



## 96TH GENERAL ASSEMBLY

### State of Illinois

### 2009 and 2010

### SB2230

Introduced 2/20/2009, by Sen. Jacqueline Y. Collins

#### 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 11441 AJ0 21916 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       detrainer 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.