

**SB0735**



**99TH GENERAL ASSEMBLY**

**State of Illinois**

**2015 and 2016**

**SB0735**

Introduced 2/3/2015, by Sen. John G. Mulroe

**SYNOPSIS AS INTRODUCED:**

735 ILCS 5/15-1501

from Ch. 110, par. 15-1501

Amends the Mortgage Foreclosure Article of the Code of Civil Procedure. In provisions outlining under which circumstances the court is not required to appoint a special representative for a deceased mortgagor for the purpose of defending the action, adds situations where there is a: (i) beneficiary under a transfer on death instrument; (ii) person or entity that was conveyed title to the property by the deceased mortgagor prior to death; (iii) person or entity that was conveyed title to the property under the administration of the deceased's estate; or (iv) trust that was conveyed title to the property.

LRB099 07334 HEP 27444 b

**A BILL FOR**

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 15-1501 as follows:

6 (735 ILCS 5/15-1501) (from Ch. 110, par. 15-1501)  
7 Sec. 15-1501. Parties.

8 (a) Necessary Parties. For the purposes of Section 2-405 of  
9 the Code of Civil Procedure, only (i) the mortgagor and (ii)  
10 other persons (but not guarantors) who owe payment of  
11 indebtedness or the performance of other obligations secured by  
12 the mortgage and against whom personal liability is asserted  
13 shall be necessary parties defendant in a foreclosure. The  
14 court may proceed to adjudicate their respective interests, but  
15 any disposition of the mortgaged real estate shall be subject  
16 to (i) the interests of all other persons not made a party or  
17 (ii) interests in the mortgaged real estate not otherwise  
18 barred or terminated in the foreclosure.

19 (b) Permissible Parties. Any party may join as a party any  
20 other person, although such person is not a necessary party,  
21 including, without limitation, the following:

22 (1) All persons having a possessory interest in the  
23 mortgaged real estate;

1           (2) A mortgagor's spouse who has waived the right of  
2 homestead;

3           (3) A trustee holding an interest in the mortgaged real  
4 estate or a beneficiary of such trust;

5           (4) The owner or holder of a note secured by a trust  
6 deed;

7           (5) Guarantors, provided that in a foreclosure any such  
8 guarantor also may be joined as a party in a separate count  
9 in an action on such guarantor's guaranty;

10          (6) The State of Illinois or any political subdivision  
11 thereof, where a foreclosure involves real estate upon  
12 which the State or such subdivision has an interest or  
13 claim for lien, in which case "An Act in relation to  
14 immunity for the State of Illinois", approved December 10,  
15 1971, as amended, shall not be effective;

16          (7) The United States of America or any agency or  
17 department thereof where a foreclosure involves real  
18 estate upon which the United States of America or such  
19 agency or department has an interest or a claim for lien;

20          (8) Any assignee of leases or rents relating to the  
21 mortgaged real estate;

22          (9) Any person who may have a lien under the Mechanic's  
23 Lien Act; and

24          (10) Any other mortgagee or claimant.

25          (c) Unknown Owners. Any unknown owner may be made a party  
26 in accordance with Section 2-413 of the Code of Civil

1 Procedure.

2 (d) Right to Become Party. Any person who has or claims an  
3 interest in real estate which is the subject of a foreclosure  
4 or an interest in any debt secured by the mortgage shall have  
5 an unconditional right to appear and become a party in such  
6 foreclosure in accordance with subsection (e) of Section  
7 15-1501, provided, that neither such appearance by a lessee  
8 whose interest in the real estate is subordinate to the  
9 interest being foreclosed, nor the act of making such lessee a  
10 party, shall result in the termination of the lessee's lease  
11 unless the termination of the lease or lessee's interest in the  
12 mortgaged real estate is specifically ordered by the court in  
13 the judgment of foreclosure.

14 (e) Time of Intervention.

