



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB4168

by Rep. Robert S. Molaro

SYNOPSIS AS INTRODUCED:

735 ILCS 5/9-106.1 rep.	
735 ILCS 5/9-111 rep.	
735 ILCS 5/9-111.1 rep.	
735 ILCS 5/9-102	from Ch. 110, par. 9-102
735 ILCS 5/9-104.1	from Ch. 110, par. 9-104.1
735 ILCS 5/9-104.2	from Ch. 110, par. 9-104.2
735 ILCS 5/9-107	from Ch. 110, par. 9-107
735 ILCS 5/9-117	from Ch. 110, par. 9-117
765 ILCS 605/9.2	from Ch. 30, par. 309.2

Amends the Forcible Entry and Detainer Article of the Code of Civil Procedure. Repeals provisions permitting the board of managers of a condominium to maintain an action for possession against a unit owner (and a tenant of a unit owner) if the unit owner fails or refuses to pay common expenses, other expenses, or a fine, and makes conforming changes in other provisions of the Code of Civil Procedure and the Condominium Property Act.

LRB095 14028 WGH 40227 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 (735 ILCS 5/9-106.1 rep.)

5 (735 ILCS 5/9-111 rep.)

6 (735 ILCS 5/9-111.1 rep.)

7 Section 5. The Code of Civil Procedure is amended by
8 repealing Sections 9-106.1, 9-111, and 9-111.1.

9 Section 10. The Code of Civil Procedure is amended by
10 changing Sections 9-102, 9-104.1, 9-104.2, 9-107, and 9-117 as
11 follows:

12 (735 ILCS 5/9-102) (from Ch. 110, par. 9-102)

13 Sec. 9-102. When action may be maintained.

14 (a) The person entitled to the possession of lands or
15 tenements may be restored thereto under any of the following
16 circumstances:

17 (1) When a forcible entry is made thereon.

18 (2) When a peaceable entry is made and the possession
19 unlawfully withheld.

20 (3) When entry is made into vacant or unoccupied lands
21 or tenements without right or title.

22 (4) When any lessee of the lands or tenements, or any

1 person holding under such lessee, holds possession without
2 right after the termination of the lease or tenancy by its
3 own limitation, condition or terms, or by notice to quit or
4 otherwise.

5 (5) When a vendee having obtained possession under a
6 written or verbal agreement to purchase lands or tenements,
7 and having failed to comply with the agreement, withholds
8 possession thereof, after demand in writing by the person
9 entitled to such possession; provided, however, that any
10 such agreement for residential real estate as defined in
11 the Illinois Mortgage Foreclosure Law entered into on or
12 after July 1, 1987 where the purchase price is to be paid
13 in installments over a period in excess of 5 years and the
14 amount unpaid under the terms of the contract at the time
15 of the filing of a foreclosure complaint under Article XV,
16 including principal and due and unpaid interest, is less
17 than 80% of the original purchase price shall be foreclosed
18 under the Illinois Mortgage Foreclosure Law.

19 This amendatory Act of 1993 is declarative of existing
20 law.

21 (6) When lands or tenements have been conveyed by any
22 grantor in possession, or sold under the order or judgment
23 of any court in this State, or by virtue of any sale in any
24 mortgage or deed of trust contained and the grantor in
25 possession or party to such order or judgment or to such
26 mortgage or deed of trust, after the expiration of the time

1 of redemption, when redemption is allowed by law, refuses
2 or neglects to surrender possession thereof, after demand
3 in writing by the person entitled thereto, or his or her
4 agent.

5 (7) When any property is subject to the provisions of
6 the Condominium Property Act, the ~~owner of a unit fails or~~
7 ~~refuses to pay when due his or her proportionate share of~~
8 ~~the common expenses of such property, or of any other~~
9 ~~expenses lawfully agreed upon or any unpaid fine, the Board~~
10 ~~of Managers or its agents have served the demand set forth~~
11 ~~in Section 9-104.1 of this Article in the manner provided~~
12 ~~for in that Section and the unit owner has failed to pay~~
13 ~~the amount claimed within the time prescribed in the~~
14 ~~demand; or if the~~ lessor-owner of a unit fails to comply
15 with the leasing requirements prescribed by subsection (n)
16 of Section 18 of the Condominium Property Act or by the
17 declaration, by-laws, and rules and regulations of the
18 condominium, or if a lessee of an owner is in breach of any
19 covenants, rules, regulations, or by-laws of the
20 condominium, and the Board of Managers or its agents have
21 served the demand set forth in Section 9-104.2 of this
22 Article in the manner provided in that Section.

