



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3811

Introduced 2/11/2010, by Sen. Iris Y. Martinez

SYNOPSIS AS INTRODUCED:

New Act

5 ILCS 80/4.31 new

735 ILCS 5/15-1702

735 ILCS 5/15-1704

from Ch. 110, par. 15-1702

from Ch. 110, par. 15-1704

Creates the Foreclosed Home Receiver License Act. Provides for the licensure of a receiver of a home foreclosed on by a mortgagee that is a bank. Provides that upon possession of a foreclosed home, a licensee under the Act shall hold onto and preserve all remaining personal property of the mortgagor or former occupant, with certain exceptions, for at least 30 days or until the mortgagor or occupant releases his or her claim to the property in writing, whichever occurs sooner. Provides that the receiver must post a public notice containing certain specified information related to how the personal property may be reclaimed by the mortgagor or former occupant. Provides that the Department of Financial and Professional Regulation shall adopt rules to administer the provisions of the Act. Sets forth powers and duties of the Department, licensure requirements, grounds for discipline, civil and criminal penalties for violation of the Act, and administrative procedure. Includes provisions concerning exemption from the Act. Amends the Regulatory Sunset Act to set a repeal date of January 1, 2021 for the new Act. Amends the Code of Civil Procedure to make corresponding changes in provisions concerning the appointment of receivers. Effective immediately.

LRB096 20669 ASK 36386 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

1 AN ACT concerning professional regulation.

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

4 Section 1. Short title. This Act may be cited as the
5 Foreclosed Home Receiver License Act.

6 Section 5. Purpose. The intent of the General Assembly in
7 enacting this Act is to evaluate the competency of persons,
8 including any entity, engaged in the foreclosed home receiver
9 business and to regulate and license those persons engaged in
10 this business for the protection of the public.

11 Section 10. Definitions. In this Act:

12 "Bank" means any person doing a banking business whether
13 subject to the laws of this State or any other jurisdiction.

14 "Department" means the Department of Financial and
15 Professional Regulation.

16 "Home" means real property that is used or intended to be
17 used as a residence by one or more individuals.

18 "Foreclosed home receiver" means any person who is
19 appointed as a receiver of a home foreclosed on by a bank or
20 any person to whom the receiver delegates managerial functions
21 concerning the foreclosed home.

22 "Licensee" means a foreclosed home receiver licensed under

1 this Act.

2 "Person" means an individual, corporation, limited
3 liability company, partnership, joint venture, trust, estate,
4 or unincorporated association.

5 "Secretary" means the Secretary of Financial and
6 Professional Regulation.

7 Section 15. Exemptions. A receiver of a foreclosed home
8 whose mortgagor is not a bank or its agent shall be exempt from
9 this Act.

10 Section 20. Unlicensed practice; civil penalty.

11 (a) Any person who practices, offers to practice, attempts
12 to practice, or holds himself or herself out to practice as a
13 foreclosed home receiver without being licensed under this Act
14 shall, in addition to any other penalty provided by law, pay a
15 civil penalty to the Department in an amount not to exceed
16 \$10,000 for each offense as determined by the Department. The
17 civil penalty shall be assessed by the Department after a
18 hearing is held in accordance with the provisions set forth in
19 this Act regarding the provision of a hearing for the
20 discipline of a licensee.

21 (b) Any licensee under this Act who delegates managerial
22 functions related to the foreclosed home to a person who is not
23 licensed under this Act shall, in addition to any other penalty
24 provided by law, pay a civil penalty to the Department in an

1 amount not to exceed \$10,000 for each offense as determined by
2 the Department. The civil penalty shall be assessed by the
3 Department after a hearing is held in accordance with the
4 provisions set forth in this Act regarding the provision of a
5 hearing for the discipline of a licensee.

6 (c) The Department has the authority and power to
7 investigate any and all unlicensed activities.

8 (d) The civil penalty imposed under this Section must be
9 paid within 60 days after the effective date of the order
10 imposing the civil penalty. The order shall constitute a
11 judgment and may be filed and execution had thereon in the same
12 manner as any judgment from any court of record.

