



Reprinted
April 12, 2001

ENGROSSED HOUSE BILL No. 1636

DIGEST OF HB 1636 (Updated April 11, 2001 12:26 PM - DI 51)

Citations Affected: IC 32-8.

Synopsis: Mortgage releases. Allows a two year period ending June 30, 2003, for a title insurance company to release a mortgage given to secure a loan of not more than \$1,000,000 on behalf of the mortgagor and mortgagee.

Effective: July 1, 2001.

Goodin, Smith M, Mahern, Hinkle

(SENATE SPONSORS — YOUNG R MICHAEL, PAUL)

January 17, 2001, read first time and referred to Committee on Financial Institutions.
February 1, 2001, amended, reported — Do Pass.
February 8, 2001, read second time, ordered engrossed. Engrossed.
February 12, 2001, read third time, passed. Yeas 99, nays 0.

SENATE ACTION

February 27, 2001, read first time and referred to Committee on Insurance and Financial Institutions.
April 5, 2001, reported favorably — Do Pass.
April 11, 2001, read second time, amended, ordered engrossed.

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EH 1636—LS 6889/DI 94+



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April 12, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

ENGROSSED HOUSE BILL No. 1636

A BILL FOR AN ACT to amend the Indiana Code concerning consumer credit.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-8-15.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2001]:

4 **Chapter 15.5. Mortgage Release by Title Insurance Company**
5 **Sec. 1. As used in this chapter, "mortgage" means a mortgage**
6 **or mortgage lien on an interest in real property in Indiana given to**
7 **secure a loan in the original principal amount of not more than one**
8 **million dollars (\$1,000,000).**

9 **Sec. 2. As used in this chapter, "mortgagee" means:**
10 **(1) the grantee of a mortgage; or**
11 **(2) if a mortgage has been assigned of record, the last person**
12 **to whom the mortgage has been assigned of record.**

13 **Sec. 3. As used in this chapter, "mortgage servicer" means the**
14 **last person to whom a mortgagor or the mortgagor's successor in**
15 **interest has been instructed by a mortgagee to send payments on**
16 **a loan secured by a mortgage. A person transmitting a payoff**
17 **statement is the mortgage service for the mortgage described in the**

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payoff statement.

Sec. 4. As used in this chapter, "mortgagor" means the grantor of a mortgage.

Sec. 5. As used in this chapter, "payoff statement" means a statement of the amount of:

- (1) the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage; and
- (2) interest on a per day basis for the unpaid balance.

Sec. 6. As used in this chapter, "person" means an individual, a corporation, or any other legal entity.

Sec. 7. As used in this chapter, "record" means to record with the county recorder.

Sec. 8. As used in this chapter, "title insurance company" means a corporation or other business entity authorized and licensed to transact the business of insuring titles to interests in real property in Indiana under IC 27.

Sec. 9. An officer or duly appointed agent of a title insurance company may, on behalf of a mortgagor or a person who acquired from the mortgagor a lien against all or part of the property described in a mortgage, execute a certificate of release that complies with the requirements of this chapter and record the certificate of release in the real property records of each county in which the mortgage is recorded if:

- (1) a satisfaction or release of the mortgage has not been executed and recorded within sixty (60) days after the date payment in full of the loan secured by the mortgage was sent in accordance with a payoff statement furnished by the mortgagee or the mortgage servicer; and
- (2) the title insurance company, an officer of the title insurance company, or an agent of the title insurance company, has sent to the last known address of the mortgagee or the mortgage servicer, at least thirty (30) days before executing the certificate of release, written notice of its intention to execute and record a certificate of release in accordance with this section after the expiration of the sixty (60) day period.

Sec. 10. A certificate of release executed under this chapter must contain substantially all of the following:

- (1) The name of the mortgagor, the name of the original mortgagee and, if applicable, the name of the mortgage service, the date of the mortgage, the date of recording of the

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1 mortgage, and the volume and page or instrument number for
2 the mortgage in the real property records where the mortgage
3 is recorded, together with similar information for the last
4 recorded assignment of the mortgage.

5 (2) A statement that the mortgage was in the original
6 principal amount of not more than one million dollars
7 (\$1,000,000).

