



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB5731

Introduced 2/16/2012, by Rep. Monique D. Davis

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1202.5

735 ILCS 5/15-1701

735 ILCS 5/15-1707 new

from Ch. 110, par. 15-1701

Amends the Code of Civil Procedure. Provides that a mortgagor has a right to remain in the mortgaged premises as a renter following foreclosure proceedings by paying rent to the mortgagee in possession or the purchaser at the judicial sale. Defines terms. Provides for a mortgagee's notice to the mortgagor of the right to remain in the mortgaged premises as a tenant, terms of tenancy, mortgagor's responsibilities while renting the foreclosed property, rental rate set by the court, responsibility for maintenance of the foreclosed property, and other matters. Effective June 1, 2012.

LRB097 17701 AJO 62915 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 15-1202.5 and 15-1701 and by adding Section  
6 15-1707 as follows:

7 (735 ILCS 5/15-1202.5)

8 Sec. 15-1202.5. Dwelling unit. For the purposes of Sections  
9 15-1508, 15-1508.5, 15-1703, ~~and~~ 15-1704, and 15-1707 only,  
10 "dwelling unit" means a room or suite of rooms providing  
11 complete, independent living facilities for at least one  
12 person, including permanent provisions for sanitation,  
13 cooking, eating, sleeping, and other activities routinely  
14 associated with daily life.

15 (Source: P.A. 96-111, eff. 10-29-09; 97-575, eff. 8-26-11.)

16 (735 ILCS 5/15-1701) (from Ch. 110, par. 15-1701)

17 Sec. 15-1701. Right to possession.

18 (a) General. The provisions of this Article shall govern  
19 the right to possession of the mortgaged real estate during  
20 foreclosure. Possession under this Article includes physical  
21 possession of the mortgaged real estate to the same extent to  
22 which the mortgagor, absent the foreclosure, would have been

1 entitled to physical possession. For the purposes of Part 17,  
2 real estate is residential real estate only if it is  
3 residential real estate at the time the foreclosure is  
4 commenced.

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

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

21 (2) In all other cases, if (i) the mortgagee is so  
22 authorized by the terms of the mortgage or other written  
23 instrument, and (ii) the court is satisfied that there is a  
24 reasonable probability that the mortgagee will prevail on a  
25 final hearing of the cause, the mortgagee shall upon  
26 request be placed in possession of the real estate, except

1           that if the mortgagor shall object and show good cause, the  
2           court shall allow the mortgagor to remain in possession.

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

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

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

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

23           (e) Termination of Leases. A lease of all or any part of  
24 the mortgaged real estate shall not be terminated automatically  
25 solely by virtue of the entry into possession by (i) a  
26 mortgagee or receiver prior to the entry of an order confirming

1 the sale, (ii) the holder of the certificate of sale, (iii) the  
2 holder of the deed issued pursuant to that certificate, or (iv)  
3 if no certificate or deed was issued, the purchaser at the  
4 sale.

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

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

22 (h) Proceedings Against Certain Occupants.

23 (1) The mortgagee-in-possession of the mortgaged real  
24 estate under Section 15-1703, a receiver appointed under  
25 Section 15-1704, a holder of the certificate of sale or  
26 deed, or the purchaser may, at any time during the pendency

1 of the foreclosure and up to 90 days after the date of the  
2 order confirming the sale, file a supplemental petition for  
3 possession against a person not personally named as a party  
4 to the foreclosure. The supplemental petition for  
5 possession shall name each such occupant against whom  
6 possession is sought and state the facts upon which the  
7 claim for relief is premised.

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

18 (3) The supplemental petition shall be heard as part of  
19 the foreclosure proceeding and without the payment of  
20 additional filing fees. An order for possession obtained  
21 under this Section shall name each occupant whose interest  
22 has been terminated, shall recite that it is only effective  
23 as to the occupant so named and those holding under them,  
24 and shall be enforceable for no more than 120 days after  
25 its entry, except that the 120-day period may be extended  
26 to the extent and in the manner provided in Section 9-117

1 of Article 9 and except as provided in item (4) of this  
2 subsection (h).