13 Section 23. Personal property requirements; public
14 posting.

15 (a) If a licensee under this Act takes possession of a
16 foreclosed home, then the licensee shall hold onto and preserve
17 all remaining personal property of the mortgagor or former
18 occupant for at least 30 days or until the mortgagor or
19 occupant releases his or her claim to his or her property in
20 writing, whichever is sooner. The Department may by rule afford
21 exceptions to the requirements of this subsection (a) for
22 perishable items, such as food, or other items that the
23 Department determines may pose a health risk to the public or
24 may risk damage to other personal property or the home itself.

25 (b) The licensee may keep the remaining personal property

1 in the home or store the personal property at another location
2 which shall be reasonably accessible to the public. A mortgagor
3 or former occupant may reclaim his or her personal property
4 free of charge at this location.

5 (c) Upon possession of the foreclosed home, the licensee
6 shall make a public posting at the entrance of the home that
7 notifies the mortgagor or any occupant of the following:

8 (1) The contact information of the receiver, including
9 phone number and address.

10 (2) The full name of the specific individual who is
11 responsible for preserving his or her personal property and
12 the location at which the personal property is stored and
13 may be reclaimed by the mortgagor or occupant, free of
14 charge.

15 (3) The phone number of the Consumer Fraud Hotline of
16 the Illinois Attorney General.

17 The requirements of this subsection (c) are in addition to
18 any other provision of State law related to the public posting
19 of information that applies to a foreclosed home receiver.

20 Section 25. Powers and duties of the Department.

21 (a) The Department shall exercise the powers and duties
22 prescribed by the Civil Administrative Code of Illinois for the
23 administration of licensing Acts and shall exercise the powers
24 and duties vested in it by this Act.

25 (b) The Department shall adopt rules necessary for the

1 administration and enforcement of this Act, including rules
2 concerning the standards and criteria for licensure, payment of
3 applicable fees, and hearings.

4 (c) The Department must prescribe forms required for the
5 administration of this Act.

6 Section 35. Licensure requirements.

7 (a) Every person applying to the Department for licensure
8 must do so in writing on forms prescribed by the Department and
9 pay the required nonrefundable fee. The application shall
10 include without limitation all of the following information:

11 (1) The name, principal place of business, address, and
12 telephone number of the applicant.

13 (2) Verification satisfactory to the Department that
14 the applicant is at least 18 years of age.

15 (3) Verification satisfactory to the Department that
16 the applicant does not have a criminal record.

17 (b) The Department may establish further requirements for
18 registration by rule.

19 Section 40. Current address. Every licensee under this Act
20 must maintain a current address with the Department. It shall
21 be the responsibility of the licensee to notify the Department
22 in writing of any change of address.

23 Section 45. Renewal; restoration; military service.

1 (a) The expiration date and renewal period for each license
2 issued under this Act shall be set by the Department by rule.

3 (b) Any person who has permitted his or her license to
4 expire may have his or her license restored by applying to the
5 Department, filing proof acceptable to the Department of his or
6 her fitness to have the license restored, which may include
7 sworn evidence certifying to active practice in another
8 jurisdiction satisfactory to the Department, and paying the
9 required restoration fee. If the person has not maintained an
10 active practice in another jurisdiction satisfactory to the
11 Department, then the Department shall determine, by an
12 evaluation program established by rule, the person's fitness to
13 resume active status and may require the successful completion
14 of an examination.

15 (c) Any person whose license has expired while he or she
16 has been engaged (i) in federal service on active duty with the
17 Armed Forces of the United States or the State Militia called
18 into service or training or (ii) in training or education under
19 the supervision of the United States preliminary to induction
20 into the military service, may have his or her license renewed
21 or restored without paying any lapsed renewal fees if, within 2
22 years after termination of service, training, or education,
23 other than by dishonorable discharge, he or she furnishes the
24 Department with satisfactory evidence to the effect that he or
25 she has been so engaged and that the service, training, or
26 education has been so terminated.

1 Section 50. Inactive status.

2 (a) Any person who notifies the Department in writing on
3 forms prescribed by the Department may elect to place his or
4 her license on inactive status and shall be excused from
5 payment of renewal fees until he or she notifies the Department
6 in writing of his or her desire to resume active status.

7 (b) Any person whose license has been expired for more than
8 3 years may have his or her certificate restored by making
9 application to the Department and filing proof acceptable to
10 the Department of his or her fitness to have his or her license
11 restored, including evidence certifying to active practice in
12 another jurisdiction, and by paying the required restoration
13 fee.

