February 15, 2008

ENGROSSED
SENATE BILL No. 62

DIGEST OF SB 62 (Updated February 12, 2008 11:54 am - DI 87)

Citations Affected: IC 32-29.

Synopsis: Posting notice of foreclosure sale. Eliminates the requirement that a sheriff post notice of a foreclosure sale in at least three public places in each township where the real estate is located. Requires notice of a foreclosure sale to be published once each week for three successive weeks in: (1) two daily or weekly newspapers of general circulation published in the county; or (2) if only one newspaper is published in the county, then publication in that newspaper. Provides that payment for publication will be due no sooner than the day after the advertised date of the sale.

Effective: July 1, 2008.

Steele, Drozda

(HOUSE SPONSORS — DEMBOWSKI, FOLEY)

January 8, 2008, read first time and referred to Committee on Judiciary.
January 14, 2008, reported favorably — Do Pass.
January 17, 2008, read second time, amended, ordered engrossed.
January 18, 2008, engrossed.
January 22, 2008, read third time, passed. Yeas 46, nays 0.

HOUSE ACTION

January 30, 2008, read first time and referred to Committee on Government and Regulatory Reform.
February 14, 2008, reported — Do Pass.

C o p y

February 15, 2008

Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

C o p y

ENGROSSED
SENATE BILL No. 62

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

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

SECTION 1. IC 32-29-7-3, AS AMENDED BY P.L.240-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the execution of a judgment or decree of sale for a period of three (3) months after the filing of a complaint in the proceeding. However:

(1) the period is:

(A) twelve (12) months in a proceeding for the foreclosure of a mortgage executed before January 1, 1958; and

(B) six (6) months in a proceeding for the foreclosure of a mortgage executed after December 31, 1957, but before July 1, 1975; and

(2) if the court finds that the mortgaged real estate is residential real estate and has been abandoned, a judgment or decree of sale may be executed on the date the judgment of foreclosure or decree of sale is entered, regardless of the date the mortgage is executed.

(b) A judgment and decree in a proceeding to foreclose a mortgage that is entered by a court having jurisdiction may be filed with the clerk in any county as provided in IC 33-32-3-2. After the period set forth in subsection (a) expires, a person who may enforce the judgment and decree may file a praecipe with the clerk in any county where the judgment and decree is filed, and the clerk shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court.

(c) Upon receiving a certified judgment under subsection (b), the sheriff shall, subject to section 4 of this chapter, sell the mortgaged premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in ~~a daily or weekly newspaper of general circulation. The~~ **two daily or weekly newspapers of general circulation published in the county where the real estate property is situated. If there is only one (1) newspaper published in the county, then publication in that newspaper alone is sufficient. Payment for publication will be due no sooner than the day after the advertised date of the sale. If the property is situated in more than one county, the** sheriff shall publish the advertisement in at least one (1) newspaper published and circulated in each county where the real estate is situated. The first publication shall be made at least thirty (30) days before the date of sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars ($10) to one (1) owner and three dollars ($3) to each additional owner for service of written notice under this subsection. The fee is:

(1) a cost of the proceeding;

(2) to be collected as other costs of the proceeding are collected; and

(3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale ~~in at least three (3) public places in each township in which the real~~

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~~estate is situated and~~ at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. The sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement, for informational purposes only, of the location of each property by street address, if any, or other common description of the property other than legal description. A misstatement in the informational statement under this subsection does not invalidate an otherwise valid sale.

(h) The sheriff may charge an administrative fee of not more than two hundred dollars ($200) with respect to a proceeding referred to in subsection (b) for actual costs directly attributable to the administration of the sale under subsection (c). The fee is:

(1) payable by the person seeking to enforce the judgment and decree; and

(2) due at the time of filing of the praecipe;

under subsection (b).

C o p y

SENATE MOTION

Madam President: I move that Senator Drozda be added as coauthor of Senate Bill 62.

STEELE

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 62, 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 Senate Bill 62 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 62 be amended to read as follows:

Page 2, line 19, strike "a daily or weekly newspaper of general circulation. The " and insert "**two daily or weekly newspapers of general circulation published in the county where the real estate property is situated. If there is only one (1) newspaper published in the county, then publication in that newspaper alone is sufficient. Payment for publication will be due no sooner than the day after the advertised date of the sale. If the property is situated in more than one county, the**".

(Reference is to SB 62 as printed January 15, 2008.)

MEEKS

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred Senate Bill 62, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

STEVENSON, Chair

Committee Vote: yeas 9, nays 0.

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