23 (8) When any property is subject to the provisions of a
24 declaration establishing a common interest community and
25 requiring the unit owner to pay regular or special
26 assessments for the maintenance or repair of common areas

1 owned in common by all of the owners of the common interest
2 community or by the community association and maintained
3 for the use of the unit owners or of any other expenses of
4 the association lawfully agreed upon, and the unit owner
5 fails or refuses to pay when due his or her proportionate
6 share of such assessments or expenses and the board or its
7 agents have served the demand set forth in Section 9-104.1
8 of this Article in the manner provided for in that Section
9 and the unit owner has failed to pay the amount claimed
10 within the time prescribed in the demand.

11 (b) The provisions of paragraph (8) of subsection (a) of
12 Section 9-102 and Section 9-104.3 of this Act shall not apply
13 to any common interest community unless (1) the association is
14 a not-for-profit corporation, (2) unit owners are authorized to
15 attend meetings of the board of directors or board of managers
16 of the association in the same manner as provided for
17 condominiums under the Condominium Property Act, and (3) the
18 board of managers or board of directors of the common interest
19 community association has, subsequent to the effective date of
20 this amendatory Act of 1984 voted to have the provisions of
21 this Article apply to such association and has delivered or
22 mailed notice of such action to the unit owners or unless the
23 declaration of the association is recorded after the effective
24 date of this amendatory Act of 1985.

25 (c) For purposes of this Article:

26 (1) "Common interest community" means real estate

1 other than a condominium or cooperative with respect to
2 which any person by virtue of his or her ownership of a
3 partial interest or unit therein is obligated to pay for
4 maintenance, improvement, insurance premiums, or real
5 estate taxes of other real estate described in a
6 declaration which is administered by an association.

7 (2) "Declaration" means any duly recorded instruments,
8 however designated, that have created a common interest
9 community and any duly recorded amendments to those
10 instruments.

11 (3) "Unit" means a physical portion of the common
12 interest community designated by separate ownership or
13 occupancy by boundaries which are described in a
14 declaration.

15 (4) "Unit owners' association" or "association" means
16 the association of all owners of units in the common
17 interest community acting pursuant to the declaration.

18 (d) If the board of a common interest community elects to
19 have the provisions of this Article apply to such association
20 or the declaration of the association is recorded after the
21 effective date of this amendatory Act of 1985, the provisions
22 of subsections (c) through (h) of Section 18.5 of the
23 Condominium Property Act applicable to a Master Association and
24 condominium unit subject to such association under subsections
25 (c) through (h) of Section 18.5 shall be applicable to the
26 community associations and to its unit owners.

1 (Source: P.A. 88-47; 89-41, eff. 6-23-95; 89-626, eff. 8-9-96.)

2 (735 ILCS 5/9-104.1) (from Ch. 110, par. 9-104.1)

