

SB3562



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3562

Introduced 2/10/2010, by Sen. Antonio Muñoz

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1701

from Ch. 110, par. 15-1701

Amends the Code of Civil Procedure. In Illinois Mortgage Foreclosure Law provisions prohibiting a mortgagee-in-possession, receiver or holder of a certificate of sale or deed, or purchaser who fails to file a supplemental petition for possession during the pendency of a mortgage foreclosure from filing a forcible entry and detainer action against an occupant of mortgaged real estate until 90 days after a notice of intent to file such action has been properly served upon the occupant, adds language providing that the prohibition also applies to a mortgagee or an assignee of a mortgagee.

LRB096 20728 AJO 36462 b

A BILL FOR

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 120 days after
14 its entry, except that the 120-day period may be extended
15 to the extent and in the manner provided in Section 9-117
16 of Article 9 and except as provided in item (4) of this
17 subsection (h).

18 (4) In a case of foreclosure where the occupant is
19 current on his or her rent, or where timely written notice
20 of to whom and where the rent is to be paid has not been
21 provided to the occupant, or where the occupant has made
22 good-faith efforts to make rental payments in order to keep
23 current, any order of possession must allow the occupant to
24 retain possession of the property covered in his or her
25 rental agreement (i) for 120 days following the notice of
26 the hearing on the supplemental petition that has been

1 properly served upon the occupant, or (ii) through the
2 duration of his or her lease, whichever is shorter,
3 provided that if the duration of his or her lease is less
4 than 30 days from the date of the order, the order shall
5 allow the occupant to retain possession for 30 days from
6 the date of the order. A mortgagee in possession, receiver,
7 holder of a certificate of sale or deed, or purchaser at
8 the judicial sale, who asserts that the occupant is not
9 current in rent, shall file an affidavit to that effect in
10 the supplemental petition proceeding. If the occupant has
11 been given timely written notice of to whom and where the
12 rent is to be paid, this item (4) shall only apply if the
13 occupant continues to pay his or her rent in full during
14 the 120-day period or has made good-faith efforts to pay
15 the rent in full during that period. No mortgagee, assignee
16 of a mortgagee, mortgagee-in-possession, receiver or
17 holder of a certificate of sale or deed, or purchaser who
18 fails to file a supplemental petition under this subsection
19 during the pendency of a mortgage foreclosure shall file a
20 forcible entry and detainer action against an occupant of
21 the mortgaged real estate until 90 days after a notice of
22 intent to file such action has been properly served upon
23 the occupant.

24 (5) The court records relating to a supplemental
25 petition for possession filed under this subsection (h)
26 against an occupant who is entitled to notice under item

1 (4) of this subsection (h), or relating to a forcible entry
2 and detainer action brought against an occupant who would
3 have lawful possession of the premises but for the
4 foreclosure of a mortgage on the property, shall be ordered
5 sealed and shall not be disclosed to any person, other than
6 a law enforcement officer or any other representative of a
7 governmental entity, except upon further order of the
8 court.

9 (Source: P.A. 95-262, eff. 1-1-08; 95-933, eff. 8-26-08; 96-60,
10 eff. 7-23-09; 96-111, eff. 10-29-09; revised 8-20-09.)