



April 8, 2009

**ENGROSSED  
HOUSE BILL No. 1637**

DIGEST OF HB 1637 (Updated April 7, 2009 12:08 pm - DI 58)

**Citations Affected:** IC 5-20; IC 24-5.5; IC 24-9; IC 25-1; IC 25-34.1; IC 32-30; IC 33-37.

**Synopsis:** Mortgage foreclosures. Provides that in the case of a residential mortgage transaction in which the debtor defaults after June 30, 2009, the creditor shall, before filing an action for foreclosure, provide a presuit notice to the debtor that informs the debtor that the creditor intends to initiate foreclosure proceedings, that the debtor may obtain assistance from a foreclosure counselor, and that provides information on how to contact a counselor. Establishes certain exceptions to the presuit notice requirement. Provides that, if a creditor  
(Continued next page)

**Effective:** Upon passage; July 1, 2009.

**Bardon, Burton**

(SENATE SPONSORS — CHARBONNEAU, BRODEN, HOLDMAN)

January 16, 2009, read first time and referred to Committee on Financial Institutions.  
February 2, 2009, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.  
February 19, 2009, reported — Do Pass.  
February 23, 2009, read second time, amended, ordered engrossed.  
February 24, 2009, engrossed.  
February 25, 2009, read third time, passed. Yeas 59, nays 33.

SENATE ACTION

March 3, 2009, read first time and referred to Committee on Judiciary.  
March 12, 2009, reported favorably — Do Pass; reassigned to Committee on Appropriations.  
April 7, 2009, amended, reported favorably — Do Pass.

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files an action for foreclosure, the creditor shall include with the complaint a notice to the debtor that informs the debtor of the debtor's right to participate in a settlement conference, and that if the debtor wishes to participate in a settlement conference, the debtor must contact the court not later than 30 days after notice is served. Provides that a court may not render a judgment of foreclosure until 60 days after the notice is filed, unless the premises are vacant. Specifies that, if a settlement conference is conducted: (1) it must be scheduled between 25 and 60 days after the notice is sent; (2) the debtor must contact a foreclosure counselor before the conference and bring certain documents to the conference; (3) the creditor must bring a complete transaction history to the conference; (4) the creditor's agent must have the authority to negotiate with the creditor; and (5) the conference will be conducted by telephone unless the parties make a contrary stipulation. Provides that the court may require any person who is a party to the action to participate in a settlement conference, and that the court may reconvene a settlement conference. Requires the creditor to file a copy of the foreclosure prevention agreement with the court if the parties reach an agreement, and provides that a foreclosure action may be stayed or dismissed for as long as the debtor complies with the terms of the foreclosure agreement. Specifies that if a foreclosure is dismissed and the debtor defaults in the terms of the foreclosure agreement, the creditor may bring a new foreclosure action without being required to send certain notices. Provides that participation in a settlement conference satisfies any mediation or alternative dispute resolution requirement established by court rule. Makes other changes and conforming amendments. Provides that certain notice of foreclosure requirements apply to all mortgagees. Requires a foreclosure consultant to retain certain records for a specific time. Allows certain licensing boards to require practitioners to pay real estate appraisal costs in certain administrative actions. Prohibits certain professional licensing boards from accepting the surrender of a practitioner's license if the attorney general has filed a complaint against the practitioner and opposes the surrender. Provides that a broker or salesperson licensee who violates the credit services organizations or mortgage rescue protection fraud provisions is subject to certain disciplinary actions. Prohibits a person from: (1) engaging in real estate transactions or consumer credit mortgage transactions without a permit or license; or (2) misrepresenting certain terms and characteristics of real estate transactions and consumer credit mortgages; and subjects a person who violates any of these prohibitions to certain penalties under the home loan practices law. Removes language prohibiting a person from engaging in a deceptive act in connection with certain loans. Creates a \$50 court fee, on persons filing an action to foreclose a mortgage, applicable to actions filed after June 30, 2009, and before January 1, 2013, for purposes of providing sufficient money to provide foreclosure prevention counseling and assistance programs.

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April 8, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

# ENGROSSED HOUSE BILL No. 1637

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

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

1 SECTION 1. IC 24-5.5-1-1, AS ADDED BY P.L.209-2007,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2009]: Sec. 1. **Except for IC 24-5.5-3**, this article does not  
4 apply to the following:

5 (1) A person organized or chartered under the laws of this state,  
6 any other state, or the United States that relate to a bank, a trust  
7 company, a savings association, a savings bank, a credit union, or  
8 an industrial loan and investment company.