15 (1) Of Right. A person not a party, other than a  
16 nonrecord claimant given notice in accordance with  
17 paragraph (2) of subsection (c) of Section 15-1502, who has  
18 or claims an interest in the mortgaged real estate may  
19 appear and become a party at any time prior to the entry of  
20 judgment of foreclosure. A nonrecord claimant given such  
21 notice may appear and become a party at any time prior to  
22 the earlier of (i) the entry of a judgment of foreclosure  
23 or (ii) 30 days after such notice is given.

24 (2) In Court's Discretion. After the right to intervene  
25 expires and prior to the sale in accordance with the  
26 judgment, the court may permit a person who has or claims

1 an interest in the mortgaged real estate to appear and  
2 become a party on such terms as the court may deem just.

3 (3) Later Right. After the sale of the mortgaged real  
4 estate in accordance with a judgment of foreclosure and  
5 prior to the entry of an order confirming the sale, a  
6 person who has or claims an interest in the mortgaged real  
7 estate, may appear and become a party, on such terms as the  
8 court may deem just, for the sole purpose of claiming an  
9 interest in the proceeds of sale. Any such party shall be  
10 deemed a party from the commencement of the foreclosure,  
11 and the interest of such party in the real estate shall be  
12 subject to all orders and judgments entered in the  
13 foreclosure.

14 (4) Termination of Interest. Except as provided in  
15 Section 15-1501(d), the interest of any person who is  
16 allowed to appear and become a party shall be terminated,  
17 and the interest of such party in the real estate shall  
18 attach to the proceeds of sale.

19 (f) Separate Actions. Any mortgagee or claimant, other than  
20 the mortgagee who commences a foreclosure, whose interest in  
21 the mortgaged real estate is recorded prior to the filing of a  
22 notice of foreclosure in accordance with this Article but who  
23 is not made a party to such foreclosure, shall not be barred  
24 from filing a separate foreclosure (i) as an intervening  
25 defendant or counterclaimant in accordance with subsections  
26 (d) and (e) of Section 15-1501 if a judgment of foreclosure has

1 not been entered in the original foreclosure or (ii) in a new  
2 foreclosure subsequent to the entry of a judgment of  
3 foreclosure in the original foreclosure.

4 (g) Service on the State of Illinois. When making the State  
5 of Illinois a party to a foreclosure, summons may be served by  
6 sending, by registered or certified mail, a copy of the summons  
7 and the complaint to the Attorney General. The complaint shall  
8 set forth with particularity the nature of the interest or lien  
9 of the State of Illinois. If such interest or lien appears in a  
10 recorded instrument, the complaint must state the document  
11 number of the instrument and the office wherein it was  
12 recorded.

13 (h) Special Representatives. With respect to the property  
14 that is the subject of the action, the ~~The~~ court is not  
15 required to appoint a special representative for a deceased  
16 mortgagor for the purpose of defending the action, if there is  
17 a:

18 (1) living person, persons, or entity that holds a 100%  
19 interest in the property ~~that is the subject of the action,~~  
20 by virtue of being the deceased mortgagor's surviving joint  
21 tenant or surviving tenant by the entirety;

22 (2) beneficiary under a transfer on death instrument  
23 executed by the deceased mortgagor prior to death;

24 (3) person, persons, or entity that was conveyed title  
25 to the property by the deceased mortgagor prior to death;

26 (4) person, persons, or entity that was conveyed title

1       to the property from the deceased mortgagor's probate  
2       estate by the administrator or executor; or

3       (5) trust that was conveyed title to the property by:

4               (A) the deceased mortgagor prior to death; or

5               (B) any other person, persons, or entity that is  
6       identified in this subsection (h) as being exempt from  
7       the requirement to appoint a special representative.

8               In no event may a deficiency judgment be sought or entered  
9       in the foreclosure case pursuant to subsection (e) of Section  
10      15-1508 against a deceased mortgagor.

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