



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3863

Introduced 2/26/2009, by Rep. William D. Burns - Deborah L. Graham - Lou Lang - Elizabeth Coulson - Mike Boland, et al.

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1504.5	
735 ILCS 5/15-1504.6 new	
735 ILCS 5/15-1508.5 new	
735 ILCS 5/15-1701	from Ch. 110, par. 15-1701
735 ILCS 5/15-1703	from Ch. 110, par. 15-1703
735 ILCS 5/15-1704	from Ch. 110, par. 15-1704

Amends the Code of Civil Procedure. Provides that the homeowner notice attached to the summons in a residential mortgage foreclosure action shall include directions concerning giving written notice to any tenants about the foreclosure and the tenant's right to remain on the premises. Provides that an occupant may file an action for failure to provide notice and recover \$200 plus actual damages, attorney's fees, and costs. Provides that a purchaser of property in a foreclosure must give notice to any occupants of the property that he or she has acquired the mortgaged real estate. Provides that a mortgagor in a foreclosure must notify any occupant or potential occupant of the foreclosure action. Provides that the purchaser of property sold at a court foreclosure sale must provide a notice of rights to occupants of the property within 7 days after the confirmation of the sale. Provides that until the rights of possession of all occupants of foreclosed property have been terminated, the purchaser of foreclosed property must maintain the property in a condition that is safe, healthful, and fit for occupancy. Provides that a receiver shall give similar written notices and may not increase the rent without leave of court. Provides that the court may allow a rent increase by a receiver or a mortgagee in possession if it finds that an increase is necessary to operate the property, after notice to all occupants affected by an increase, but nothing in the Act shall alter the lease. Makes other changes. Effective immediately.

LRB096 08541 AJO 18662 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 15-1504.5, 15-1508, 15-1701, 15-1703, and
6 15-1704 and by adding Sections 15-1504.6, and 15-1508.5 as
7 follows:

8 (735 ILCS 5/15-1504.5)

9 Sec. 15-1504.5. Homeowner notice to be attached to summons.
10 For all residential foreclosure actions filed, the plaintiff
11 must attach a Homeowner Notice to the summons. The Homeowner
12 Notice must be in at least 12 point type and in English and
13 Spanish. The Spanish translation shall be prepared by the
14 Attorney General and posted on the Attorney General's website.
15 A notice that includes the Attorney General's Spanish
16 translation in substantially similar form shall be deemed to
17 comply with the Spanish notice requirement in this Section. The
18 Notice must be in substantially the following form:

19 **IMPORTANT INFORMATION FOR HOMEOWNERS IN FORECLOSURE**

20 **1. POSSESSION:** The lawful occupants of a home have the
21 right to live in the home until a judge enters an order for

1 possession.

2 **2. OWNERSHIP:** You continue to own your home until the
3 court rules otherwise.

4 **3. REINSTATEMENT:** As the homeowner you have the right
5 to bring the mortgage current within 90 days after you
6 receive the summons.

7 **4. REDEMPTION:** As the homeowner you have the right to
8 sell your home, refinance, or pay off the loan during the
9 redemption period.

10 **5. SURPLUS:** As the homeowner you have the right to
11 petition the court for any excess money that results from a
12 foreclosure sale of your home.

13 **6. WORKOUT OPTIONS:** The mortgage company does not want
14 to foreclose on your home if there is any way to avoid it.
15 Call your mortgage company [insert name of the homeowner's
16 current mortgage servicer in bold and 14 point type] or its
17 attorneys to find out the alternatives to foreclosure.

18 **7. PAYOFF AMOUNT:** You have the right to obtain a
19 written statement of the amount necessary to pay off your
20 loan. Your mortgage company (identified above) must
21 provide you this statement within 10 business days of
22 receiving your request, provided that your request is in
23 writing and includes your name, the address of the
24 property, and the mortgage account or loan number. Your
25 first payoff statement will be free.

26 **8. GET ADVICE:** This information is not exhaustive and

1 does not replace the advice of a professional. You may have
2 other options. Get professional advice from a lawyer or
3 certified housing counselor about your rights and options
4 to avoid foreclosure.