14 (c) Any licensee whose license is on inactive status, has
15 been suspended or revoked, or has expired may not represent
16 himself or herself to be a licensed foreclosed home receiver or
17 use the title "licensed foreclosed home receiver".

18 Section 55. Fees; disposition of funds.

19 (a) The Department shall establish by rule a schedule of
20 fees for the administration and maintenance of this Act. Such
21 fees shall be nonrefundable.

22 (b) All fees and fines collected pursuant to this Act shall
23 be deposited in the General Professions Dedicated Fund. All
24 moneys deposited into the Fund may be used for the expenses of

1 the Department in the administration of this Act.

2 Section 60. Roster. The Department shall maintain a roster
3 of the names and addresses of all licensees under this Act.
4 This roster shall be made available upon written request and
5 payment of the required fee.

6 Section 65. Advertising. Any person licensed under this Act
7 may advertise the availability of professional services in the
8 public media or on the premises where such professional
9 services are rendered, provided that such advertising is
10 truthful and not misleading.

11 Section 70. Injunction; criminal penalty; cease and desist
12 order.

13 (a) If any person violates the provisions of this Act, the
14 Secretary may, in the name of the People of the State of
15 Illinois and through the Attorney General or the State's
16 Attorney of any county in which the action is brought, petition
17 for an order enjoining such violation and for an order
18 enforcing compliance with this Act. Upon the filing of a
19 verified petition in court, the court may issue a temporary
20 restraining order, without notice or bond, and may
21 preliminarily and permanently enjoin such violation. If it is
22 established that such person has violated or is violating the
23 injunction, the Court may punish the offender for contempt of

1 court. Proceedings under this Section shall be in addition to,
2 and not in lieu of, all other remedies and penalties provided
3 by this Act.

4 (b) If any person holds himself or herself out as a
5 "licensed foreclosed home receiver" without being licensed
6 under the provisions of this Act, then any interested party or
7 person injured thereby may, in addition to the Secretary,
8 petition for relief as provided in subsection (a) of this
9 Section.

10 (c) Whoever holds himself or herself out as a "licensed
11 foreclosed home receiver" in this State without being licensed
12 for that purpose is guilty of a Class A misdemeanor, and for
13 each subsequent conviction, is guilty of a Class 4 felony.

14 (d) Whenever, in the opinion of the Department, a person
15 violates any provision of this Act, the Department may issue a
16 rule to show cause why an order to cease and desist should not
17 be entered against that person. The rule shall clearly set
18 forth the grounds relied upon by the Department and shall allow
19 the person at least 7 days after the date of the rule to file an
20 answer that is satisfactory to the Department. Failure to
21 answer to the satisfaction of the Department shall cause an
22 order to cease and desist to be issued.

23 Section 75. Disciplinary grounds.

24 (a) The Department may refuse to issue or renew, or may
25 revoke, suspend, place on probation, reprimand, or take other

1 disciplinary action as the Department considers appropriate,
2 including the issuance of fines not to exceed \$10,000 for each
3 violation, with regard to any license for any one or more of
4 the following causes:

5 (1) Violation of this Act or any rule adopted under
6 this Act.

7 (2) Conviction of any crime under the laws of any U.S.
8 jurisdiction that is a felony or a misdemeanor an essential
9 element of which is dishonesty or that directly relates to
10 the practice of the profession.

11 (3) Making any misrepresentation for the purpose of
12 obtaining a license.

13 (4) Professional incompetence or gross negligence in
14 the practice of building contracting.

15 (5) Gross malpractice, prima facie evidence of which
16 may be a conviction or judgment of malpractice in any court
17 of competent jurisdiction.

18 (6) Aiding or assisting another person in violating any
19 provision of this Act or any rule adopted under this Act.

20 (7) Failing, within 60 days, to provide information in
21 response to a written request made by the Department that
22 has been sent by certified mail to the licensee's last
23 known address.

24 (8) Engaging in dishonorable, unethical, or
25 unprofessional conduct of a character likely to deceive,
26 defraud, or harm the public.

1 (9) Habitual or excessive use of or addiction to
2 alcohol, narcotics, stimulants, or any other chemical
3 agent or drug that results in the inability to practice
4 with reasonable judgment, skill, or safety.

5 (10) Discipline by another U.S. jurisdiction or
6 foreign nation, if at least one of the grounds for the
7 discipline is the same or substantially equivalent to those
8 set forth in this Section.

