



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB3690

Introduced 2/24/2009, by Rep. Michael J. Zalewski

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/9-117

from Ch. 110, par. 9-117

735 ILCS 5/15-1701

from Ch. 110, par. 15-1701

Amends the Code of Civil Procedure. Provides that no judgment for possession obtained in a forcible entry action may be enforced more than 120 (instead of 90) days after judgment is entered, unless upon plaintiff's motion the court grants an enforcement period extension. Provides that the plaintiff's notice of motion shall contain a notice to the defendant that states that the landlord obtained an eviction judgment against the defendant, but the sheriff did not evict the defendant within the 120 (instead of 90) days that the landlord has to evict after a judgment. Makes corresponding change to 120 days (instead of 90 days) in a provision addressing an order of possession following a hearing and supplemental petition. Effective immediately.

LRB096 09607 AJO 19768 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 Sections 9-117 and 15-1701 as follows:

6 (735 ILCS 5/9-117) (from Ch. 110, par. 9-117)

7 Sec. 9-117. Expiration of Judgment. No judgment for  
8 possession obtained in an action brought under this Article may  
9 be enforced more than 120 ~~90~~ days after judgment is entered,  
10 unless upon motion by the plaintiff the court grants an  
11 extension of the period of enforcement of the judgment.  
12 Plaintiff's notice of motion shall contain the following notice  
13 directed to the defendant:

14 "Your landlord, (insert name), obtained an eviction  
15 judgment against you on (insert date), but the sheriff did  
16 not evict you within the 120 ~~90~~ days that the landlord has  
17 to evict after a judgment in court. On the date stated in  
18 this notice, your landlord will be asking the court to  
19 allow the sheriff to evict you based on that judgment. You  
20 must attend the court hearing if you want the court to stop  
21 the landlord from having you evicted. To prevent the  
22 eviction, you must be able to prove that (1) the landlord  
23 and you made an agreement after the judgment (for instance,

1 to pay up back rent or to comply with the lease) and you  
2 have lived up to the agreement; or (2) the reason the  
3 landlord brought the original eviction case has been  
4 resolved or forgiven, and the eviction the landlord now  
5 wants the court to grant is based on a new or different  
6 reason; or (3) that you have another legal or equitable  
7 reason why the court should not grant the landlord's  
8 request for your eviction."

9 The court shall grant the motion for the extension of the  
10 judgment of possession unless the defendant establishes that  
11 the tenancy has been reinstated, that the breach upon which the  
12 judgment was issued has been cured or waived, that the  
13 plaintiff and defendant entered into a post-judgment agreement  
14 whose terms the defendant has performed, or that other legal or  
15 equitable grounds exist that bar enforcement of the judgment.  
16 This Section does not apply to any action based upon a breach  
17 of a contract entered into on or after July 1, 1962, for the  
18 purchase of premises in which the court has entered a stay  
19 under Section 9-110; nor shall this Section apply to any action  
20 to which the provisions of Section 9-111 apply; nor shall this  
21 Section affect the rights of Boards of Managers under Section  
22 9-104.2.

23 (Source: P.A. 86-1280.)

24 (735 ILCS 5/15-1701) (from Ch. 110, par. 15-1701)  
25 Sec. 15-1701. Right to possession.

1           (a) General. The provisions of this Article shall govern  
2 the right to possession of the mortgaged real estate during  
3 foreclosure. Possession under this Article includes physical  
4 possession of the mortgaged real estate to the same extent to  
5 which the mortgagor, absent the foreclosure, would have been  
6 entitled to physical possession. For the purposes of Part 17,  
7 real estate is residential real estate only if it is  
8 residential real estate at the time the foreclosure is  
9 commenced.

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

12           (1) In the case of residential real estate, the  
13 mortgagor shall be entitled to possession of the real  
14 estate except if (i) the mortgagee shall object and show  
15 good cause, (ii) the mortgagee is so authorized by the  
16 terms of the mortgage or other written instrument, and  
17 (iii) the court is satisfied that there is a reasonable  
18 probability that the mortgagee will prevail on a final  
19 hearing of the cause, the court shall upon request place  
20 the mortgagee in possession. If the residential real estate  
21 consists of more than one dwelling unit, then for the  
22 purpose of this Part residential real estate shall mean  
23 only that dwelling unit or units occupied by persons  
24 described in clauses (i), (ii) and (iii) of Section  
25 15-1219.