5 **9. LAWYER:** If you do not have a lawyer, you may be able
6 to find assistance by contacting the Illinois State Bar
7 Association or a legal aid organization that provides free
8 legal assistance.

9 **10. PROCEED WITH CAUTION:** You may be contacted by
10 people offering to help you avoid foreclosure. Before
11 entering into any transaction with persons offering to help
12 you, please contact a lawyer, government official, or
13 housing counselor for advice.

14 **11. IF YOU HAVE TENANTS OR RENT YOUR PROPERTY:**

15 A. Within 7 days after receiving this notice, you
16 must notify any tenants living in your property, and
17 anyone who routinely makes rental payments on behalf of
18 a tenant, that the building is in foreclosure
19 proceedings. This must be in writing and must provide
20 the tenants with the case name and case number of the
21 pending foreclosure action, and shall notify tenants
22 of the court where the foreclosure action is pending.
23 The notice must also include the following language:
24 "This is not a notice to vacate the premises. This
25 notice does not mean ownership of the building has
26 changed. All tenants are still responsible for payment

1 of rent and other obligations under the rental
2 agreement. The owner or landlord is still responsible
3 for his or her obligations under the rental agreement.
4 You shall receive additional notice if there is a
5 change in owner."

6 B. You must also give written notice to anyone who
7 might rent or lease your property, that the building is
8 in foreclosure proceedings, before you rent or lease
9 the property to him or her.

10 C. If you do not provide these notices to anyone
11 entitled to notice, you may be liable to your tenants
12 for any damages that they suffer, as well as a penalty
13 of \$200, and any attorney's fees or court costs that
14 the tenant may accrue.

15 D. Even though your building is in foreclosure, you
16 must still keep your property in good repair and
17 utilities must be paid under the terms of any lease or
18 as required by State and local law.

19 (Source: P.A. 95-961, eff. 1-1-09.)

20 (735 ILCS 5/15-1504.6 new)

21 Sec. 15-1504.6. Notice by mortgagor to occupants.

22 (a) Within 7 days after being served a foreclosure
23 complaint, as defined in Section 15-1504, a mortgagor or owner
24 of the mortgaged real estate that is the subject of the
25 foreclosure complaint shall notify, in writing, all occupants

1 of the mortgaged real estate that a foreclosure action has been
2 filed against the mortgagor or owner. A mortgagor or owner
3 shall also notify, in writing, any other third party who has a
4 consistent pattern and practice of paying rent to the mortgagor
5 or owner on behalf of an occupant that the mortgaged real
6 estate is in foreclosure. The notice shall include the court in
7 which the foreclosure action is pending, the case name, and the
8 case number and shall include the following language:

9 "This is not a notice to vacate the premises. This notice
10 does not mean ownership of the building has changed. All
11 tenants are still responsible for payment of rent and other
12 obligations under the lease or rental agreement. The owner or
13 landlord is still responsible for his or her obligations under
14 the lease or rental agreement. You shall receive additional
15 notice if there is a change in owner."

16 (b) The written notice required by subsection (a) of this
17 Section shall be served: by delivering a copy to the occupant,
18 or by leaving the same with some person of the age of 13 years
19 or older, residing on or in possession of the premises; or by
20 sending a copy of the notice to the occupant by certified or
21 registered mail, return receipt requested.

22 (c) Once served with a foreclosure complaint, the mortgagor
23 or owner of the mortgaged real estate shall also disclose to a
24 prospective occupant, in writing, that the mortgaged real
25 estate is in foreclosure prior to entering into a lease or
26 rental agreement for a dwelling unit at the mortgaged real

1 estate.

2 (d) Penalty for noncompliance. If the mortgagor or owner
3 fails to comply with this Section, the occupant may terminate
4 any lease by written notice. The written notice shall specify a
5 date of termination no later than 30 days after the date of the
6 written notice. An occupant may bring an action in the circuit
7 court against a mortgagor or owner for failure to provide
8 notice as required in this Section. If the occupant establishes
9 that a violation of this Section has occurred, the occupant is
10 entitled to recover \$200 plus actual damages, attorney's fees,
11 and costs.