3 (4) In a case of foreclosure where the occupant is  
4 current on his or her rent, or where timely written notice  
5 of to whom and where the rent is to be paid has not been  
6 provided to the occupant, or where the occupant has made  
7 good-faith efforts to make rental payments in order to keep  
8 current, any order of possession must allow the occupant to  
9 retain possession of the property covered in his or her  
10 rental agreement (i) for 120 days following the notice of  
11 the hearing on the supplemental petition that has been  
12 properly served upon the occupant, or (ii) through the  
13 duration of his or her lease, whichever is shorter,  
14 provided that if the duration of his or her lease is less  
15 than 30 days from the date of the order, the order shall  
16 allow the occupant to retain possession for 30 days from  
17 the date of the order. A mortgagee in possession, receiver,  
18 holder of a certificate of sale or deed, or purchaser at  
19 the judicial sale, who asserts that the occupant is not  
20 current in rent, shall file an affidavit to that effect in  
21 the supplemental petition proceeding. If the occupant has  
22 been given timely written notice of to whom and where the  
23 rent is to be paid, this item (4) shall only apply if the  
24 occupant continues to pay his or her rent in full during  
25 the 120-day period or has made good-faith efforts to pay  
26 the rent in full during that period. No



1 mortgagee-in-possession, receiver or holder of a  
2 certificate of sale or deed, or purchaser who fails to file  
3 a supplemental petition under this subsection during the  
4 pendency of a mortgage foreclosure shall file a forcible  
5 entry and detainer action against an occupant of the  
6 mortgaged real estate until 90 days after a notice of  
7 intent to file such action has been properly served upon  
8 the occupant.

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

20 (i) Right to rent.

21 (1) Notwithstanding any other provision of law or  
22 contract, no mortgagee, receiver, holder of a certificate  
23 of sale, holder of the deed issued pursuant to that  
24 certificate, or if no certificate or deed was issued, the  
25 purchaser at the sale entitled to take possession of  
26 mortgaged real estate under this Section shall take

1 possession or seek to remove an eligible mortgagor from the  
2 mortgaged real estate without providing at least 30 days'  
3 written notice of the eligible mortgagor's right to rent as  
4 provided in subsection (c) of Section 15-1707.

5 (2) If a mortgagor has elected to occupy the mortgaged  
6 real estate as a tenant pursuant to Section 15-1707, the  
7 mortgagee, receiver, holder of a certificate of sale,  
8 holder of the deed issued pursuant to that certificate, or  
9 if no certificate or deed was issued, the purchaser at the  
10 sale entitled to take possession under this Section shall  
11 take possession subject to the tenancy created under  
12 Section 15-1707.

13 (3) A holder of a certificate of sale, holder of the  
14 deed issued pursuant to that certificate, or if no  
15 certificate or deed was issued, the purchaser at the sale  
16 entitled to take possession of the property under this  
17 Section may take possession of the property that is  
18 occupied pursuant to Section 15-1707 without providing  
19 notice as required under paragraph (1) of this subsection

20 (i) if:

21 (A) the holder of a certificate of sale, holder of  
22 the deed issued pursuant to that certificate, or if no  
23 certificate or deed was issued, the purchaser at the  
24 sale entitled to take possession is not:

25 (i) the mortgagee or a subsidiary, parent,  
26 trustee, or agent of the mortgagee;

1                   (ii) any other financial institution or its  
2                   subsidiary, parent, trustee, or agent;

3                   (iii) the Federal National Mortgage  
4                   Association;

5                   (iv) the Federal Home Loan Mortgage  
6                   Corporation; or

7                   (v) the Federal Deposit Insurance Corporation;  
8                   and

9                   (B) the holder of a certificate of sale, holder of  
10                   the deed issued pursuant to that certificate, or if no  
11                   certificate or deed was issued, the purchaser at the  
12                   sale entitled to take possession under this Section  
13                   provides written notice of the termination of the  
14                   tenancy to the eligible mortgagor at least 30 days  
15                   prior to the termination.

16                   (Source: P.A. 95-262, eff. 1-1-08; 95-933, eff. 8-26-08; 96-60,  
17                   eff. 7-23-09; 96-111, eff. 10-29-09; 96-1000, eff. 7-2-10.)

18                   (735 ILCS 5/15-1707 new)

19                   Sec. 15-1707. Right to rent.

20                   (a) Definitions. For the purposes of this Section:

21                   "Covered foreclosure proceeding" means a foreclosure  
22                   proceeding with respect to an eligible mortgage under the  
23                   Illinois Mortgage Foreclosure Law.

