



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB3216

Introduced 2/15/2018, by Sen. Jason A. Barickman

SYNOPSIS AS INTRODUCED:

735 ILCS 5/13-107	from Ch. 110, par. 13-107
735 ILCS 5/13-107.1 new	
735 ILCS 5/13-109	from Ch. 110, par. 13-109
735 ILCS 5/13-109.1 new	
735 ILCS 5/15-1603.5	

Amends the Code of Civil Procedure. Provides that actions for the recovery of real property following a foreclosure shall be brought within 3 years after possession is taken. Provides that every person in the actual possession of lands or tenements, under claim and color of title, as a purchaser following a foreclosure, and who for 3 successive years continues in possession, and also, during such time, pays all taxes legally assessed on the lands or tenements, shall be held and adjudged to be the legal owner of the lands or tenements, to the extent and according to the purport of his or her paper title. In the Section concerning strict foreclosure of an omitted subordinate interest, provides that "omitted subordinate interest" includes a person who was a named party in a foreclosure action over which the court lacked personal jurisdiction due to defective service of process, or was a party over which the court initially had personal jurisdiction but whose judgment was vacated due to lack of personal jurisdiction over a co-defendant. Provides that a foreclosure proceeding may be reopened as to the defendant and co-defendants only if the defendant was a named party in the foreclosure action over which the court lacked personal jurisdiction due to defective service of process, and after the foreclosure proceeding is reopened, if the defendant is unsuccessful in defeating the foreclosure action, then the defendant or its co-defendants shall have the option to redeem the property. Provides that the redemption period shall extend 90 days after the entry of the order if the defendant has not been in possession of the real estate for a period of 6 months prior to the entry of the order. Provides that nothing in the Section concerning strict foreclosure affects any existing right that the holder of the certificate of sale or any person who acquired title following a judicial sale or any subsequent successor, assignee, transferee, or grantee of such a person may have against the defendant or the real estate. Makes other changes. Contains a statement of legislative purpose. Adds language concerning applicability and severability. Effective immediately.

LRB100 18695 HEP 33927 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 1. Findings. The General Assembly finds that:

5 (1) The public's reliance on the finality of court
6 orders entered in mortgage foreclosure actions is an
7 important policy concern.

8 (2) Highly technical jurisdictional challenges on
9 behalf of foreclosed landowners who long ago abandoned
10 their property are injurious to the interests of
11 third-party purchasers for value of foreclosed properties.

12 (3) It is important to balance the interests of
13 third-party subsequent purchasers for value of foreclosed
14 properties with the interests of foreclosed landowners.

15 (4) It is necessary to remedy the negative effects upon
16 the real estate marketplace in Illinois that challenges to
17 final court orders entered in mortgage foreclosures
18 actions cause, including disincentives to third parties
19 purchasing foreclosed properties, reduction of neighboring
20 property values, reduction of the tax base, increased
21 crime, additional costs on local governments, and the
22 increased burden on the courts of this State.

23 (5) An expedited but fair process for these foreclosed
24 property owners as set forth in this Act will provide

1 notice to foreclosed parties and give them a right of
2 relief, recovery, or redemption. This will help the
3 citizens and the courts of this State by allowing these
4 cases to proceed more efficiently through the court system.

5 Section 5. The Code of Civil Procedure is amended by
6 changing Sections 13-107, 13-109, and 15-1603.5 and by adding
7 Sections 13-107.1 and 13-109.1 as follows:

8 (735 ILCS 5/13-107) (from Ch. 110, par. 13-107)

9 Sec. 13-107. Seven years with possession and record title.
10 Except as provided in Section 13-107.1, actions ~~Actions~~ brought
11 for the recovery of any lands, tenements or hereditaments of
12 which any person may be possessed by actual residence thereon
13 for 7 successive years, having a connected title, deductible of
14 record, from this State or the United States, or from any
15 public officer or other person authorized by the laws of this
16 State to sell such land for the non-payment of taxes, or from
17 any sheriff, marshal, or other person authorized to sell such
18 land for the enforcement of a judgment or under any order or
19 judgment of any court shall be brought within 7 years next
20 after possession is taken, but when the possessor acquires such
21 title after taking such possession, the limitation shall begin
22 to run from the time of acquiring title.

23 (Source: P.A. 82-280.)