12 (735 ILCS 5/15-1508.5 new)

13 Sec. 15-1508.5. Notice by holder or purchaser to occupants
14 of mortgaged real estate.

15 (a) Within 7 days after the confirmation of sale under
16 Section 15-1508, the holder of the certificate of sale or deed
17 issued pursuant to that certificate or, if no certificate or
18 deed was issued, the purchaser, shall notify all occupants of
19 the mortgaged real estate, except the mortgagor, that he or she
20 has acquired the mortgaged real estate.

21 (b) The notice required under subsection (a) shall be in
22 writing and shall:

23 (1) provide the name and address of the holder or
24 purchaser who acquired the mortgaged real estate and the
25 date it was acquired;

1 (2) provide the name, address, and telephone number of
2 the individual or entity to whom the occupants should pay
3 rent and whom occupants may contact with concerns about the
4 mortgaged real estate or to request repairs of that
5 property;

6 (3) provide the occupant not less than 5 days from the
7 date of service of the notice to pay the rent, if rent is
8 due for the current rental period, and not less than 5 days
9 from the beginning of each subsequent rental period to pay
10 rent for that rental period;

11 (4) include the following language:

12 "This is notice that the ownership of the building
13 has changed. It is not a notice to vacate the premises.
14 If the new owner decides to end your lease or rental
15 agreement at the building, you will receive additional
16 notice of the termination of your tenancy. You may wish
17 to contact a lawyer or your local legal aid or housing
18 counseling agency to discuss any rights you may have.";
19 and

20 (5) attach a copy of the order confirming sale or other
21 court order that indicates the holder or purchaser has
22 acquired the mortgaged real estate.

23 (c) The written notice required by subsection (a) shall be
24 served: by delivering a copy to the occupant, or by leaving the
25 same with some person of the age of 13 years or older, residing
26 on or in possession of the premises; or by sending a copy of

1 the notice to the occupant by certified or registered mail,
2 return receipt requested.

3 (d) An occupant of mortgaged real estate shall not be
4 liable for rent to the holder or purchaser, and the holder or
5 purchaser shall not terminate an occupant's tenancy for
6 non-payment of such rent, until the holder or purchaser has
7 served the notice prescribed in subsection (a). An occupant who
8 previously paid rent for the current rental period to the
9 mortgagor, or other entity with the authority to operate,
10 manage, and conserve the mortgaged real estate at the time of
11 payment, shall not be held liable for that rent by the holder
12 or purchaser, and the occupant's tenancy shall not be
13 terminated for non-payment of such rent.

14 (735 ILCS 5/15-1701) (from Ch. 110, par. 15-1701)

15 Sec. 15-1701. Right to possession.

16 (a) General. The provisions of this Article shall govern
17 the right to possession of the mortgaged real estate during
18 foreclosure. Possession under this Article includes physical
19 possession of the mortgaged real estate to the same extent to
20 which the mortgagor, absent the foreclosure, would have been
21 entitled to physical possession. For the purposes of Part 17,
22 real estate is residential real estate only if it is
23 residential real estate at the time the foreclosure is
24 commenced.

25 (b) Pre-Judgment. Prior to the entry of a judgment of

1 foreclosure:

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

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

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

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

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

22 (d) After 30 Days After Sale Confirmation. The holder of
23 the certificate of sale or deed issued pursuant to that
24 certificate or, if no certificate or deed was issued, the
25 purchaser, except to the extent the holder or purchaser may
26 consent otherwise, shall be entitled to possession of the