24                   "Eligible mortgage" means a first or subordinate mortgage:

25                   (1) on a property that:

1           (A) is a single family property located in this  
2           State;

3           (B) has been used as the principal residence of the  
4           eligible mortgagor for a period of not less than 2  
5           years immediately preceding the initiation of the  
6           covered foreclosure proceeding involved; and

7           (C) had a purchase price, at the time purchased by  
8           the eligible mortgagor, that is (i) less than the  
9           median purchase price for residences that are located  
10           in the same metropolitan statistical area or, (ii) if  
11           the property is not located in a metropolitan  
12           statistical area or information for the area is not  
13           available, less than the median purchase price as  
14           determined according to information collected and made  
15           available by the National Association of Realtors for  
16           the area, or in this State, for the most recently  
17           completed month for which such information is  
18           available; and

19           (2) that was originated before July 1, 2007.

20           "Eligible mortgagor" means a mortgagor under an eligible  
21           mortgage.

22           "Financial institution" means any bank, savings bank,  
23           savings and loan association, credit union, mortgage broker,  
24           mortgage banker, licensee under the Consumer Installment Loan  
25           Act or the Sales Finance Agency Act, or a corporate fiduciary,  
26           subsidiary, affiliate, parent company, or holding company of

1 any such licensee, or any institution involved in real estate  
2 financing that is regulated by State or federal law.

3 "Foreclosed property" means the single family property  
4 that is subject to the eligible mortgage being foreclosed under  
5 the Illinois Mortgage Foreclosure Law.

6 "Party entitled to possession" means the mortgagee,  
7 receiver, holder of a certificate of sale, holder of the deed  
8 issued pursuant to that certificate, or if no certificate or  
9 deed was issued, the purchaser at the sale entitled to take  
10 possession under Section 15-1701 of the real estate that was  
11 secured by an eligible mortgage.

12 "Single family property" means:

13 (1) a residential property consisting of one to 4  
14 dwelling units;

15 (2) a dwelling unit in a condominium property together  
16 with an undivided interest in the common areas and  
17 facilities serving the property; or

18 (3) a dwelling unit in a multi-unit project for which  
19 purchase of stock or a membership interest entitles the  
20 purchaser to permanent occupancy of that unit.

21 (b) Right to rent subject to foreclosure. Notwithstanding  
22 any other provision of law, an eligible mortgagor under an  
23 eligible mortgage that is in foreclosure may, at the sole  
24 option of the eligible mortgagor, continue to occupy the  
25 foreclosed property as a tenant subject to the requirements of  
26 subsection (d) of this Section if the eligible mortgagor

1 provides written notice to a party entitled to possession of  
 2 his or her intention to exercise the right to rent within 30  
 3 days after the receipt of the notice described in subsection  
 4 (c) of this Section.

5 (c) Notice of the right to rent. A party entitled to  
 6 possession shall provide written notice of the eligible  
 7 mortgagor's right to rent at least 30 days prior to taking  
 8 possession of the property or seeking to remove the eligible  
 9 mortgagor from the property. The notice shall:

10 (1) be headed in bold 14-point type "RIGHT TO RENT  
 11 NOTICE";

12 (2) state the following in 14-point type:  
 13 "YOUR PROPERTY IS CURRENTLY IN FORECLOSURE AND SUBJECT TO  
 14 POSSESSION BY ..... PURSUANT TO STATE LAW, YOU HAVE  
 15 THE RIGHT TO CONTINUE TO OCCUPY YOUR HOME AS A RENTER AT A FAIR  
 16 MARKET RATE APPROVED BY THE COURT. TO EXERCISE YOUR RIGHT TO  
 17 RENT, YOU MUST PROVIDE WRITTEN NOTICE OF YOUR INTENTION TO  
 18 EXERCISE YOUR RIGHT TO RENT TO ..... AT  
 19 ..... WITHIN 30 DAYS AFTER THE RECEIPT OF THIS  
 20 NOTICE.";

21 (3) include the name, address, and telephone number of  
 22 the party entitled to possession;

23 (4) clearly set forth the terms of the tenancy under  
 24 subsection (d) of this Section; and

25 (5) be sent by first class mail to the eligible  
 26 mortgagor at the common address of the residential property

1       securing the eligible mortgage.

2       (d) Terms of tenancy.

3           (1) Period of tenancy.

4               (A) The occupancy of a foreclosed property by an  
5               eligible mortgagor pursuant to this Section shall be  
6               under a periodic month-to-month tenancy that shall not  
7               be terminated unless:

8                   (i) except as provided in subparagraph (B) of  
9                   this paragraph (1), the property is sold and the  
10                  purchaser or holder of the certificate of sale,  
11                  holder of the deed issued pursuant to that  
12                  certificate, or if no certificate or deed was  
13                  issued, the purchaser at the sale entitled to take  
14                  possession under Section 15-1701 provides written  
15                  notice of the termination to the eligible  
16                  mortgagor at least 30 days prior to the  
17                  termination;

18                  (ii) the tenancy is terminated pursuant to  
19                  paragraph (3) of this subsection (d); or

20                  (iii) the eligible mortgage has been  
21                  reinstated pursuant to Section 15-1602.