3 Sec. 9-104.1. Demand; Notice; Return; Condominium and
4 Contract Purchasers.

5 (a) In case there is a contract for the purchase of such
6 lands or tenements or in case of condominium property, the
7 demand shall give the purchaser under such contract, or to the
8 condominium unit owner, as the case may be, at least 30 days to
9 satisfy the terms of the demand before an action is filed. In
10 case of a ~~condominium unit, the demand shall set forth the~~
11 ~~amount claimed which must be paid within the time prescribed in~~
12 ~~the demand and the time period or periods when the amounts were~~
13 ~~originally due, unless the demand is for compliance with~~
14 Section 18(n) of the Condominium Property Act, ~~in which case~~
15 the demand shall set forth the nature of the lease and
16 memorandum of lease or the leasing requirement not satisfied.
17 ~~The amount claimed shall include regular or special~~
18 ~~assessments, late charges or interest for delinquent~~
19 ~~assessments, and attorneys' fees claimed for services incurred~~
20 ~~prior to the demand. Attorneys' fees claimed by condominium~~
21 ~~associations in the demand shall be subject to review by the~~
22 ~~courts in any forcible entry and detainer proceeding under~~
23 ~~subsection (b) of Section 9-111 of this Act.~~ The demand shall
24 be signed by the person claiming such possession, his or her
25 agent, or attorney.

1 (b) (Blank). ~~In the case of a condominium unit, the demand~~
2 ~~is not invalidated by partial payment of amounts due if the~~
3 ~~payments do not, at the end of the notice period, total the~~
4 ~~amounts demanded in the notice for common expenses, unpaid~~
5 ~~finest, interest, late charges, reasonable attorney fees~~
6 ~~incurred prior to the initiation of any court action and costs~~
7 ~~of collection. The person claiming possession, or his or her~~
8 ~~agent or attorney, may, however, agree in writing to withdraw~~
9 ~~the demand in exchange for receiving partial payment. To~~
10 ~~prevent invalidation, the notice must prominently state:~~

11 ~~"Only FULL PAYMENT of all amounts demanded in this notice~~
12 ~~will invalidate the demand, unless the person claiming~~
13 ~~possession, or his or her agent or attorney, agrees in writing~~
14 ~~to withdraw the demand in exchange for receiving partial~~
15 ~~payment."~~

16 (c) The demand set forth in subsection (a) of this Section
17 shall be served either personally upon such purchaser or
18 condominium unit owner or by sending the demand thereof by
19 registered or certified mail with return receipt requested to
20 the last known address of such purchaser or condominium unit
21 owner or in case no one is in the actual possession of the
22 premises, then by posting the same on the premises. When such
23 demand is made by an officer authorized to serve process, his
24 or her return is prima facie evidence of the facts therein
25 stated and if such demand is made by any person not an officer,
26 the return may be sworn to by the person serving the same, and

1 is then prima facie evidence of the facts therein stated. To be
2 effective service under this Section, a demand sent by
3 certified or registered mail to the last known address need not
4 be received by the purchaser or condominium unit owner. No
5 other demand shall be required as a prerequisite to filing an
6 action under paragraph (7) of subsection (a) of Section 9-102
7 of this Act. Service of the demand by registered or certified
8 mail shall be deemed effective upon deposit in the United
9 States mail with proper postage prepaid and addressed as
10 provided in this subsection.

11 (Source: P.A. 90-496, eff. 8-18-97.)

12 (735 ILCS 5/9-104.2) (from Ch. 110, par. 9-104.2)

13 Sec. 9-104.2. Demand - Notice - Termination of Lease and
14 Possession of a Condominium.

15 (a) Unless the Board of Managers is seeking to terminate
16 the right of possession of a tenant or other occupant of a unit
17 under an existing lease or other arrangement with the owner of
18 a unit, no demand nor summons need be served upon the tenant or
19 other occupant in connection with an action brought under
20 paragraph (7) of subsection (a) of Section 9-102 of this
21 Article.

22 (a-5) The Board of Managers may seek to terminate the right
23 of possession of a tenant or other occupant of a unit under an
24 existing lease or other arrangement between the tenant or other
25 occupant and the defaulting owner of a unit, either within the