9 (11) Directly or indirectly giving to or receiving from
10 any person, firm, corporation, partnership, or association
11 any fee, commission, rebate, or other form of compensation
12 for any professional service not actually rendered.

13 (12) A finding by the Department that a licensee, after
14 having his or her license placed on probationary status,
15 has violated the terms of probation.

16 (13) Conviction by any court of competent
17 jurisdiction, either within or without this State, of any
18 violation of any law governing the practice of building
19 contracting if the Department determines, after
20 investigation, that such person has not been sufficiently
21 rehabilitated to warrant the public trust.

22 (14) A finding that registration has been applied for
23 or obtained by fraudulent means.

24 (15) Practicing, attempting to practice, or
25 advertising under a name other than the full name as shown
26 on the license or any other legally authorized name.

1 (16) Gross and willful overcharging for professional
2 services, including filing false statements for collection
3 of fees or moneys for which services are not rendered.

4 (17) Failure to file a return, to pay the tax, penalty,
5 or interest shown in a filed return, or to pay any final
6 assessment of tax, penalty, or interest as required by any
7 tax Act administered by the Department of Revenue, until
8 such time as the requirements of the tax Act are satisfied
9 in accordance with subsection (g) of Section 15 of the
10 Department of Professional Regulation Law of the Civil
11 Administrative Code of Illinois (20 ILCS 2105/2105-15).

12 (18) Failure to continue to meet the requirements of
13 this Act.

14 (19) Material misstatement in furnishing information
15 to the Department or to any other State agency.

16 (20) Advertising in any manner that is false,
17 misleading, or deceptive.

18 (b) In enforcing this Section, the Department, upon a
19 showing of a possible violation, may order a licensee or
20 applicant to submit to a mental or physical examination, or
21 both, at the expense of the Department. The Department may
22 order the examining physician to present testimony concerning
23 his or her examination of the licensee or applicant. No
24 information shall be excluded by reason of any common law or
25 statutory privilege relating to communications between the
26 licensee or applicant and the examining physician. The

1 examining physicians shall be specifically designated by the
2 Department. The licensee or applicant may have, at his or her
3 own expense, another physician of his or her choice present
4 during all aspects of the examination. Failure of a licensee or
5 applicant to submit to any such examination when directed,
6 without reasonable cause as defined by rule, shall be grounds
7 for either the immediate suspension of his or her license or
8 immediate denial of his or her application.

9 If the Secretary immediately suspends the license of a
10 licensee for his or her failure to submit to a mental or
11 physical examination when directed, a hearing must be convened
12 by the Department within 15 days after the suspension and
13 completed without appreciable delay.

14 If the Secretary otherwise suspends a license pursuant to
15 the results of the licensee's mental or physical examination, a
16 hearing must be convened by the Department within 15 days after
17 the suspension and completed without appreciable delay. The
18 Department shall have the authority to review the licensee's
19 record of treatment and counseling regarding the relevant
20 impairment or impairments to the extent permitted by applicable
21 federal statutes and regulations safeguarding the
22 confidentiality of medical records.

23 Any licensee suspended under this subsection (b) shall be
24 afforded an opportunity to demonstrate to the Department that
25 he or she can resume practice in compliance with the acceptable
26 and prevailing standards under the provisions of his or her

1 license.

2 (c) The Department shall deny a license or renewal
3 authorized by this Act to a person who has defaulted on an
4 educational loan or scholarship provided or guaranteed by the
5 Illinois Student Assistance Commission or any governmental
6 agency of this State in accordance with subdivision (a)(5) of
7 Section 15 of the Department of Professional Regulation Law of
8 the Civil Administrative Code of Illinois (20 ILCS
9 2105/2105-15).

10 (d) In cases where the Department of Healthcare and Family
11 Services (formerly the Department of Public Aid) has previously
12 determined that a licensee or a potential licensee is more than
13 30 days delinquent in the payment of child support and has
14 subsequently certified the delinquency to the Department, the
15 Department may refuse to issue or renew or may revoke or
16 suspend that person's license or may take other disciplinary
17 action against that person based solely upon the certification
18 of delinquency made by the Department of Healthcare and Family
19 Services in accordance with subdivision (a)(5) of Section 15 of
20 the Department of Professional Regulation Law of the Civil
21 Administrative Code of Illinois (20 ILCS 2105/2105-15).