26           (2) In all other cases, if (i) the mortgagee is so

1 authorized by the terms of the mortgage or other written  
2 instrument, and (ii) the court is satisfied that there is a  
3 reasonable probability that the mortgagee will prevail on a  
4 final hearing of the cause, the mortgagee shall upon  
5 request be placed in possession of the real estate, except  
6 that if the mortgagor shall object and show good cause, the  
7 court shall allow the mortgagor to remain in possession.

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

11 (1) Subsection (b) of Section 15-1701 shall be  
12 applicable, regardless of the provisions of the mortgage or  
13 other instrument, except that after a sale pursuant to the  
14 judgment the holder of the certificate of sale (or, if  
15 none, the purchaser at the sale) shall have the mortgagee's  
16 right to be placed in possession, with all rights and  
17 duties of a mortgagee in possession under this Article.

18 (2) Notwithstanding paragraph (1) of subsection (b)  
19 and paragraph (1) of subsection (c) of Section 15-1701,  
20 upon request of the mortgagee, a mortgagor of residential  
21 real estate shall not be allowed to remain in possession  
22 between the expiration of the redemption period and through  
23 the 30th day after sale confirmation unless (i) the  
24 mortgagor pays to the mortgagee or such holder or  
25 purchaser, whichever is applicable, monthly the lesser of  
26 the interest due under the mortgage calculated at the

1 mortgage rate of interest applicable as if no default had  
2 occurred or the fair rental value of the real estate, or  
3 (ii) the mortgagor otherwise shows good cause. Any amounts  
4 paid by the mortgagor pursuant to this subsection shall be  
5 credited against the amounts due from the mortgagor.

6 (d) After 30 Days After Sale Confirmation. The holder of  
7 the certificate of sale or deed issued pursuant to that  
8 certificate or, if no certificate or deed was issued, the  
9 purchaser, except to the extent the holder or purchaser may  
10 consent otherwise, shall be entitled to possession of the  
11 mortgaged real estate, as of the date 30 days after the order  
12 confirming the sale is entered, against those parties to the  
13 foreclosure whose interests the court has ordered terminated,  
14 without further notice to any party, further order of the  
15 court, or resort to proceedings under any other statute other  
16 than this Article. This right to possession shall be limited by  
17 the provisions governing entering and enforcing orders of  
18 possession under subsection (g) of Section 15-1508. If the  
19 holder or purchaser determines that there are occupants of the  
20 mortgaged real estate who have not been made parties to the  
21 foreclosure and had their interests terminated therein, the  
22 holder or purchaser may bring a proceeding under subsection (h)  
23 of this Section or under Article 9 of this Code to terminate  
24 the rights of possession of any such occupants. The holder or  
25 purchaser shall not be entitled to proceed against any such  
26 occupant under Article 9 of this Code until after 30 days after

1 the order confirming the sale is entered.

2 (e) Termination of Leases. A lease of all or any part of  
3 the mortgaged real estate shall not be terminated automatically  
4 solely by virtue of the entry into possession by (i) a  
5 mortgagee or receiver prior to the entry of an order confirming  
6 the sale, (ii) the holder of the certificate of sale, (iii) the  
7 holder of the deed issued pursuant to that certificate, or (iv)  
8 if no certificate or deed was issued, the purchaser at the  
9 sale.

10 (f) Other Statutes; Instruments. The provisions of this  
11 Article providing for possession of mortgaged real estate shall  
12 supersede any other inconsistent statutory provisions. In  
13 particular, and without limitation, whenever a receiver is  
14 sought to be appointed in any action in which a foreclosure is  
15 also pending, a receiver shall be appointed only in accordance  
16 with this Article. Except as may be authorized by this Article,  
17 no mortgage or other instrument may modify or supersede the  
18 provisions of this Article.

