

HB4837



104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

HB4837

by Rep. Rita Mayfield

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1501

from Ch. 110, par. 15-1501

Amends the Code of Civil Procedure. Provides that the court must appoint a special representative for a deceased mortgagor for the purpose of defending a judicial foreclosure action.

LRB104 19695 JRC 33144 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
9 of 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
12 by the mortgage and against whom personal liability is
13 asserted shall be necessary parties defendant in a
14 foreclosure. The court may proceed to adjudicate their
15 respective interests, but any disposition of the mortgaged
16 real estate shall be subject to (i) the interests of all other
17 persons not made a party or (ii) interests in the mortgaged
18 real estate not otherwise barred or terminated in the
19 foreclosure.

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

23 (1) All persons having a possessory interest in the

1 mortgaged real estate;

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

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

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

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

11 (6) The State of Illinois or any political subdivision
12 thereof, where a foreclosure involves real estate upon
13 which the State or such subdivision has an interest or
14 claim for lien, in which case "An Act in relation to
15 immunity for the State of Illinois", approved December 10,
16 1971, as amended, shall not be effective;

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

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

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

25 (10) Any other mortgagee or claimant.

26 (c) Unknown Owners. Any unknown owner may be made a party

1 in accordance with Section 2-413 of the Code of Civil
2 Procedure.

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

15 (e) Time of Intervention.

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

25 (2) In Court's Discretion. After the right to
26 intervene expires and prior to the sale in accordance with

1 the judgment, the court may permit a person who has or
2 claims an interest in the mortgaged real estate to appear
3 and become a party on such terms as the court may deem
4 just.

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

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

21 (f) Separate Actions. Any mortgagee or claimant, other
22 than the mortgagee who commences a foreclosure, whose interest
23 in the mortgaged real estate is recorded prior to the filing of
24 a notice of foreclosure in accordance with this Article but
25 who is not made a party to such foreclosure, shall not be
26 barred from filing a separate foreclosure (i) as an

1 intervening defendant or counterclaimant in accordance with
2 subsections (d) and (e) of Section 15-1501 if a judgment of
3 foreclosure has not been entered in the original foreclosure
4 or (ii) in a new foreclosure subsequent to the entry of a
5 judgment of foreclosure in the original foreclosure.

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

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

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

24 ~~(2) beneficiary under a transfer on death instrument~~
25 ~~executed by the deceased mortgagor prior to death;~~

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

1 ~~to the property by the deceased mortgagor prior to death;~~
2 ~~(4) person, persons, or entity that was conveyed title~~
3 ~~to the property from the deceased mortgagor's probate~~
4 ~~estate by the administrator or executor; or~~
5 ~~(5) trust that was conveyed title to the property by:~~
6 ~~(A) the deceased mortgagor prior to death; or~~
7 ~~(B) any other person, persons, or entity that is~~
8 ~~identified in this subsection (h) as being exempt from~~
9 ~~the requirement to appoint a special representative.~~

10 In no event may a deficiency judgment be sought or entered
11 in the foreclosure case pursuant to subsection (e) of Section
12 15-1508 against a deceased mortgagor.

13 (Source: P.A. 98-514, eff. 11-19-13; 99-24, eff. 1-1-16.)