22 Section 80. Investigation; notice of hearing. The
23 Department may investigate the actions or qualifications of any
24 applicant or person holding or claiming to hold a license. The
25 Department shall, before suspending or revoking, placing on

1 probation, reprimanding, or taking any other disciplinary
2 action under Section 75 of this Act, at least 30 days before
3 the date set for the hearing, notify the applicant or licensee
4 in writing of the nature of the charges and that a hearing will
5 be held on the date designated. The written notice may be
6 served by personal delivery or certified mail to the applicant
7 or licensee at the address of his or her last notification to
8 the Department. The Department shall direct the applicant or
9 licensee to file a written answer with the Department, under
10 oath, within 20 days after the service of the notice, and
11 inform the person that if he or she fails to file an answer,
12 his or her certificate may be revoked, suspended, placed on
13 probation, reprimanded, or the Department may take any other
14 additional disciplinary action, including the issuance of
15 fines not to exceed \$1,000 for each violation, as the
16 Department may consider necessary, without a hearing. At the
17 time and place fixed in the notice, the Department shall
18 proceed to hear the charges and the parties or their counsel.
19 All parties shall be afforded an opportunity to present any
20 statements, testimony, evidence, and arguments as may be
21 pertinent to the charges or to their defense. The Department
22 may continue the hearing from time to time.

23 Section 120. Restoration of suspended or revoked license.
24 At any time after the suspension or revocation of any license,
25 the Department may restore it to the licensee, unless after an

1 investigation and hearing, the Department determines that
2 restoration is not in the public interest.

3 Section 125. Surrender of license. Upon the revocation or
4 suspension of any license, the licensee shall immediately
5 surrender his or her certificate to the Department. If the
6 licensee fails to do so, the Department has the right to seize
7 the certificate.

8 Section 130. Summary suspension of a license. The Secretary
9 may summarily suspend a license issued under this Act without a
10 hearing, simultaneously with the institution of proceedings
11 for a hearing provided for in this Act, if the Secretary finds
12 that evidence in the possession of the Secretary indicates that
13 the continuation in practice by the licensee would constitute
14 an imminent danger to the public. In the event that the
15 Secretary temporarily suspends the license of an individual
16 without a hearing, a hearing must be held within 30 days after
17 such suspension has occurred.

18 Section 135. Administrative Review Law; venue.

19 (a) All final administrative decisions of the Department
20 are subject to judicial review under the Administrative Review
21 Law and its rules. The term "administrative decision" is
22 defined as in Section 3-101 of the Code of Civil Procedure.

23 (b) Proceedings for judicial review shall be commenced in

1 the circuit court of the county in which the party applying for
2 review resides, but if the party is not a resident of this
3 State, the venue shall be in Sangamon County.

4 Section 140. Certification of record; costs. The
5 Department shall not be required to certify any record to the
6 court or file an answer in court or to otherwise appear in any
7 court in a judicial review proceeding, unless there is filed in
8 the court with the complaint a receipt from the Department
9 acknowledging payment of the costs of furnishing and certifying
10 the record. Failure on the part of the plaintiff to file such
11 receipt in court shall be grounds for dismissal of the action.

12 Section 145. Administrative Procedure Act. The Illinois
13 Administrative Procedure Act is hereby expressly adopted and
14 incorporated herein as if all of the provisions of that Act
15 were included in this Act, except that the provision of
16 subsection (d) of Section 10-65 of the Illinois Administrative
17 Procedure Act that provides that at hearings the licensee has
18 the right to show compliance with all lawful requirements for
19 retention, continuation, or renewal of the certificate is
20 specifically excluded. For the purposes of this Act, the notice
21 required under Section 10-25 of the Illinois Administrative
22 Procedure Act is deemed sufficient when mailed to the last
23 known address of a party.

1 Section 150. Home rule. A unit of local government,
2 including a home rule unit, may not regulate the practice of
3 foreclosed home receivers in a manner inconsistent with this
4 Act. This Section is a limitation under subsection (i) of
5 Section 6 of Article VII of the Illinois Constitution on the
6 concurrent exercise by home rule units of powers and functions
7 exercised by the State.