9 (2) The Federal National Mortgage Association, the Federal  
10 Home Loan Mortgage Corporation, or a Federal Home Loan  
11 Bank.

12 (3) A department or agency of the United States or of Indiana.

13 (4) A person that is servicing or enforcing a loan that it owns.

14 (5) A person that is servicing a loan:

15 (A) for a person described in subdivisions (1) through (4); ~~or~~  
16 ~~this section~~; or

17 (B) insured by the Department of Housing and Urban

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**EH 1637—LS 7043/DI 51+**



1 Development or guaranteed by the Veterans Administration.  
2 (6) An attorney licensed to practice law in Indiana who is  
3 representing a mortgagor.

4 SECTION 2. IC 24-5.5-3-1, AS ADDED BY P.L.209-2007,  
5 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
6 JULY 1, 2009]: Sec. 1. **Subject to IC 32-30-10.5 with respect to first  
7 lien mortgage transactions and** in addition to any other notice  
8 required by law, a mortgagee, or the mortgagee's assignee, that  
9 proceeds under IC 32-30-10 to foreclose a mortgage or deed of trust  
10 shall, at the time of filing the complaint in the action, provide the  
11 following written notice to the mortgagor in a statement printed in at  
12 least 14 point boldface type:

13 "NOTICE REQUIRED BY STATE LAW

14 Mortgage foreclosure is a complex process. People may  
15 approach you about "saving" your home. You should be  
16 careful about any such promises. There are government  
17 agencies and nonprofit organizations you may contact for  
18 helpful information about the foreclosure process. For the  
19 name and telephone number of an organization near you,  
20 please call the Indiana housing and community development  
21 authority."

22 Service of the written notice required by this chapter shall be made as  
23 provided in the Indiana Rules of Trial Procedure governing service of  
24 process upon a person.

25 SECTION 3. IC 24-5.5-5-7 IS ADDED TO THE INDIANA CODE  
26 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
27 1, 2009]: **Sec. 7. A foreclosure consultant shall retain all records  
28 and documents related to services performed on behalf of a  
29 homeowner for at least three (3) years after the termination or  
30 conclusion of a contract with the homeowner.**

31 SECTION 4. IC 24-9-2-12.5 IS ADDED TO THE INDIANA CODE  
32 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
33 1, 2009]: **Sec. 12.5. "Real estate transaction" has the meaning set  
34 forth in IC 25-34.1-10-8.**

35 SECTION 5. IC 24-9-3-7, AS AMENDED BY P.L.141-2005,  
36 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
37 JULY 1, 2009]: Sec. 7. A person may not:

- 38 (1) divide a loan transaction into separate parts with the intent of  
39 evading a provision of this article;
- 40 (2) structure a home loan transaction as an open-end loan with the  
41 intent of evading the provisions of this article if the loan would be  
42 a high cost home loan if the home loan had been structured as a

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- 1 closed-end loan; or
- 2 (3) engage in a deceptive act in connection with a:
- 3 (A) home loan; or
- 4 (B) loan described in IC 24-9-1-1.
- 5 (3) engage or solicit to engage in a real estate transaction or
- 6 a consumer credit mortgage transaction without a permit or
- 7 license required by law; or
- 8 (4) represent that a real estate transaction or a consumer
- 9 credit mortgage transaction has sponsorship, approval,
- 10 performance, characteristics, accessories, uses, or benefits
- 11 that:
- 12 (A) the real estate transaction or consumer credit
- 13 mortgage does not have; and
- 14 (B) the person knows or reasonably should know the real
- 15 estate transaction or consumer credit mortgage does not
- 16 have.

17 SECTION 6. IC 25-1-11-17 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. A practitioner may  
 19 petition the board to accept the surrender of the practitioner's license  
 20 instead of having a hearing before the board. The practitioner may not  
 21 surrender the practitioner's license without the written approval of the  
 22 board, and the board may impose any conditions appropriate to the  
 23 surrender or reinstatement of a surrendered license. **The board may**  
 24 **not accept the surrender of a practitioner's license if the office of**  
 25 **attorney general:**

- 26 (1) has filed an administrative complaint concerning the
- 27 practitioner's license; and
- 28 (2) opposes the surrender of the license.