1 mortgaged real estate, as of the date 30 days after the order
2 confirming the sale is entered, against those parties to the
3 foreclosure whose interests the court has ordered terminated,
4 without further notice to any party, further order of the
5 court, or resort to proceedings under any other statute other
6 than this Article. This right to possession shall be limited by
7 the provisions governing entering and enforcing orders of
8 possession under subsection (g) of Section 15-1508. If the
9 holder or purchaser determines that there are occupants of the
10 mortgaged real estate who have not been made parties to the
11 foreclosure and had their interests terminated therein, the
12 holder or purchaser may bring a proceeding under subsection (h)
13 of this Section or under Article 9 of this Code to terminate
14 the rights of possession of any such occupants. The holder or
15 purchaser shall not be entitled to proceed against any such
16 occupant under Article 9 of this Code until after 30 days after
17 the order confirming the sale is entered. Until the rights of
18 possession of all such occupants have been terminated, the
19 holder or purchaser shall maintain the mortgaged real estate in
20 a condition that is safe, healthful, and fit for occupancy and
21 in compliance with the terms of any lease and with the
22 requirements of State and local law. The holder or purchaser
23 shall also accept all rental payments from an occupant of the
24 mortgaged property and any payments from a third party or any
25 rental assistance program in support of an occupant's housing.
26 The holder or purchaser shall not charge an occupant of the

1 mortgaged real estate a rental amount greater than that which
2 the occupant had been paying for use and occupancy of the
3 mortgaged real estate prior to the confirmation of sale, for
4 the 12 months following the confirmation of sale.

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

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

22 (g) Certain Leases. Leases of the mortgaged real estate
23 entered into by a mortgagee in possession or a receiver and
24 approved by the court in a foreclosure shall be binding on all
25 parties, including the mortgagor after redemption, the
26 purchaser at a sale pursuant to a judgment of foreclosure and

1 any person acquiring an interest in the mortgaged real estate
2 after entry of a judgment of foreclosure in accordance with
3 Sections 15-1402 and 15-1403.

4 (h) Proceedings Against Certain Occupants.

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

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

26 (3) The supplemental petition shall be heard as part of

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

11 (4) Any order of possession shall allow the occupant ~~In~~
12 ~~a case of foreclosure where the tenant is current on his or~~
13 ~~her rent, or where timely written notice of to whom and~~
14 ~~where the rent is to be paid has not been provided to the~~
15 ~~tenant, or where the tenant has made good faith efforts to~~
16 ~~make rental payments in order to keep current, any order of~~
17 ~~possession must allow the tenant~~ to retain possession of
18 the property covered in his or her rental agreement ~~(i)~~ for
19 120 days following the notice of the hearing on the
20 supplemental petition that has been properly served upon
21 the tenant, ~~or (ii) through the duration of his or her~~
22 ~~lease, whichever is shorter. If the tenant has been given~~
23 ~~timely written notice of to whom and where the rent is to~~
24 ~~be paid, this item (4) shall only apply if the tenant~~
25 ~~continues to pay his or her rent in full during the 120-day~~
26 ~~period or has made good faith efforts to pay the rent in~~

1 ~~full during that period.~~ No mortgagee-in-possession,
2 receiver or holder of a certificate of sale or deed, or
3 purchaser who fails to file a supplemental petition under
4 this subsection during the pendency of a mortgage
5 foreclosure shall file a forcible entry and detainer action
6 against an occupant ~~a tenant~~ of the mortgaged real estate
7 until 90 days after a notice of intent to file such action
8 has been ~~properly~~ served in the manner provided in this
9 Code upon the occupant ~~tenant~~. This notice requirement
10 shall be in addition to, and shall not replace, the
11 provisions of Article 9 of this Code, including, but not
12 limited to, the procedures for terminating the tenancy of
13 an occupant.

14 (4.5) Notwithstanding the provisions of item (4) of
15 this subsection (h), all orders of possession granted
16 pursuant to this Article shall allow the occupant to retain
17 possession of the property covered in his or her lease for
18 no less than 30 days.

19 (4.6) The court may shorten the period of time that an
20 occupant is allowed to retain possession of the mortgaged
21 real estate under items (4) and (4.5) of this subsection
22 (h) if, upon separate motion by the petitioner or as a part
23 of the supplemental petition for possession, the court
24 finds, by a preponderance of the evidence, that: (i) the
25 occupant has been given the required notice under Section
26 15-1508.5, 15-1703, or 15-1704; and (ii) the occupant has

1 failed to pay rent or make a good faith effort to pay rent
2 within the time period prescribed in the required notice.