8 (3) A statement that the person executing the certificate of
9 release is an officer or a duly appointed agent of a title
10 insurance company authorized and licensed to transact the
11 business of insuring titles to interests in real property in
12 Indiana under IC 27.

13 (4) A statement that the certificate of release is made on
14 behalf of the mortgagor or a person who acquired a lien from
15 the mortgagor against all or part of the property described in
16 the mortgage.

17 (5) A statement that the mortgagee or mortgage service
18 provided a payoff statement that was used to make payment
19 in full of the unpaid balance of the loan secured by the
20 mortgage.

21 (6) A statement that payment in full of the unpaid balance of
22 the loan secured by the mortgage was made in accordance
23 with the written or verbal payoff statement, and received by
24 the mortgagee or mortgage servicer, as evidenced in the
25 records of the title insurance company or its agents by:

26 (A) a bank check;

27 (B) a certified check;

28 (C) an escrow account check from the title company or title
29 insurance agent;

30 (D) an attorney trust account check that has been
31 negotiated by the mortgagee or mortgage servicer; or

32 (E) any other documentary evidence of payment to the
33 mortgagee or mortgage servicer.

34 (7) A statement indicating that more than sixty (60) days
35 have elapsed since the date payment in full was sent.

36 (8) A statement that after the expiration of the sixty (60) day
37 period in section 9 of this chapter, the title insurance
38 company, its officers, or its agent sent to the last known
39 address of the mortgagee or mortgage servicer, at least thirty
40 (30) days before executing the certificate of release, notice in
41 writing of its intention to execute and record a certificate of
42 release as required under this section, with an unexecuted

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1 copy of the proposed certificate of release attached to the
2 written notice.

3 (9) A statement that neither the title insurance company nor
4 its officers or agent have received notification in writing of
5 any reason why the certificate of release should not be
6 executed and recorded after the expiration of the thirty (30)
7 day notice period in section 9 of this chapter.

8 Sec. 11. A certificate of release authorized by this chapter shall
9 be executed and acknowledged in the same manner as required by
10 law in Indiana for the execution and acknowledgment of a deed.

11 Sec. 12. (a) A title insurance company may authorize a duly
12 appointed agent of the title insurance company to execute
13 certificates of release in accordance with the requirements of this
14 chapter by recording a notice of authorization in the office of the
15 county recorder for each county in which the duly appointed agent
16 is authorized to execute and record certificates of release on behalf
17 of the title insurance company stating the following:

18 (1) The name of the title insurance company that is
19 authorizing a duly appointed agent to execute certificates of
20 release on behalf of the title insurance company.

21 (2) The identity of the person who is a duly appointed agent of
22 the title insurance company and who is authorized to execute
23 and record certificates of release in accordance with the
24 requirements of this chapter on behalf of the title insurance
25 company.

26 (3) That the duly appointed agent has full authority to execute
27 and record certificates of release in accordance with the
28 requirements of this chapter on behalf of the title insurance
29 company.

30 (b) The notice of authorization shall be executed and
31 acknowledged in the same manner as required by law in Indiana
32 for the execution and acknowledgment of a deed.

33 (c) A single notice of authorization recorded in the office of a
34 county recorder in accordance with the requirements of this
35 section constitutes the authority of the duly appointed agent to
36 execute and record certificates of release in that county on behalf
37 of the title insurance company. A separate notice of authority is not
38 required for each certificate of release recorded by a duly
39 appointed agent.

40 (d) The authority granted to a duly appointed agent by a title
41 insurance company in accordance with the requirements of this
42 section continues until a revocation of the notice of authorization

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1 is recorded in the office of the county recorder for the county in
2 which the notice of authorization was recorded.

3 (e) The delegation of authority to a duly appointed agent by a
4 title insurance company in accordance with the requirements of
5 this section does not relieve the title insurance company of any
6 liability for damages caused by the duly appointed agent for the
7 wrongful or erroneous execution and recording of a certificate of
8 release.

