



## 95TH GENERAL ASSEMBLY

### State of Illinois

### 2007 and 2008

#### SB0258

Introduced 2/7/2007, by Sen. M. Maggie Crotty

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1701

from Ch. 110, par. 15-1701

Amends the Code of Civil Procedure. Provides that, in a case of foreclosure where the tenant is current on his or her rent, any order of possession must allow the tenant to retain possession of the property covered in his or her rental agreement (i) for 120 days following the notice of the hearing on the supplemental petition that has been properly served upon the tenant, or (ii) through the duration of his or her lease, whichever is shorter. Provides that the exception for continued possession by the tenant only applies if the tenant continues to pay his or her rent in full during the 120-day period.

LRB095 09724 LCT 29928 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by  
5 changing Section 15-1701 as follows:

6 (735 ILCS 5/15-1701) (from Ch. 110, par. 15-1701)

7 Sec. 15-1701. Right to possession.

8 (a) General. The provisions of this Article shall govern  
9 the right to possession of the mortgaged real estate during  
10 foreclosure. Possession under this Article includes physical  
11 possession of the mortgaged real estate to the same extent to  
12 which the mortgagor, absent the foreclosure, would have been  
13 entitled to physical possession. For the purposes of Part 17,  
14 real estate is residential real estate only if it is  
15 residential real estate at the time the foreclosure is  
16 commenced.

17 (b) Pre-Judgment. Prior to the entry of a judgment of  
18 foreclosure:

19 (1) In the case of residential real estate, the  
20 mortgagor shall be entitled to possession of the real  
21 estate except if (i) the mortgagee shall object and show  
22 good cause, (ii) the mortgagee is so authorized by the  
23 terms of the mortgage or other written instrument, and

1 (iii) the court is satisfied that there is a reasonable  
2 probability that the mortgagee will prevail on a final  
3 hearing of the cause, the court shall upon request place  
4 the mortgagee in possession. If the residential real estate  
5 consists of more than one dwelling unit, then for the  
6 purpose of this Part residential real estate shall mean  
7 only that dwelling unit or units occupied by persons  
8 described in clauses (i), (ii) and (iii) of Section  
9 15-1219.

10 (2) In all other cases, if (i) the mortgagee is so  
11 authorized by the terms of the mortgage or other written  
12 instrument, and (ii) the court is satisfied that there is a  
13 reasonable probability that the mortgagee will prevail on a  
14 final hearing of the cause, the mortgagee shall upon  
15 request be placed in possession of the real estate, except  
16 that if the mortgagor shall object and show good cause, the  
17 court shall allow the mortgagor to remain in possession.

18 (c) Judgment Through 30 Days After Sale Confirmation. After  
19 the entry of a judgment of foreclosure and through the 30th day  
20 after a foreclosure sale is confirmed:

21 (1) Subsection (b) of Section 15-1701 shall be  
22 applicable, regardless of the provisions of the mortgage or  
23 other instrument, except that after a sale pursuant to the  
24 judgment the holder of the certificate of sale (or, if  
25 none, the purchaser at the sale) shall have the mortgagee's  
26 right to be placed in possession, with all rights and

1 duties of a mortgagee in possession under this Article.

2 (2) Notwithstanding paragraph (1) of subsection (b)  
3 and paragraph (1) of subsection (c) of Section 15-1701,  
4 upon request of the mortgagee, a mortgagor of residential  
5 real estate shall not be allowed to remain in possession  
6 between the expiration of the redemption period and through  
7 the 30th day after sale confirmation unless (i) the  
8 mortgagor pays to the mortgagee or such holder or  
9 purchaser, whichever is applicable, monthly the lesser of  
10 the interest due under the mortgage calculated at the  
11 mortgage rate of interest applicable as if no default had  
12 occurred or the fair rental value of the real estate, or  
13 (ii) the mortgagor otherwise shows good cause. Any amounts  
14 paid by the mortgagor pursuant to this subsection shall be  
15 credited against the amounts due from the mortgagor.