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

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

15 (735 ILCS 5/15-1703) (from Ch. 110, par. 15-1703)

16 Sec. 15-1703. Mortgagee in Possession. (a) Powers and
17 Duties. A mortgagee placed in possession of the real estate
18 pursuant to Section 15-1701 or Section 15-1702 shall have:

19 (1) such power and authority with respect to the real
20 estate and other property subject to the mortgage, including
21 the right to receive the rents, issues and profits thereof, as
22 may have been conferred upon the mortgagee by the terms of the
23 mortgage or other written instrument authorizing the taking of
24 possession;

25 (2) all other rights and privileges of a mortgagee in

1 possession under law not inconsistent herewith; and

2 (3) the same powers, duties and liabilities as a receiver
3 appointed for the real estate in accordance with this Article.
4 If an order placing a mortgagee in possession is modified,
5 revoked or set aside, the mortgagee shall not be liable for any
6 damages to the extent such damages arise solely out of the fact
7 that the mortgagor was removed from possession or that the
8 mortgagee was placed in possession.

9 (a-5) Notice to occupants.

10 (1) Within 7 days after taking possession of the
11 mortgaged real estate, the mortgagee in possession shall
12 notify all occupants of the mortgaged real estate that he
13 or she has acquired the mortgaged real estate. The notice
14 shall be in writing and shall:

15 (i) provide the name and address of the mortgagee
16 in possession and the date the mortgagee took
17 possession;

18 (ii) provide the name, address, and telephone
19 number of the individual or entity to whom the
20 occupants should pay rent and whom occupants may
21 contact with concerns about the mortgaged real estate
22 or to request repairs of that property;

23 (iii) provide the occupant not less than 5 days
24 from the date of service of the notice to pay the rent,
25 if rent is due for the current rental period, and not
26 less than 5 days from the beginning of each subsequent

1 rental period to pay rent for that rental period; and

2 (iv) attach a copy of the court order placing the
3 mortgagee in possession of the mortgaged real estate.

4 (2) The written notice required by item (1) of this
5 subsection (a-5) shall be served: by delivering a copy
6 thereof to the occupant, or by leaving the same with some
7 person of the age of 13 years or older, residing on or in
8 possession of the premises; or by sending a copy of the
9 notice to the occupant by certified or registered mail,
10 returned receipt requested.

11 (3) An occupant of mortgaged real estate shall not be
12 liable for rent to the mortgagee in possession, and the
13 mortgagee in possession shall not terminate an occupant's
14 tenancy for non-payment of such rent, until the mortgagee
15 in possession has served the notice prescribed in item (1)
16 of this subsection (a-5). An occupant who previously paid
17 rent for the current rental period to the mortgagor, or to
18 another entity with the authority to operate, manage, and
19 conserve the mortgaged real estate at the time of payment,
20 shall not be held liable for that rent by the mortgagee
21 after taking possession, and the mortgagee in possession
22 shall not terminate an occupant's tenancy for non-payment
23 of such rent.

24 (b) Fees and Expenses. A mortgagee in possession shall not
25 be entitled to any fees for so acting, but shall be entitled to
26 reimbursement for reasonable costs, expenses and third party

1 management fees incurred in connection with such possession.

2 (Source: P.A. 84-1462.)

3 (735 ILCS 5/15-1704) (from Ch. 110, par. 15-1704)

4 Sec. 15-1704. Receivers. (a) Receiver. Notwithstanding the
5 provisions of subsections (b), (c) and (d) of Section 15-1701,
6 and except as provided in Section 15-1702, upon request of any
7 party and a showing of good cause, the court shall appoint a
8 receiver for the mortgaged real estate.