1 same action against the unit owner under paragraph (7) of
2 subsection (a) of Section 9-102 of this Article or
3 independently thereafter under other paragraphs of that
4 subsection. If a tenant or other occupant of a unit is joined
5 within the same action against the defaulting unit owner under
6 paragraph (7), only the unit owner and not the tenant or other
7 occupant need to be served with 30 days prior written notice as
8 provided in this Article. The tenant or other occupant may be
9 joined as additional defendants at the time the suit is filed
10 or at any time thereafter prior to execution of judgment for
11 possession by filing, with or without prior leave of the court,
12 an amended complaint and summons for trial. If the complaint
13 alleges that the unit is occupied or may be occupied by persons
14 other than or in addition to the unit owner of record, that the
15 identities of the persons are concealed and unknown, they may
16 be named and joined as defendant "Unknown Occupants". Summons
17 may be served on the defendant "Unknown Occupants" by the
18 sheriff or court appointed process server by leaving a copy at
19 the unit with any person residing at the unit of the age of 13
20 years or greater, and if the summons is returned without
21 service stating that service cannot be obtained, constructive
22 service may be obtained pursuant to Section 9-107 of this Code
23 with notice mailed to "Unknown Occupants" at the address of the
24 unit. If prior to execution of judgment for possession the
25 identity of a defendant or defendants served in this manner is
26 discovered, his or her name or names and the record may be

1 corrected upon hearing pursuant to notice of motion served upon
2 the identified defendant or defendants at the unit in the
3 manner provided by court rule for service of notice of motion.
4 If however an action under paragraph (7) was brought against
5 the defaulting unit owner only, and after obtaining judgment
6 for possession and expiration of the stay on enforcement the
7 Board of Managers elects not to accept a tenant or occupant in
8 possession as its own and to commence a separate action,
9 written notice of the judgment against the unit owner and
10 demand to quit the premises shall be served on the tenant or
11 other occupant in the manner provided under Section 9-211 at
12 least 10 days prior to bringing suit to recover possession from
13 the tenant or other occupant.

14 (b) (Blank). ~~If a judgment for possession is granted to the~~
15 ~~Board of Managers under Section 9-111, any interest of the unit~~
16 ~~owner to receive rents under any lease arrangement shall be~~
17 ~~deemed assigned to the Board of Managers until such time as the~~
18 ~~judgment is vacated.~~

19 (c) If a judgment for possession is entered, the Board of
20 Managers may obtain from the clerk of the court an
21 informational certificate notifying any tenants not parties to
22 the proceeding of the assignment of the unit owner's interest
23 in the lease arrangement to the Board of Managers as a result
24 of the entry of the judgment for possession and stating that
25 any rent hereinafter due the unit owner or his agent under the
26 lease arrangement should be paid to the Board of Managers until

1 further order of court. If the tenant pays his rent to the
2 association pursuant to the entry of such a judgement for
3 possession, the unit owner may not sue said tenant for any such
4 amounts the tenant pays the association. Upon service of the
5 certificate on the tenant in the manner provided by Section
6 9-211 of this Code, the tenant shall be obligated to pay the
7 rent under the lease arrangement to the Board of Managers as it
8 becomes due. If the tenant thereafter fails and refuses to pay
9 the rent, the Board of Managers may bring an action for
10 possession after making a demand for rent in accordance with
11 Section 9-209 of this Code.

12 (c-5) In an action against the unit owner and lessee to
13 evict a lessee for failure of the lessor/owner of the
14 condominium unit to comply with the leasing requirements
15 prescribed by subsection (n) of Section 18 of the Condominium
16 Property Act or by the declaration, bylaws, and rules and
17 regulations of the condominium, or against a lessee for any
18 other breach by the lessee of any covenants, rules,
19 regulations, or bylaws of the condominium, the demand shall
20 give the lessee at least 10 days to quit and vacate the unit.
21 The notice shall be substantially in the following form:

22 "TO A.B. You are hereby notified that in consequence of
23 (here insert lessor-owner name) failure to comply with the
24 leasing requirements prescribed by Section 18(n) of the
25 Condominium Property Act or by the declaration, bylaws, and
26 rules and regulations of the condominium, or your default

1 of any covenants, rules, regulations or bylaws of the
2 condominium, in (here insert the character of the default)
3 of the premises now occupied by you, being (here described
4 the premises) the Board of Managers of (here describe the
5 condominium) Association elects to terminate your lease,
6 and you are hereby notified to quit and vacate same within
7 10 days of this date.".