8 Section 900. The Regulatory Sunset Act is amended by adding
9 Section 4.31 as follows:

10 (5 ILCS 80/4.31 new)

11 Sec. 4.31. Act repealed on January 1, 2021. The following
12 Act is repealed on January 1, 2021:

13 The Foreclosed Home Receiver License Act.

14 Section 920. The Code of Civil Procedure is amended by
15 changing Sections 15-1702 and 15-1704 as follows:

16 (735 ILCS 5/15-1702) (from Ch. 110, par. 15-1702)

17 Sec. 15-1702. Specific Rules of Possession. (a)
18 Mortgagee's Rights. No mortgagee shall be required to take
19 possession of the mortgaged real estate, whether upon
20 application made by any other party or otherwise. Whenever a
21 mortgagee entitled to possession so requests, the court shall
22 appoint a receiver. If the mortgagee is a bank, then the court

1 may only appoint a receiver that is licensed under the
2 Foreclosed Home Receiver License Act. The failure of a
3 mortgagee to request possession or appointment of a receiver
4 shall not preclude a mortgagee otherwise entitled to possession
5 from making such a request at any future time. The appointment
6 of a receiver shall not preclude a mortgagee from thereafter
7 seeking to exercise such mortgagee's right to be placed in
8 possession.

9 (b) Designation of Receivers. Whenever a receiver is to be
10 appointed, the mortgagee shall be entitled to designate the
11 receiver. If the mortgagor or any other party to the
12 foreclosure objects to any such designation or designations and
13 shows good cause, or the court disapproves the designee, then
14 the mortgagee in such instance shall be entitled to make
15 another designation. If the mortgagee is a bank, then the
16 mortgagee may only designate a receiver that is licensed under
17 the Foreclosed Home Receiver License Act.

18 (c) Rights of Mortgagee Having Priority. If a mortgagee
19 having priority objects to the proposed possession by a
20 subordinate mortgagee or by a receiver designated by the
21 subordinate mortgagee, upon entry of a finding in accordance
22 with subsection (d) of Section 15-1702 the court shall instead
23 place that objecting mortgagee in possession or, if a receiver
24 is to be designated in accordance with subsection (b) of
25 Section 15-1702, allow the designation of the receiver to be
26 made by that objecting mortgagee.

1 (d) Removal of Mortgagee in Possession. A mortgagee placed
2 in possession shall not be removed from possession, and no
3 receiver or other mortgagee shall be placed in possession
4 except upon (i) the mortgagee's misconduct, death, legal
5 disability or other inability to act, (ii) appointment of a
6 receiver in accordance with subsection (a) of Section 15-1704
7 or (iii) a showing of good cause by a mortgagee having
8 priority. A receiver shall not be removed solely on account of
9 being designated by a mortgagee later determined not to have
10 priority.

11 (e) Determination of Priority. If the court is required to
12 determine priority for the purposes of subsection (c) of
13 Section 15-1702, a new determination shall be made each time a
14 mortgagee is to be placed in possession or a receiver is to be
15 appointed and shall be an interim determination which shall not
16 preclude the court from making a contrary determination later
17 in the foreclosure. If the court subsequently shall make such a
18 contrary determination, a mortgagee in possession or acting
19 receiver shall not be removed except in accordance with Part 17
20 of this Article.

21 (f) Rights to Crops. With respect to any crops growing or
22 to be grown on the mortgaged real estate, the rights of a
23 holder of any obligation secured by a collateral assignment of
24 beneficial interest in a land trust, the rights of a mortgagee
25 in possession, or the rights of a receiver, including rights by
26 virtue of an equitable lien, shall be subject to a security

1 interest properly perfected pursuant to Article 9 of the
2 Uniform Commercial Code, where the holder of a collateral
3 assignment, mortgagee in possession, or receiver becomes
4 entitled to crops by obtaining possession on or after the
5 effective date of this Amendatory Act of 1988.

6 (Source: P.A. 85-1427.)

7 (735 ILCS 5/15-1704) (from Ch. 110, par. 15-1704)

8 Sec. 15-1704. Receivers.

9 (a) Receiver. Notwithstanding the provisions of
10 subsections (b), (c) and (d) of Section 15-1701, and except as
11 provided in Section 15-1702, upon request of any party and a
12 showing of good cause, the court shall appoint a receiver for
13 the mortgaged real estate. If the mortgagee is a bank, then the
14 court may only appoint a receiver that is licensed under the
15 Foreclosed Home Receiver License Act.