9 (b) Powers. A receiver appointed pursuant to this Article
10 shall have possession of the mortgaged real estate and other
11 property subject to the mortgage during the foreclosure, shall
12 have full power and authority to operate, manage and conserve
13 such property, and shall have all the usual powers of receivers
14 in like cases. Without limiting the foregoing, a receiver shall
15 have the power and authority to:

16 (1) secure tenants and execute leases for the real estate,
17 the duration and terms of which are reasonable and customary
18 for the type of use involved, and such leases shall have the
19 same priority as if made by the owner of the real estate; but,
20 unless approved by the Court, the receiver shall not execute
21 oil, gas or other mineral leases, or (even if otherwise allowed
22 by law) leases extending beyond the time of the receiver's
23 possession; provided, however, with respect to residential
24 real estate leased by the receiver, nothing in this Section
25 shall affect the legal rights of any lessee with respect to the

1 safety and habitability of the residential real estate;

2 (2) collect the rents, issues and profits from the
3 mortgaged real estate;

4 (3) insure the mortgaged real estate against loss by fire
5 or other casualty;

6 (4) employ counsel, custodians, janitors and other help;
7 and

8 (5) pay taxes which may have been or may be levied against
9 the mortgaged real estate.

10 (c) Duties. A receiver appointed pursuant to this Article
11 must manage the mortgaged real estate as would a prudent
12 person, taking into account the effect of the receiver's
13 management on the interest of the mortgagor. A receiver may,
14 without an order of the court, delegate managerial functions to
15 a person in the business of managing real estate of the kind
16 involved who is financially responsible, not related to the
17 mortgagee or receiver and prudently selected. However, the
18 receiver shall remain responsible to the mortgagor or other
19 persons for the acts or omissions of such management agent.
20 When fees are paid to such a management agent, the receiver's
21 fees may be adjusted to the extent the court deems appropriate.
22 In managing the mortgaged real estate and other property
23 subject to the mortgage, a receiver or receiver's delegate, to
24 the extent the receiver receives sufficient receipts from the
25 mortgaged real estate, such other property or other sources,
26 except to the extent ordered otherwise by the court:

1 (1) shall maintain the existing casualty and liability
2 insurance required in accordance with the mortgage or
3 applicable to the real estate and other property subject to the
4 mortgage at the time the receiver took possession;

5 (2) shall use reasonable efforts to maintain the real
6 estate and other property subject to the mortgage in at least
7 as good condition as existed at the time the receiver took
8 possession, excepting reasonable wear and tear and damage by
9 any casualty;

10 (3) shall maintain the mortgaged real estate in a condition
11 that is safe, healthful, and fit for occupancy and in
12 compliance with the terms of any lease and with the
13 requirements of State and local law;

14 (4) shall accept all rental payments from an occupant of
15 the mortgaged property and any payments from a third party or
16 any rental assistance program in support of an occupant's
17 housing;

18 (5) ~~(3)~~ shall apply receipts to payment of ordinary
19 operating expenses, including royalties, rents and other
20 expenses of management;

21 (6) ~~(4)~~ shall pay any shared or common expense assessments
22 due to any association of owners of interests in real estate to
23 the extent that such assessments are or may become a lien
24 against the mortgaged real estate;

25 (7) ~~(5)~~ may pay the amounts due under any mortgage if the
26 mortgagee thereof is not a party in the foreclosure;

1 (8) ~~(6)~~ may carry such additional casualty and liability
2 insurance as is reasonably available and reasonable as to
3 amounts and risks covered;

4 (9) ~~(7)~~ may make other repairs and improvements necessary
5 to comply with building, housing, and other similar codes or
6 with existing contractual obligations affecting the mortgaged
7 real estate;

8 (10) ~~(8)~~ may hold receipts as reserves reasonably required
9 for the foregoing purposes; and

10 (11) ~~(9)~~ may take such other actions as may be reasonably
11 necessary to conserve the mortgaged real estate and other
12 property subject to the mortgage, or as otherwise authorized by
13 the court.

14 (d) Allocation of Receipts. Receipts received from
15 operation of the real estate and other property subject to the
16 mortgage by the receiver shall be applied in the following
17 order of priority.

