



Sen. M. Maggie Crotty

Filed: 4/11/2008

09500SB2721sam001

LRB095 05913 AJ0 48657 a

1 AMENDMENT TO SENATE BILL 2721

2 AMENDMENT NO. _____. Amend Senate Bill 2721 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 changing Section 15-1701 as follows:

6 (735 ILCS 5/15-1701) (from Ch. 110, par. 15-1701)

7 Sec. 15-1701. Right to possession.

8 (a) General. The provisions of this Article shall govern
9 the right to possession of the mortgaged real estate during
10 foreclosure. Possession under this Article includes physical
11 possession of the mortgaged real estate to the same extent to
12 which the mortgagor, absent the foreclosure, would have been
13 entitled to physical possession. For the purposes of Part 17,
14 real estate is residential real estate only if it is
15 residential real estate at the time the foreclosure is
16 commenced.

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

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

17 (2) In all other cases, if (i) the mortgagee is so
18 authorized by the terms of the mortgage or other written
19 instrument, and (ii) the court is satisfied that there is a
20 reasonable probability that the mortgagee will prevail on a
21 final hearing of the cause, the mortgagee shall upon
22 request be placed in possession of the real estate, except
23 that if the mortgagor shall object and show good cause, the
24 court shall allow the mortgagor to remain in possession.

25 (c) Judgment Through 30 Days After Sale Confirmation. After
26 the entry of a judgment of foreclosure and through the 30th day

1 after a foreclosure sale is confirmed:

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

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

23 (d) After 30 Days After Sale Confirmation. The holder of
24 the certificate of sale or deed issued pursuant to that
25 certificate or, if no certificate or deed was issued, the
26 purchaser, except to the extent the holder or purchaser may

1 consent otherwise, shall be entitled to possession of the
2 mortgaged real estate, as of the date 30 days after the order
3 confirming the sale is entered, against those parties to the
4 foreclosure whose interests the court has ordered terminated,
5 without further notice to any party, further order of the
6 court, or resort to proceedings under any other statute other
7 than this Article. This right to possession shall be limited by
8 the provisions governing entering and enforcing orders of
9 possession under subsection (g) of Section 15-1508. If the
10 holder or purchaser determines that there are occupants of the
11 mortgaged real estate who have not been made parties to the
12 foreclosure and had their interests terminated therein, the
13 holder or purchaser may bring a proceeding under subsection (h)
14 of this Section or under Article 9 of this Code to terminate
15 the rights of possession of any such occupants. The holder or
16 purchaser shall not be entitled to proceed against any such
17 occupant under Article 9 of this Code until after 30 days after
18 the order confirming the sale is entered.

19 (e) Termination of Leases. A lease of all or any part of
20 the mortgaged real estate shall not be terminated automatically
21 solely by virtue of the entry into possession by (i) a
22 mortgagee or receiver prior to the entry of an order confirming
23 the sale, (ii) the holder of the certificate of sale, (iii) the
24 holder of the deed issued pursuant to that certificate, or (iv)
25 if no certificate or deed was issued, the purchaser at the
26 sale.

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

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

18 (h) Proceedings Against Certain Occupants.

19 (1) The mortgagee-in-possession of the mortgaged real
20 estate under Section 15-1703, a receiver appointed under
21 Section 15-1704, a holder of the certificate of sale or
22 deed, or the purchaser may, at any time during the pendency
23 of the foreclosure and up to 90 days after the date of the
24 order confirming the sale, file a supplemental petition for
25 possession against a person not personally named as a party
26 to the foreclosure. The supplemental petition for

1 possession shall name each such occupant against whom
2 possession is sought and state the facts upon which the
3 claim for relief is premised.

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

14 (3) The supplemental petition shall be heard as part of
15 the foreclosure proceeding and without the payment of
16 additional filing fees. An order for possession obtained
17 under this Section shall name each occupant whose interest
18 has been terminated, shall recite that it is only effective
19 as to the occupant so named and those holding under them,
20 and shall be enforceable for no more than 90 days after its
21 entry, except that the 90-day period may be extended to the
22 extent and in the manner provided in Section 9-117 of
23 Article 9 and except as provided in item (4) of this
24 subsection (h).

25 (4) In a case of foreclosure where the tenant is
26 current on his or her rent, or where timely written notice

1 of to whom and where the rent is to be paid has not been
2 provided to the tenant, or where the tenant has made
3 good-faith efforts to make rental payments in order to keep
4 current, any order of possession must allow the tenant to
5 retain possession of the property covered in his or her
6 rental agreement (i) for 120 days following the notice of
7 the hearing on the supplemental petition that has been
8 properly served upon the tenant, or (ii) through the
9 duration of his or her lease, whichever is shorter. If the
10 tenant has been given timely written notice of to whom and
11 where the rent is to be paid, this ~~This~~ item (4) shall only
12 apply if the tenant continues to pay his or her rent in
13 full during the 120-day period or has made good-faith
14 efforts to pay the rent in full during that period. No
15 mortgagee-in-possession, receiver or holder of a
16 certificate of sale or deed, or purchaser who fails to file
17 a supplemental petition under this subsection during the
18 pendency of a mortgage foreclosure shall file a forcible
19 entry and detainer action against a tenant of the mortgaged
20 real estate until 90 days after a notice of intent to file
21 such action has been properly served upon the tenant.

22 (5) The court records relating to a supplemental
23 petition for possession filed under this subsection (h)
24 against a tenant who is entitled to notice under item (4)
25 of this subsection (h), or relating to a forcible entry and
26 detainer action brought against a tenant who would have

1 lawful possession of the premises but for the foreclosure
2 of a mortgage on the property, shall be ordered sealed and
3 shall not be disclosed to any person, other than a law
4 enforcement officer or any other representative of a
5 governmental entity, except upon further order of the
6 court.

7 (Source: P.A. 95-262, eff. 1-1-08.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.".