16 (b) Powers. A receiver appointed pursuant to this Article
17 shall have possession of the mortgaged real estate and other
18 property subject to the mortgage during the foreclosure, shall
19 have full power and authority to operate, manage, and conserve
20 such property, and shall have all the usual powers of receivers
21 in like cases. Without limiting the foregoing, a receiver shall
22 have the power and authority to:

23 (1) secure tenants and execute leases for the real
24 estate, the duration and terms of which are reasonable and
25 customary for the type of use involved, and such leases

1 shall have the same priority as if made by the owner of the
2 real estate; but, unless approved by the Court, the
3 receiver shall not execute oil, gas or other mineral
4 leases, or (even if otherwise allowed by law) leases
5 extending beyond the time of the receiver's possession;
6 provided, however, with respect to residential real estate
7 leased by the receiver, nothing in this Section shall
8 affect the legal rights of any lessee with respect to the
9 safety and habitability of the residential real estate;

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

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

14 (4) employ counsel, custodians, janitors, and other
15 help; and

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

18 (c) Duties. A receiver appointed pursuant to this Article
19 must manage the mortgaged real estate as would a prudent
20 person, taking into account the effect of the receiver's
21 management on the interest of the mortgagor. A receiver may,
22 without an order of the court, delegate managerial functions to
23 a person in the business of managing real estate of the kind
24 involved who is financially responsible, not related to the
25 mortgagee or receiver and prudently selected. However, the
26 receiver shall remain responsible to the mortgagor or other

1 persons for the acts or omissions of such management agent and,
2 if the mortgagee is a bank, the receiver may only delegate
3 managerial functions to a person licensed under the Foreclosed
4 Home Receiver License Act. When fees are paid to such a
5 management agent, the receiver's fees may be adjusted to the
6 extent the court deems appropriate. In managing the mortgaged
7 real estate and other property subject to the mortgage, a
8 receiver or receiver's delegate, to the extent the receiver
9 receives sufficient receipts from the mortgaged real estate,
10 such other property or other sources, except to the extent
11 ordered otherwise by the court:

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

16 (2) shall use reasonable efforts to maintain the real
17 estate and other property subject to the mortgage in at
18 least as good condition as existed at the time the receiver
19 took possession, excepting reasonable wear and tear and
20 damage by any casualty;

21 (2.5) shall accept all rental payments from an occupant
22 of the mortgaged property, and any payments from a third
23 party or any rental assistance program in support of an
24 occupant's housing;

25 (3) shall apply receipts to payment of ordinary
26 operating expenses, including royalties, rents and other

1 expenses of management;

2 (4) shall pay any shared or common expense assessments
3 due to any association of owners of interests in real
4 estate to the extent that such assessments are or may
5 become a lien against the mortgaged real estate;

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

8 (6) may carry such additional casualty and liability
9 insurance as is reasonably available and reasonable as to
10 amounts and risks covered;

11 (7) may make other repairs and improvements necessary
12 to comply with building, housing, and other similar codes
13 or with existing contractual obligations affecting the
14 mortgaged real estate;

15 (8) may hold receipts as reserves reasonably required
16 for the foregoing purposes; and

17 (9) may take such other actions as may be reasonably
18 necessary to conserve the mortgaged real estate and other
19 property subject to the mortgage, or as otherwise
20 authorized by the court.

21 (d) Allocation of Receipts. Receipts received from
22 operation of the real estate and other property subject to the
23 mortgage by the receiver shall be applied in the following
24 order of priority.

25 (1) to reimbursement of the receiver for all reasonable
26 costs and expenses incurred by the receiver or the

1 receiver's delegates;

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

4 (3) to payment of the receiver's delegates of any
5 reasonable management fees for managing real estate of the
6 type involved;

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

8 (5) to payment of expenses authorized in paragraphs
9 (2), (3) and (4) of subsection (c) of Section 15-1704;

10 (6) to payment of amounts authorized in paragraph (5)
11 of subsection (c) of Section 15-1704;

12 (7) to payment of expenses authorized in paragraphs (6)
13 and (7) of subsection (c) of Section 15-1704; and

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

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

20 (f) Notice to occupants.