8 The demand shall be signed by the Board of Managers, its
9 agent, or attorney and shall be served either personally upon
10 the lessee with a copy to the unit owner or by sending the
11 demand thereof by registered or certified mail with return
12 receipt requested to the unit occupied by the lessee and to the
13 last known address of the unit owner, and no other demand of
14 termination of such tenancy shall be required. To be effective
15 service under this Section, a demand sent by certified mail,
16 return receipt requested, to the unit occupied by the lessee
17 and to the last known address of the unit owner need not be
18 received by the lessee or condominium unit owner.

19 (d) Nothing in this Section 9-104.2 is intended to confer
20 upon a Board of Managers any greater authority with respect to
21 possession of a unit after a judgment than was previously
22 established by this Act.

23 (Source: P.A. 90-496, eff. 8-18-97; 91-196, eff. 7-20-99.)

24 (735 ILCS 5/9-107) (from Ch. 110, par. 9-107)

25 Sec. 9-107. Constructive service. If the plaintiff, his or

1 her agent, or attorney files a forcible detainer action, with
2 or without joinder of a claim for rent in the complaint, and is
3 unable to obtain personal service on the defendant or unknown
4 occupant and a summons duly issued in such action is returned
5 without service stating that service can not be obtained, then
6 the plaintiff, his or her agent or attorney may file an
7 affidavit stating that the defendant or unknown occupant is not
8 a resident of this State, or has departed from this State, or
9 on due inquiry cannot be found, or is concealed within this
10 State so that process cannot be served upon him or her, and
11 also stating the place of residence of the defendant or unknown
12 occupant, if known, or if not known, that upon diligent inquiry
13 the affiant has not been able to ascertain the defendant's or
14 unknown occupant's place of residence, then in all such
15 forcible detainer cases whether or not a claim for rent is
16 joined with the complaint for possession, the defendant or
17 unknown occupant may be notified by posting and mailing of
18 notices; or by publication and mailing, as provided for in
19 Section 2-206 of this Act. However, in cases where the
20 defendant or unknown occupant is notified by posting and
21 mailing of notices or by publication and mailing, and the
22 defendant or unknown occupant does not appear generally, the
23 court may rule only on the portion of the complaint which seeks
24 judgment for possession, and the court shall not enter judgment
25 as to any rent claim joined in the complaint ~~or enter personal~~
26 ~~judgment for any amount owed by a unit owner for his or her~~

1 ~~proportionate share of the common expenses, however, an in rem~~
2 ~~judgment may be entered against the unit for the amount of~~
3 ~~common expenses due, any other expenses lawfully agreed upon or~~
4 ~~the amount of any unpaid fine, together with reasonable~~
5 ~~attorney fees, if any, and costs.~~ The claim for rent may remain
6 pending until such time as the defendant or unknown occupant
7 appears generally or is served with summons, but the order for
8 possession shall be final, enforceable and appealable if the
9 court makes an express written finding that there is no just
10 reason for delaying enforcement or appeal, as provided by
11 Supreme Court rule of this State.

12 Such notice shall be in the name of the clerk of the court,
13 be directed to the defendant or unknown occupant, shall state
14 the nature of the cause against the defendant or unknown
15 occupant and at whose instance issued and the time and place
16 for trial, and shall also state that unless the defendant or
17 unknown occupant appears at the time and place fixed for trial,
18 judgment will be entered by default, and shall specify the
19 character of the judgment that will be entered in such cause.
20 The sheriff shall post 3 copies of the notice in 3 public
21 places in the neighborhood of the court where the cause is to
22 be tried, at least 10 days prior to the day set for the
23 appearance, and, if the place of residence of the defendant or
24 unknown occupant is stated in any affidavit on file, shall at
25 the same time mail one copy of the notice addressed to such
26 defendant or unknown occupant at such place of residence shown

1 in such affidavit. On or before the day set for the appearance,
2 the sheriff shall file the notice with an endorsement thereon
3 stating the time when and places where the sheriff posted and
4 to whom and at what address he or she mailed copies as required
5 by this Section. For want of sufficient notice any cause may be
6 continued from time to time until the court has jurisdiction of
7 the defendant or unknown occupant.