9 Sec. 13. A creditor or mortgage servicer may not withhold the
10 release of a mortgage if the written mortgage payoff statement
11 misstates the amount of the payoff and the written payoff is relied
12 upon in good faith by an independent closing agent without
13 knowledge of the misstatement. It is not a misstatement if the
14 written payoff statement is not accurate as a result of a change in
15 circumstances occurring after the issuance of the payoff statement.
16 The release of a mortgage does not affect the ability of the creditor
17 or mortgage servicer to collect the full amount owed without
18 regard to a misstatement in the written payoff statement and a
19 release of the mortgage.

20 Sec. 14. The acceptance of a payment by a creditor or mortgage
21 servicer of an amount that is not sufficient to pay the amount owed
22 does not constitute a waiver, release, accord and satisfaction, or
23 other impairment of the creditors or mortgage servicers rights
24 notwithstanding any contrary instructions or restrictive
25 endorsements.

26 Sec. 15. A certificate of release prepared, executed, and
27 recorded in accordance with the requirements of this chapter
28 constitutes a release of the mortgage described in that certificate
29 of release, and the county recorder shall enter and index the
30 certificate of release in the same manner that a release or
31 satisfaction of mortgage is entered and indexed in the records of
32 the county recorder.

33 Sec. 16. (a) The execution and recording of a wrongful or
34 erroneous certificate of release by a title insurance company or a
35 duly appointed agent with authority from a title insurance
36 company does not relieve the mortgagor, or anyone succeeding to
37 or assuming the interest of the mortgagor, from any liability for
38 the debt or other obligations secured by the mortgage that is the
39 subject of the wrongful or erroneous certificate of release.

40 (b) Additionally, a title insurance company or a duly appointed
41 agent with authority from a title insurance company that
42 wrongfully or erroneously executes and records a certificate of

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1 release is liable to the mortgagee, or the assignee of the mortgagee
2 if the mortgage has been assigned, for actual damages sustained
3 due to the recording of a wrongful or erroneous certificate of
4 release.

5 Sec. 17. (a) This chapter applies to the release of a mortgage
6 after June 30, 2001, and before July 1, 2002, regardless of when the
7 mortgage was created or assigned.

8 (b) This chapter expires July 1, 2003.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1636, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Delete page 2.

Page 3, delete lines 1 through 33.

Page 3, line 37, after "Mortgage" delete ";".

Page 7, line 41, delete "2002" and insert "**2003**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1636 as introduced.)

BODIKER, Chair

Committee Vote: yeas 13, nays 0.

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SENATE MOTION

Mr. President: I move that Senator Paul be removed as sponsor of Engrossed House Bill 1636 and that Senator Young R Michael be substituted therefor.

PAUL

SENATE MOTION

Mr. President: I move that Senator Paul be added as a second sponsor of Engrossed House Bill 1636.

YOUNG R MICHAEL

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COMMITTEE REPORT

Mr. President: The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1636, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1636 as printed February 2, 2001.)

PAUL, Chairperson

Committee Vote: Yeas 6, Nays 0.

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SENATE MOTION

Mr. President: I move that Engrossed House Bill 1636 be amended to read as follows:

Page 5, between lines 8 and 9, begin a new paragraph and insert:

"Sec. 13. A creditor or mortgage servicer may not withhold the release of a mortgage if the written mortgage payoff statement misstates the amount of the payoff and the written payoff is relied upon in good faith by an independent closing agent without knowledge of the misstatement. It is not a misstatement if the written payoff statement is not accurate as a result of a change in circumstances occurring after the issuance of the payoff statement. The release of a mortgage does not affect the ability of the creditor or mortgage servicer to collect the full amount owed without regard to a misstatement in the written payoff statement and a release of the mortgage.

Sec. 14. The acceptance of a payment by a creditor or mortgage servicer of an amount that is not sufficient to pay the amount owed does not constitute a waiver, release, accord and satisfaction, or other impairment of the creditors or mortgage servicers rights notwithstanding any contrary instructions or restrictive endorsements."

Page 5, line 9, delete "13" and insert "**15**".

Page 5, line 16, delete "14" and insert "**16**".

Page 5, line 30, delete "15" and insert "**17**".

(Reference is to EHB 1636 as printed April 6, 2001.)

YOUNG R MICHAEL

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