1 (735 ILCS 5/13-107.1 new)

2 Sec. 13-107.1. Three years with possession and record title
3 derived from a judicial foreclosure sale.

4 (a) Actions brought for the recovery of any lands,
5 tenements, or hereditaments of which any person may be
6 possessed for 3 successive years, having a connected title,
7 deductible of record, as a purchaser at a judicial foreclosure
8 sale, other than a mortgagee, who takes possession pursuant to
9 a court order under the Illinois Mortgage Foreclosure Law, or a
10 purchaser who acquires title from a mortgagee or a purchaser at
11 a judicial foreclosure sale who received title and took
12 possession pursuant to a court order, shall be brought within 3
13 years after possession is taken. When the purchaser acquires
14 title and has taken possession, the limitation shall begin to
15 run from the date a mortgagee or a purchaser at a judicial
16 foreclosure sale takes possession pursuant to a court order
17 under the Illinois Mortgage Foreclosure Law or Article IX of
18 this Code. The vacation or modification, pursuant to the
19 provisions of Section 2-1401, of an order or judgment entered
20 in the judicial foreclosure does not affect the limitation in
21 this Section.

22 (b) This Section applies to actions filed on or after 180
23 days after the effective date of this amendatory Act of the
24 100th General Assembly.

25 (735 ILCS 5/13-109) (from Ch. 110, par. 13-109)

1 Sec. 13-109. Payment of taxes with color of title. Except
2 as provided in Section 13-109.1, every ~~Every~~ person in the
3 actual possession of lands or tenements, under claim and color
4 of title, made in good faith, and who for 7 successive years
5 continues in such possession, and also, during such time, pays
6 all taxes legally assessed on such lands or tenements, shall be
7 held and adjudged to be the legal owner of such lands or
8 tenements, to the extent and according to the purport of his or
9 her paper title. All persons holding under such possession, by
10 purchase, legacy or descent, before such 7 years have expired,
11 and who continue such possession, and continue to pay the taxes
12 as above set forth so as to complete the possession and payment
13 of taxes for the term above set forth, are entitled to the
14 benefit of this Section.

15 (Source: P.A. 88-45.)

16 (735 ILCS 5/13-109.1 new)

17 Sec. 13-109.1. Payment of taxes with color of title derived
18 from judicial foreclosure. Every person in the actual
19 possession of lands or tenements, under claim and color of
20 title, as a purchaser at a judicial foreclosure sale, other
21 than a mortgagee, who takes possession pursuant to a court
22 order under the Illinois Mortgage Foreclosure Law, or a
23 purchaser who acquires title from a mortgagee or a purchaser at
24 a judicial foreclosure sale who received title and took
25 possession pursuant to such a court order, and who for 3

1 successive years continues in possession, and also, during such
2 time, pays all taxes legally assessed on the lands or
3 tenements, shall be held and adjudged to be the legal owner of
4 the lands or tenements, to the extent and according to the
5 purport of his or her paper title. All persons holding under
6 such possession, by purchase, legacy, or descent, before such 3
7 years have expired, and who continue possession, and continue
8 to pay the taxes as above set forth so as to complete the
9 possession and payment of taxes for the term above set forth,
10 are entitled to the benefit of this Section. The vacation or
11 modification, pursuant to the provisions of Section 2-1401, of
12 an order or judgment entered in the judicial foreclosure does
13 not affect the limitation in this Section.

14 This Section applies to actions filed on or after 180 days
15 after the effective date of this amendatory Act of the 100th
16 General Assembly.

17 (735 ILCS 5/15-1603.5)

18 Sec. 15-1603.5. Strict foreclosure of an omitted
19 subordinate interest.

20 (a) As used in this Section, "omitted subordinate interest"
21 means a recorded subordinate interest in real estate where:

22 (1) the real estate is the subject of a foreclosure
23 action under this Article;

24 (2) a motion to confirm judicial sale under subsection
25 (b) of Section 15-1508 is either pending or has been

1 granted;

2 (3) the interest attached to the real estate prior to
3 the filing or recording of any notice in accordance with
4 Sections 2-1901 and 15-1503; and

5 (4) the person who has the interest was not named in
6 the foreclosure complaint, was a named party in a
7 foreclosure action over which the court lacked personal
8 jurisdiction due to defective service of process, or was a
9 party over which the court initially had personal
10 jurisdiction but whose judgment was vacated due to lack of
11 personal jurisdiction over a co-defendant.

12 (b) The holder of the certificate of sale or any person who
13 acquired title pursuant to Section 15-1509 or any subsequent
14 successor, assignee, transferee, or grantee who discovers an
15 omitted subordinate interest may file a strict foreclosure
16 complaint naming the person who has the omitted subordinate
17 interest as the defendant. A complaint filed under this Section
18 must include substantially the following:

19 (1) the identity of the plaintiff and how the plaintiff
20 acquired its interest in the property which is the subject
21 of the strict foreclosure;

22 (2) the docket number of the prior foreclosure action
23 and the recording number and date of the mortgage that was
24 previously foreclosed;

25 (3) the legal description, common address, and parcel
26 identification number of the real estate which is the

1 subject of the strict foreclosure;

2 (4) the recording number and a copy of the recorded
3 instrument identifying the person who has the omitted
4 subordinate interest that is named as the defendant;