16 (d) After 30 Days After Sale Confirmation. The holder of  
17 the certificate of sale or deed issued pursuant to that  
18 certificate or, if no certificate or deed was issued, the  
19 purchaser, except to the extent the holder or purchaser may  
20 consent otherwise, shall be entitled to possession of the  
21 mortgaged real estate, as of the date 30 days after the order  
22 confirming the sale is entered, against those parties to the  
23 foreclosure whose interests the court has ordered terminated,  
24 without further notice to any party, further order of the  
25 court, or resort to proceedings under any other statute other  
26 than this Article. This right to possession shall be limited by

1 the provisions governing entering and enforcing orders of  
2 possession under subsection (g) of Section 15-1508. If the  
3 holder or purchaser determines that there are occupants of the  
4 mortgaged real estate who have not been made parties to the  
5 foreclosure and had their interests terminated therein, the  
6 holder or purchaser may bring a proceeding under subsection (h)  
7 of this Section or under Article 9 of this Code to terminate  
8 the rights of possession of any such occupants. The holder or  
9 purchaser shall not be entitled to proceed against any such  
10 occupant under Article 9 of this Code until after 30 days after  
11 the order confirming the sale is entered.

12 (e) Termination of Leases. A lease of all or any part of  
13 the mortgaged real estate shall not be terminated automatically  
14 solely by virtue of the entry into possession by (i) a  
15 mortgagee or receiver prior to the entry of an order confirming  
16 the sale, (ii) the holder of the certificate of sale, (iii) the  
17 holder of the deed issued pursuant to that certificate, or (iv)  
18 if no certificate or deed was issued, the purchaser at the  
19 sale.

20 (f) Other Statutes; Instruments. The provisions of this  
21 Article providing for possession of mortgaged real estate shall  
22 supersede any other inconsistent statutory provisions. In  
23 particular, and without limitation, whenever a receiver is  
24 sought to be appointed in any action in which a foreclosure is  
25 also pending, a receiver shall be appointed only in accordance  
26 with this Article. Except as may be authorized by this Article,

1 no mortgage or other instrument may modify or supersede the  
2 provisions of this Article.

3 (g) Certain Leases. Leases of the mortgaged real estate  
4 entered into by a mortgagee in possession or a receiver and  
5 approved by the court in a foreclosure shall be binding on all  
6 parties, including the mortgagor after redemption, the  
7 purchaser at a sale pursuant to a judgment of foreclosure and  
8 any person acquiring an interest in the mortgaged real estate  
9 after entry of a judgment of foreclosure in accordance with  
10 Sections 15-1402 and 15-1403.

11 (h) Proceedings Against Certain Occupants.

12 (1) The mortgagee-in-possession of the mortgaged real  
13 estate under Section 15-1703, a receiver appointed under  
14 Section 15-1704, a holder of the certificate of sale or  
15 deed, or the purchaser may, at any time during the pendency  
16 of the foreclosure and up to 90 days after the date of the  
17 order confirming the sale, file a supplemental petition for  
18 possession against a person not personally named as a party  
19 to the foreclosure. The supplemental petition for  
20 possession shall name each such occupant against whom  
21 possession is sought and state the facts upon which the  
22 claim for relief is premised.

23 (2) The petitioner shall serve upon each named occupant  
24 the petition, a notice of hearing on the petition, and, if  
25 any, a copy of the certificate of sale or deed. The  
26 proceeding for the termination of such occupant's

1       possessory interest, including service of the notice of the  
2       hearing and the petition, shall in all respects comport  
3       with the requirements of Article 9 of this Code, except as  
4       otherwise specified in this Section. The hearing shall be  
5       no less than 21 days from the date of service of the  
6       notice.

7               (3) The supplemental petition shall be heard as part of  
8       the foreclosure proceeding and without the payment of  
9       additional filing fees. An order for possession obtained  
10      under this Section shall name each occupant whose interest  
11      has been terminated, shall recite that it is only effective  
12      as to the occupant so named and those holding under them,  
13      and shall be enforceable for no more than 90 days after its  
14      entry, except that the 90-day period may be extended to the  
15      extent and in the manner provided in Section 9-117 of  
16      Article 9 and except as provided in item (4) of this  
17      subsection (h).

18              (4) In a case of foreclosure where the tenant is  
19      current on his or her rent, any order of possession must  
20      allow the tenant to retain possession of the property  
21      covered in his or her rental agreement (i) for 120 days  
22      following the notice of the hearing on the supplemental  
23      petition that has been properly served upon the tenant, or  
24      (ii) through the duration of his or her lease, whichever is  
25      shorter. This item (4) shall only apply if the tenant  
26      continues to pay his or her rent in full during the 120-day

1           period.

2           (Source: P.A. 88-21; 88-265; 88-670, eff. 12-2-94; 89-203, eff.

3           7-21-95.)