22               (B) An eligible mortgagor may continue to occupy  
23               the foreclosed property as a tenant under this Section  
24               if the property is sold and the purchaser is any of the  
25               following:

26                   (i) the mortgagee or a subsidiary, parent,

1 trustee, or agent of the mortgagee;

2 (ii) any other financial institution or its  
3 subsidiary, parent, trustee, or agent;

4 (iii) the Federal National Mortgage  
5 Association;

6 (iv) the Federal Home Loan Mortgage  
7 Corporation; or

8 (v) the Federal Deposit Insurance Corporation.

9 (2) Responsibilities of eligible mortgagor. An  
10 eligible mortgagor who occupies a foreclosed property  
11 pursuant to this Section shall:

12 (A) timely pay rent on a monthly basis in an amount  
13 approved by the court pursuant to subsection (e) of  
14 this Section;

15 (B) use the property as his or her principal  
16 residence; and

17 (C) maintain the property in safe, habitable  
18 condition.

19 (3) Termination by party entitled to possession or  
20 eligible mortgagor.

21 (A) The party entitled to possession may terminate  
22 the tenancy of an eligible mortgagor for material  
23 breach but shall not have the authority, at will, to  
24 terminate the tenancy during the occupancy if the  
25 eligible mortgagor has met the requirements of  
26 paragraph (2) of this subsection (d). The party



1 entitled to possession shall provide written notice of  
2 the termination to the eligible mortgagor at least 30  
3 days prior to the termination. The notice shall include  
4 an explanation of the reason for termination.

5 (B) The eligible mortgagor occupying a foreclosed  
6 property under this Section may terminate the tenancy  
7 at will upon at least 30 days' written notice to the  
8 party entitled to possession.

9 (4) Failure to surrender possession. If an eligible  
10 mortgagor fails to surrender possession of the property  
11 upon termination of the tenancy, the party entitled to  
12 possession may seek possession of the property through an  
13 action for forcible entry and detainer or ejectment.

14 (e) Rental rate.

15 (1) Initial determination. The rent for a foreclosed  
16 property occupied under this Section shall be a fair market  
17 rate approved by the court overseeing the foreclosure of  
18 the eligible mortgage. The rent shall not be greater than  
19 the amount the eligible mortgagor was required to pay per  
20 month pursuant to the eligible mortgage subject to  
21 foreclosure.

22 (2) Redetermination. The party entitled to possession  
23 or the eligible mortgagor may request that the court  
24 redetermine the fair market rent for the foreclosed  
25 property in the same manner provided under paragraph (1) of  
26 this subsection (e), except that no such redetermination

1       shall be made pursuant to this subsection (e) before the  
2       expiration of the 12-month period beginning upon the most  
3       recent redetermination conducted at the request of the same  
4       party.

5       (f) Payment for maintenance of property. If a tenancy under  
6       this Section is terminated due to the sale of the property, the  
7       eligible mortgagor shall receive 5% of the purchase price  
8       unless the eligible mortgagor has:

9               (1) occupied the property as a tenant under this  
10              Section for less than 12 months;

11              (2) failed to maintain the property in safe, habitable  
12              condition during the tenancy; or

13              (3) caused substantial damage to the property during  
14              the tenancy.

15       (g) Construction. This Section shall not be construed to  
16       delay, or otherwise modify, affect, or alter any right of a  
17       creditor under an eligible mortgage to foreclose on an eligible  
18       mortgage and to sell the foreclosed property in connection with  
19       such foreclosure, except that the right of any owner of the  
20       property to possession of the property shall be subject to the  
21       leasehold interest established pursuant to this Section.

22       (h) Applicability and sunset.

23              (1) This Section shall apply to any covered foreclosure  
24              proceeding that has not been finally adjudicated as of the  
25              effective date of this amendatory Act of the 97th General  
26              Assembly.

1           (2) This Section shall not apply to any foreclosure  
2           commenced after 5 years from the effective date of this  
3           amendatory Act of the 97th General Assembly.

4           Section 99. Effective date. This Act takes effect June 1,  
5           2012.