18 (1) to reimbursement of the receiver for all reasonable
19 costs and expenses incurred by the receiver or the receiver's
20 delegates;

21 (2) to payment of insurance premiums authorized in
22 paragraph (1) of subsection (c) of Section 15-1704;

23 (3) to payment of the receiver's delegates of any
24 reasonable management fees for managing real estate of the type
25 involved;

26 (4) to payment of receiver's fees allowed by the court;

1 (5) to payment of expenses authorized in paragraphs (2),
2 (3), (5), and (6) ~~(4)~~ of subsection (c) of Section 15-1704;

3 (6) to payment of amounts authorized in paragraph (7) ~~(5)~~
4 of subsection (c) of Section 15-1704;

5 (7) to payment of expenses authorized in paragraphs (8) ~~(6)~~
6 and (9) ~~(7)~~ of subsection (c) of Section 15-1704; and

7 (8) the balance, if any, shall be held or disbursed as
8 ordered by the court.

9 (e) Non-Liability for Allocations. A receiver shall in no
10 event be liable to any person for the allocation of, or failure
11 to allocate, receipts to possible expenditures within the same
12 priority category.

13 (f) Notice to Occupants.

14 (1) Within 7 days after appointment, the receiver shall
15 notify all occupants of the mortgaged real estate that he
16 or she has been appointed receiver of the mortgaged real
17 estate. The notice shall be in writing and shall:

18 (i) provide the name and address of the receiver
19 and the date the receiver was appointed;

20 (ii) provide the name, address, and telephone
21 number of the individual or entity to whom the
22 occupants should pay rent and whom occupants may
23 contact with concerns about the mortgaged real estate
24 or to request repairs of that property;

25 (iii) provide the occupant not less than 5 days
26 from the date of service of the notice to pay the rent,

1 if rent is due for the current rental period, and not
2 less than 5 days from the beginning of each subsequent
3 rental period to pay rent for that rental period; and
4 (iv) attach a copy of the order appointing the
5 receiver as receiver for the mortgaged real estate.

6 (2) The notice required by item (1) of this subsection
7 (f) shall be served: by delivering a written or printed, or
8 partly written and printed, copy thereof to the occupant,
9 or by leaving the same with some person of the age of 13
10 years or older, residing on or in possession of the
11 premises; or by sending a copy of the notice to the
12 occupant by certified or registered mail, returned receipt
13 requested.

14 (3) An occupant of mortgaged real estate shall not be
15 liable for rent to the receiver, and the receiver shall not
16 terminate an occupant's tenancy for non-payment of such
17 rent, until the receiver has served the notice prescribed
18 in item (1) of this subsection (f). An occupant who
19 previously paid rent for the current rental period to the
20 mortgagor, or other entity with the authority to operate,
21 manage and conserve the mortgaged real estate at the time
22 of payment, shall not be held liable for that rent by the
23 receiver after appointment, and the receiver shall not
24 terminate an occupant's tenancy for non-payment of such
25 rent.

26 (g) Increase of rents. Notwithstanding any other provision

1 of this Article, a receiver or mortgagee in possession shall
2 not charge an occupant of the mortgaged real estate a rental
3 amount greater than that which the occupant had been paying for
4 use and occupancy of the mortgaged real estate prior to the
5 appointment of a receiver or mortgagee in possession, without
6 leave of court. The court may allow an increase of rent if,
7 upon motion by the receiver or mortgagee in possession, the
8 court finds by a preponderance of the evidence, that the
9 increase of rent is necessary to operate, manage, and conserve
10 the mortgaged real estate pursuant to this Section. A list of
11 the current rents for each unit in the mortgaged real estate,
12 and a list of the proposed rent increase for each of those
13 units, must be attached to a motion for a rent increase under
14 this subsection (g). All occupants of the mortgaged real estate
15 who may be affected by the motion for a rent increase, if not
16 otherwise entitled to notice, shall be notified in writing of
17 the nature of the motion, the date and time of the motion, and
18 the court where the motion will be heard. Such notice shall be
19 by personal service or first-class mail. Nothing in this
20 subsection (g) shall alter the terms of any lease agreement.

21 (h) ~~(f)~~ Removal. The court may remove a receiver upon a
22 showing of good cause, in which case a new receiver may be
23 appointed in accordance with subsection (b) of Section 15-1702
24 and subsection (a) of Section 15-1704.

25 (Source: P.A. 84-1462.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.