21 (1) Following an order appointing a receiver pursuant
22 to Section 15-1704, but no later than 21 days after the
23 entry of such order, the appointed receiver shall make a
24 good faith effort to ascertain the identities and addresses
25 of all occupants of dwelling units of the mortgaged real
26 estate.

1 (2) Following an order appointing a receiver pursuant
2 to Section 15-1704, but no later than 21 days after the
3 entry of such order, the appointed receiver shall notify
4 all known occupants of dwelling units of the mortgaged real
5 estate that the receiver has been appointed receiver of the
6 mortgaged real estate. Such notice shall be in writing and
7 shall:

8 (i) identify the occupant being served by the name
9 known to the receiver;

10 (ii) inform the occupant that the mortgaged real
11 estate at which the dwelling unit is located is the
12 subject of a foreclosure action and that control of the
13 mortgaged real estate has changed;

14 (iii) provide the name, address, and telephone
15 number of the individual or entity whom occupants may
16 contact with concerns about the mortgaged real estate
17 or to request repairs of that property;

18 (iv) include the following language, or language
19 that is substantially similar: "This is NOT a notice to
20 vacate the premises. You may wish to contact a lawyer
21 or your local legal aid or housing counseling agency to
22 discuss any rights that you may have."; and

23 (v) include the name of the case, the case number,
24 and the court where the foreclosure action is pending.

25 (3) The written notice required by item (2) of this
26 subsection (f) shall be served by delivering a copy thereof

1 to the known occupant, or by leaving the same with some
2 person of the age of 13 years or upwards, who is residing
3 on or in possession of the premises; or by sending a copy
4 of the notice to the known occupant by first-class mail,
5 addressed to the occupant by the name known to the
6 receiver.

7 (4) In the event that a receiver ascertains the
8 identity and address of an occupant of a dwelling unit of
9 the mortgaged real estate more than 21 days after
10 appointment pursuant to Section 15-1704, the receiver
11 shall provide the notice required by item (2) of this
12 subsection (f) within 7 days of ascertaining the identity
13 and address of the occupant.

14 (5) (i) A receiver who fails to comply with items (1),
15 (2), (3), and (4) of this subsection (f) may not collect
16 any rent due and owing from a known occupant, or terminate
17 a known occupant's tenancy for non-payment of such rent,
18 until the receiver has served the notice described in item
19 (2) of this subsection (f) upon the known occupant. After
20 providing such notice, the receiver may collect any and all
21 rent otherwise due and owing the receiver from the known
22 occupant and may terminate the known occupant's tenancy for
23 non-payment of such rent if the receiver otherwise has such
24 right to terminate.

25 (ii) An occupant who previously paid rent for the
26 current rental period to the mortgagor, or other entity

1 with the authority to operate, manage, and conserve the
2 mortgaged real estate at the time of payment, shall not be
3 held liable for that rent by the receiver, and the
4 occupant's tenancy shall not be terminated for non-payment
5 of rent for that rental period.

6 (6) Within 21 days of appointment, the receiver shall
7 post a written notice on the primary entrance of each
8 dwelling unit subject to the foreclosure action that
9 informs occupants that the receiver has been appointed to
10 operate and manage the property. This notice shall:

11 (i) inform occupant that the dwelling unit is the
12 subject of a foreclosure action and that control of the
13 mortgaged real estate has changed;

14 (ii) include the following language: "This is NOT a
15 notice to vacate the premises."; and

16 (iii) provide the name, address, and telephone
17 number of the individual or entity whom occupants may
18 contact with concerns about the mortgaged real estate
19 or to request repairs of the property.

20 (7) (i) The provisions of item (5) of this subsection
21 (f) shall be the exclusive remedy for the failure of a
22 receiver to provide notice to a known occupant under this
23 Section.

24 (ii) This Section shall not abrogate any right that a
25 receiver may have to possession of the mortgaged real
26 estate and to maintain a proceeding against an occupant of

1 a dwelling unit for possession under Article 9 of this Code
2 or subsection (h) of Section 15-1701.

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

1 (h) Removal. The court may remove a receiver upon a showing
2 of good cause, in which case a new receiver may be appointed in
3 accordance with subsection (b) of Section 15-1702 and
4 subsection (a) of Section 15-1704.

5 (Source: P.A. 96-111, eff. 10-29-09.)

6 Section 999. Effective date. This Act takes effect upon
7 becoming law.