



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB3966

by Rep. Joe Sosnowski

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1701

from Ch. 110, par. 15-1701

Amends the Code of Civil Procedure. Provides that in a foreclosure proceeding and up to 90 days after the date of the order confirming the sale, a mortgagee-in-possession of the mortgaged real estate, a receiver, a holder of the certificate of sale or deed, or the purchaser may file a supplemental petition for possession against an occupant of the property who is a squatter. Provides procedural requirements. Provides that the court shall enter a final ruling on the petition no later than 180 days after it is filed, and that the sheriff shall evict the squatter as soon as practicable after the entry of an order granting possession.

LRB099 07045 HEP 27128 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 Section 15-1701 as follows:

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

7 Sec. 15-1701. Right to possession.

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

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

19 (1) In the case of residential real estate, the  
20 mortgagor shall be entitled to possession of the real  
21 estate except if (i) the mortgagee shall object and show  
22 good cause, (ii) the mortgagee is so authorized by the  
23 terms of the mortgage or other written instrument, and

1 (iii) the court is satisfied that there is a reasonable  
2 probability that the mortgagee will prevail on a final  
3 hearing of the cause, the court shall upon request place  
4 the mortgagee in possession. If the residential real estate  
5 consists of more than one dwelling unit, then for the  
6 purpose of this Part residential real estate shall mean  
7 only that dwelling unit or units occupied by persons  
8 described in clauses (i), (ii) and (iii) of Section  
9 15-1219.

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

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

21 (1) Subsection (b) of Section 15-1701 shall be  
22 applicable, regardless of the provisions of the mortgage or  
23 other instrument, except that after a sale pursuant to the  
24 judgment the holder of the certificate of sale (or, if  
25 none, the purchaser at the sale) shall have the mortgagee's  
26 right to be placed in possession, with all rights and

1 duties of a mortgagee in possession under this Article.

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

16 (d) After 30 Days After Sale Confirmation. The holder of  
17 the certificate of sale or deed issued pursuant to that  
18 certificate or, if no certificate or deed was issued, the  
19 purchaser, except to the extent the holder or purchaser may  
20 consent otherwise, shall be entitled to possession of the  
21 mortgaged real estate, as of the date 30 days after the order  
22 confirming the sale is entered, against those parties to the  
23 foreclosure whose interests the court has ordered terminated,  
24 without further notice to any party, further order of the  
25 court, or resort to proceedings under any other statute other  
26 than this Article. This right to possession shall be limited by

1 the provisions governing entering and enforcing orders of  
2 possession under subsection (g) of Section 15-1508. If the  
3 holder or purchaser determines that there are occupants of the  
4 mortgaged real estate who have not been made parties to the  
5 foreclosure and had their interests terminated therein, the  
6 holder or purchaser may bring a proceeding under subsection (h)  
7 of this Section, if applicable, or under Article IX of this  
8 Code to terminate the rights of possession of any such  
9 occupants. The holder or purchaser shall not be entitled to  
10 proceed against any such occupant under Article IX of this Code  
11 until after 30 days after the order confirming the sale is  
12 entered.

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

21 (f) Other Statutes; Instruments. The provisions of this  
22 Article providing for possession of mortgaged real estate shall  
23 supersede any other inconsistent statutory provisions. In  
24 particular, and without limitation, whenever a receiver is  
25 sought to be appointed in any action in which a foreclosure is  
26 also pending, a receiver shall be appointed only in accordance

1 with this Article. Except as may be authorized by this Article,  
2 no mortgage or other instrument may modify or supersede the  
3 provisions of this Article.

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

12 (h) Proceedings Against Certain Occupants.

13 (1) The mortgagee-in-possession of the mortgaged real  
14 estate under Section 15-1703, a receiver appointed under  
15 Section 15-1704, a holder of the certificate of sale or  
16 deed, or the purchaser may, at any time during the pendency  
17 of the foreclosure and up to 90 days after the date of the  
18 order confirming the sale, file a supplemental petition for  
19 possession against a person not personally named as a party  
20 to the foreclosure. This subsection (h) does not apply to  
21 squatters or any lessee with a bona fide lease of a  
22 dwelling unit in residential real estate in foreclosure.