8 (Source: P.A. 92-823, eff. 8-21-02.)

9 (735 ILCS 5/9-117) (from Ch. 110, par. 9-117)

10 Sec. 9-117. Expiration of Judgment. No judgment for
11 possession obtained in an action brought under this Article may
12 be enforced more than 90 days after judgment is entered, unless
13 upon motion by the plaintiff the court grants an extension of
14 the period of enforcement of the judgment. Plaintiff's notice
15 of motion shall contain the following notice directed to the
16 defendant:

17 "Your landlord, (insert name), obtained an eviction
18 judgment against you on (insert date), but the sheriff did
19 not evict you within the 90 days that the landlord has to
20 evict after a judgment in court. On the date stated in this
21 notice, your landlord will be asking the court to allow the
22 sheriff to evict you based on that judgment. You must
23 attend the court hearing if you want the court to stop the
24 landlord from having you evicted. To prevent the eviction,
25 you must be able to prove that (1) the landlord and you

1 made an agreement after the judgment (for instance, to pay
2 up back rent or to comply with the lease) and you have
3 lived up to the agreement; or (2) the reason the landlord
4 brought the original eviction case has been resolved or
5 forgiven, and the eviction the landlord now wants the court
6 to grant is based on a new or different reason; or (3) that
7 you have another legal or equitable reason why the court
8 should not grant the landlord's request for your eviction."

9 The court shall grant the motion for the extension of the
10 judgment of possession unless the defendant establishes that
11 the tenancy has been reinstated, that the breach upon which the
12 judgment was issued has been cured or waived, that the
13 plaintiff and defendant entered into a post-judgment agreement
14 whose terms the defendant has performed, or that other legal or
15 equitable grounds exist that bar enforcement of the judgment.
16 This Section does not apply to any action based upon a breach
17 of a contract entered into on or after July 1, 1962, for the
18 purchase of premises in which the court has entered a stay
19 under Section 9-110; ~~nor shall this Section apply to any action~~
20 ~~to which the provisions of Section 9-111 apply;~~ nor shall this
21 Section affect the rights of Boards of Managers under Section
22 9-104.2.

23 (Source: P.A. 86-1280.)

24 Section 15. The Condominium Property Act is amended by
25 changing Section 9.2 as follows:

1 (765 ILCS 605/9.2) (from Ch. 30, par. 309.2)

2 Sec. 9.2. Other remedies.

3 (a) In the event of any default by any unit owner, his
4 tenant, invitee or guest in the performance of his obligations
5 under this Act or under the declaration, bylaws, or the rules
6 and regulations of the board of managers, the board of managers
7 or its agents shall have such rights and remedies as provided
8 in the Act or condominium instruments including the right to
9 maintain an action for possession against such defaulting unit
10 owner or his tenant for the benefit of all the other unit
11 owners, but only to the extent permitted by, and in the manner
12 prescribed by, Article IX of the Code of Civil Procedure.

13 (b) Any attorneys' fees incurred by the Association arising
14 out of a default by any unit owner, his tenant, invitee or
15 guest in the performance of any of the provisions of the
16 condominium instruments, rules and regulations or any
17 applicable statute or ordinance shall be added to, and deemed a
18 part of, his respective share of the common expense.

19 (c) Other than attorney's fees, no fees pertaining to the
20 collection of a unit owner's financial obligation to the
21 Association, including fees charged by a manager or managing
22 agent, shall be added to and deemed a part of an owner's
23 respective share of the common expenses unless: (i) the
24 managing agent fees relate to the costs to collect common
25 expenses for the Association; (ii) the fees are set forth in a

1 contract between the managing agent and the Association; and
2 (iii) the authority to add the management fees to an owner's
3 respective share of the common expenses is specifically stated
4 in the declaration or bylaws of the Association.

5 (d) Nothing in subsection (a), (b), or (c) shall be
6 construed to give the board of managers or its agents the right
7 to commence an action under the repealed Section 9-111 or
8 9-111.1 of the Code of Civil Procedure.

9 (Source: P.A. 94-384, eff. 1-1-06.)