5 (5) the amount of the successful bid at the foreclosure
6 sale, as stated in the report of sale in the prior
7 foreclosure action, with a copy of the report of sale
8 attached to the complaint;

9 (6) an allegation that, due to inadvertence or mistake
10 or such other reason as may be applicable, the person who
11 has the omitted subordinate interest was not made a party
12 defendant in the prior foreclosure action or was a party
13 over which the court initially had personal jurisdiction
14 but whose judgment was vacated due to lack of personal
15 jurisdiction over a co-defendant and the omitted
16 subordinate interest was not terminated by the judgment of
17 foreclosure and when the subject property was sold by
18 judicial sale; and

19 (7) a request for relief setting forth the redemption
20 period as provided in this Section and identifying a
21 contact by name and telephone number who will accept tender
22 of the redemption amount.

23 (c) Subject to the objection of the defendant, the court
24 shall enter a judgment extinguishing the omitted subordinate
25 interest and the interest of other parties that were made a
26 defendant to the action.

1 (d) If the defendant or any additional co-defendants object
2 ~~objects~~ to the entry of the judgment, the court, after a
3 hearing, shall enter an order providing either:

4 (1) that the defendant and any additional
5 co-defendants have ~~has~~ not agreed to pay the amount
6 required to redeem, in which event the court shall proceed
7 to enter the judgment; or

8 (2) that the defendant or a co-defendant has agreed to
9 pay the amount required to redeem.

10 The foreclosure proceeding may be reopened as to the
11 defendant and co-defendants only if the defendant was a named
12 party in the foreclosure action over which the court lacked
13 personal jurisdiction due to defective service of process.
14 After the foreclosure proceeding is reopened, if the defendant
15 is unsuccessful in defeating the foreclosure action, then the
16 defendant or co-defendant shall have the option to redeem
17 pursuant to subsection (e) of this Section. Nothing contained
18 in this Section affects any existing right that the holder of
19 the certificate of sale or any person who acquired title
20 pursuant to Section 15-1509 of this Code or any subsequent
21 successor, assignee, transferee, or grantee of such a person
22 may have against the defendant or the real estate.

23 (e) The amount required to redeem shall be the sum bid at
24 the prior foreclosure sale plus any costs and fees incurred
25 subsequent to the sale for the payment of taxes, preservation
26 of the property, or any other actions taken by the holder of

1 the certificate of sale to protect its interest in the
2 property. The amount required to redeem shall not include any
3 costs or fees incurred by the plaintiff in the strict
4 foreclosure case filed under this Section.

5 Notwithstanding any provision of Sections 15-1602,
6 15-1603, or 15-1604 to the contrary, the redemption period
7 shall extend 90 days after the entry of the order if the
8 defendant has not been in possession of the real estate for a
9 period of 6 months prior to the entry of the order. The order
10 shall state that upon payment of the redemption amount within
11 the redemption period, which shall extend 30 days after the
12 entry of the order, title to the real estate shall vest in the
13 defendant who redeems pursuant to this Section. If the
14 defendant subject to the order has not paid the amount required
15 to redeem within the 30-day redemption period, the interest of
16 the defendant in the property is terminated.

17 (f) A person whose omitted subordinate interest was not
18 terminated by a prior foreclosure action does not have a right
19 to file a strict foreclosure action.

20 (g) Notwithstanding that the person's omitted subordinate
21 interest in the real estate has been terminated pursuant to
22 this Section, nothing in this Section shall be construed to
23 extinguish or impair any claim of such person in the surplus
24 proceeds of a sale held or distributed pursuant to subsection
25 (d) of Section 15-1512 of this Code after the confirmation of
26 the sale of the real estate for which such person had an

1 omitted subordinate interest.

2 (h) Notwithstanding the provisions of Section 15-1701 of
3 this Code relative to possession of a mortgaged real estate
4 during the pendency of the foreclosure proceedings, if the
5 mortgagor has vacated the property in advance of or pursuant to
6 either an order confirming the sale in the prior foreclosure
7 proceedings or an eviction order based upon the order
8 confirming the sale in the prior foreclosure proceedings and
9 the mortgaged real estate has been occupied by a purchaser not
10 a party to the mortgage foreclosure proceedings and any
11 successor purchaser for more than 6 months, the purchaser or
12 successor purchaser shall remain in possession of the property
13 during the strict foreclosure proceedings unless and until the
14 subordinate omitted party or a necessary party made defendant
15 pursuant to this Section redeems from the foreclosure sale.

16 (i) The changes to this Section made by this amendatory Act
17 of the 100th General Assembly are meant to be procedural in
18 nature and thus apply retroactively.

19 (Source: P.A. 98-1099, eff. 8-26-14.)

20 Section 97. Severability. The provisions of this Act are
21 severable under Section 1.31 of the Statute on Statutes.

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.