19 (g) Certain Leases. Leases of the mortgaged real estate  
20 entered into by a mortgagee in possession or a receiver and  
21 approved by the court in a foreclosure shall be binding on all  
22 parties, including the mortgagor after redemption, the  
23 purchaser at a sale pursuant to a judgment of foreclosure and  
24 any person acquiring an interest in the mortgaged real estate  
25 after entry of a judgment of foreclosure in accordance with  
26 Sections 15-1402 and 15-1403.

1 (h) Proceedings Against Certain Occupants.

2 (1) The mortgagee-in-possession of the mortgaged real  
3 estate under Section 15-1703, a receiver appointed under  
4 Section 15-1704, a holder of the certificate of sale or  
5 deed, or the purchaser may, at any time during the pendency  
6 of the foreclosure and up to 90 days after the date of the  
7 order confirming the sale, file a supplemental petition for  
8 possession against a person not personally named as a party  
9 to the foreclosure. The supplemental petition for  
10 possession shall name each such occupant against whom  
11 possession is sought and state the facts upon which the  
12 claim for relief is premised.

13 (2) The petitioner shall serve upon each named occupant  
14 the petition, a notice of hearing on the petition, and, if  
15 any, a copy of the certificate of sale or deed. The  
16 proceeding for the termination of such occupant's  
17 possessory interest, including service of the notice of the  
18 hearing and the petition, shall in all respects comport  
19 with the requirements of Article 9 of this Code, except as  
20 otherwise specified in this Section. The hearing shall be  
21 no less than 21 days from the date of service of the  
22 notice.

23 (3) The supplemental petition shall be heard as part of  
24 the foreclosure proceeding and without the payment of  
25 additional filing fees. An order for possession obtained  
26 under this Section shall name each occupant whose interest



1 has been terminated, shall recite that it is only effective  
2 as to the occupant so named and those holding under them,  
3 and shall be enforceable for no more than 120 ~~90~~ days after  
4 its entry, except that the 120-day ~~90-day~~ period may be  
5 extended to the extent and in the manner provided in  
6 Section 9-117 of Article 9 and except as provided in item  
7 (4) of this subsection (h).

8 (4) In a case of foreclosure where the tenant is  
9 current on his or her rent, or where timely written notice  
10 of to whom and where the rent is to be paid has not been  
11 provided to the tenant, or where the tenant has made  
12 good-faith efforts to make rental payments in order to keep  
13 current, any order of possession must allow the tenant to  
14 retain possession of the property covered in his or her  
15 rental agreement (i) for 120 days following the notice of  
16 the hearing on the supplemental petition that has been  
17 properly served upon the tenant, or (ii) through the  
18 duration of his or her lease, whichever is shorter. If the  
19 tenant has been given timely written notice of to whom and  
20 where the rent is to be paid, this item (4) shall only  
21 apply if the tenant continues to pay his or her rent in  
22 full during the 120-day period or has made good-faith  
23 efforts to pay the rent in full during that period. No  
24 mortgagee-in-possession, receiver or holder of a  
25 certificate of sale or deed, or purchaser who fails to file  
26 a supplemental petition under this subsection during the

1           pendency of a mortgage foreclosure shall file a forcible  
2           entry and detainer action against a tenant of the mortgaged  
3           real estate until 90 days after a notice of intent to file  
4           such action has been properly served upon the tenant.

5           (5) The court records relating to a supplemental  
6           petition for possession filed under this subsection (h)  
7           against a tenant who is entitled to notice under item (4)  
8           of this subsection (h), or relating to a forcible entry and  
9           detainer action brought against a tenant who would have  
10          lawful possession of the premises but for the foreclosure  
11          of a mortgage on the property, shall be ordered sealed and  
12          shall not be disclosed to any person, other than a law  
13          enforcement officer or any other representative of a  
14          governmental entity, except upon further order of the  
15          court.

16          (Source: P.A. 95-262, eff. 1-1-08; 95-933, eff. 8-26-08.)

17          Section 99. Effective date. This Act takes effect upon  
18          becoming law.