23 (2) The supplemental petition for possession shall  
24 name each such occupant against whom possession is sought  
25 and state the facts upon which the claim for relief is  
26 premised.

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

11          (4) The supplemental petition shall be heard as part of  
12          the foreclosure proceeding and without the payment of  
13          additional filing fees. An order for possession obtained  
14          under this Section shall name each occupant whose interest  
15          has been terminated, shall recite that it is only effective  
16          as to the occupant so named and those holding under them,  
17          and shall be enforceable for no more than 120 days after  
18          its entry, except that the 120-day period may be extended  
19          to the extent and in the manner provided in Section 9-117  
20          of Article IX and except as provided in item (5) of this  
21          subsection (h).

22          (5) In a case of foreclosure where the occupant is  
23          current on his or her rent, or where timely written notice  
24          of to whom and where the rent is to be paid has not been  
25          provided to the occupant, or where the occupant has made  
26          good-faith efforts to make rental payments in order to keep

1 current, any order of possession must allow the occupant to  
2 retain possession of the property covered in his or her  
3 rental agreement (i) for 120 days following the notice of  
4 the hearing on the supplemental petition that has been  
5 properly served upon the occupant, or (ii) through the  
6 duration of his or her lease, whichever is shorter,  
7 provided that if the duration of his or her lease is less  
8 than 30 days from the date of the order, the order shall  
9 allow the occupant to retain possession for 30 days from  
10 the date of the order. A mortgagee in possession, receiver,  
11 holder of a certificate of sale or deed, or purchaser at  
12 the judicial sale, who asserts that the occupant is not  
13 current in rent, shall file an affidavit to that effect in  
14 the supplemental petition proceeding. If the occupant has  
15 been given timely written notice of to whom and where the  
16 rent is to be paid, this item (5) shall only apply if the  
17 occupant continues to pay his or her rent in full during  
18 the 120-day period or has made good-faith efforts to pay  
19 the rent in full during that period.

20 (6) The court records relating to a supplemental  
21 petition for possession filed under this subsection (h)  
22 against an occupant who is entitled to notice under item  
23 (5) of this subsection (h), or relating to a forcible entry  
24 and detainer action brought against an occupant who would  
25 have lawful possession of the premises but for the  
26 foreclosure of a mortgage on the property, shall be ordered



1 sealed and shall not be disclosed to any person, other than  
2 a law enforcement officer or any other representative of a  
3 governmental entity, except upon further order of the  
4 court.

5 (h-5) Proceedings Against Squatters.

6 (1) The mortgagee-in-possession of the mortgaged real  
7 estate under Section 15-1703, a receiver appointed under  
8 Section 15-1704, a holder of the certificate of sale or  
9 deed, or the purchaser may, at any time during the pendency  
10 of the foreclosure and up to 90 days after the date of the  
11 order confirming the sale, file a supplemental petition for  
12 possession against an occupant of the property who is a  
13 squatter.

14 (2) As used in this subsection, "squatter" means a  
15 person who occupies the property without title or payment  
16 of rent.

17 (3) The petitioner shall serve upon the squatter the  
18 petition, a notice of hearing on the petition, and, if any,  
19 a copy of the certificate of sale or deed. The proceeding  
20 for the termination of the squatter's possessory interest,  
21 including service of the notice of the hearing and the  
22 petition, shall in all respects comport with the  
23 requirements of Article IX of this Code, except as  
24 otherwise specified in this Section. The hearing shall be  
25 no less than 21 days from the date of service of the  
26 notice.

1           (4) The supplemental petition shall be heard as part of  
2           the foreclosure proceeding and without the payment of  
3           additional filing fees, and the court shall enter a final  
4           ruling on the petition no later than 180 days after it is  
5           filed.

6           (5) The sheriff shall evict the squatter as soon as  
7           practicable after the entry of an order granting possession  
8           under this subsection.

9           (i) Termination of bona fide leases. The holder of the  
10          certificate of sale, the holder of the deed issued pursuant to  
11          that certificate, or, if no certificate or deed was issued, the  
12          purchaser at the sale shall not terminate a bona fide lease of  
13          a dwelling unit in residential real estate in foreclosure  
14          except pursuant to Article IX of this Code.

15          (Source: P.A. 98-514, eff. 11-19-13.)