29 SECTION 7. IC 25-1-11-18, AS AMENDED BY P.L.194-2005,  
 30 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 31 JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to  
 32 disciplinary sanctions may be required by a board to pay the costs of  
 33 the proceeding. The practitioner's ability to pay shall be considered  
 34 when costs are assessed. If the practitioner fails to pay the costs, a  
 35 suspension may not be imposed solely upon the practitioner's inability  
 36 to pay the amount assessed. These costs are limited to costs for the  
 37 following:

- 38 (1) Court reporters.
- 39 (2) Transcripts.
- 40 (3) Certification of documents.
- 41 (4) Photo duplication.
- 42 (5) Witness attendance and mileage fees.

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- 1 (6) Postage.
- 2 (7) Expert witnesses.
- 3 (8) Depositions.
- 4 (9) Notarizations.
- 5 (10) Administrative law judges.
- 6 **(11) Real estate appraisals.**

7 SECTION 8. IC 25-34.1-6-2 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who:

- 9 (1) performs the acts of a salesperson without a salesperson  
10 license;
  - 11 (2) performs the acts of a broker without a broker license; or
  - 12 (3) conducts, or solicits or accepts enrollment of students for, a  
13 course as prescribed in IC 25-34.1-3 without course approval;
- 14 commits a Class A infraction. Upon conviction for an offense under  
 15 this section, the court shall add to any fine imposed, the amount of any  
 16 fee or other compensation earned in the commission of the offense.  
 17 Each transaction constitutes a separate offense.

18 (b) In all actions for the collection of a fee or other compensation for  
 19 performing acts regulated by this article, it must be alleged and proved  
 20 that, at the time the cause of action arose, the party seeking relief was  
 21 not in violation of this section.

22 (c) The commission may issue a cease and desist order to prevent  
 23 violations of this section.

24 (1) If the commission determines that a person is violating this  
 25 section, or is believed to be violating this section, the commission  
 26 may issue an order to that person setting forth the time and place  
 27 for a hearing at which the affected person may appear and show  
 28 cause as to why the challenged activities are not in violation of  
 29 this section.

30 (2) After an opportunity for hearing, if the commission determines  
 31 that the person is violating this section, the commission shall  
 32 issue a cease and desist order which shall describe the person and  
 33 activities which are the subject of the order.

34 (3) A cease and desist order issued under this section is  
 35 enforceable in the circuit courts of this state.

36 (d) The attorney general, the commission, or the prosecuting  
 37 attorney of any county in which a violation occurs may maintain an  
 38 action in the name of the state to enjoin a person from violating this  
 39 section.

40 (e) In charging any person in a complaint for an injunction or in  
 41 affidavit, information, or indictment with the violation of the provisions  
 42 of this section, it is sufficient, without averring any further or more

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1 particular facts, to charge that the person upon a certain day and in a  
2 certain county either acted as a real estate broker or salesperson not  
3 having a license or conducted, or solicited or accepted enrollment of  
4 students for, a broker or salesperson course without course approval.

5 **(f) A licensee who violates IC 24-5-15 or IC 24-5.5 may be**  
6 **disciplined under IC 25-1-11 and this section.**

7 ~~(f)~~ **(g)** Each enforcement procedure established in this section is  
8 supplemental to other enforcement procedures established in this  
9 section.

10 SECTION 9. IC 32-30-10-3 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **Except as**  
12 **provided in IC 32-30-10.5 for first lien mortgage transactions**, if a  
13 mortgagor defaults in the performance of any condition contained in a  
14 mortgage, the mortgagee or the mortgagee's assigns may proceed in the  
15 circuit court of the county where the real estate is located to foreclose  
16 the equity of redemption contained in the mortgage.

17 (b) If the real estate is located in more than one (1) county, the  
18 circuit court of any county in which the real estate is located has  
19 jurisdiction for an action for the foreclosure of the equity of redemption  
20 contained in the mortgage.

21 SECTION 10. IC 32-30-10-10 IS AMENDED TO READ AS  
22 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. A plaintiff may not:

- 23 (1) proceed to foreclose the mortgagee's mortgage:
  - 24 **(A)** while the plaintiff is prosecuting any other action for the
  - 25 same debt or matter that is secured by the mortgage; or
  - 26 **(B)** while the plaintiff is seeking to obtain execution of any
  - 27 judgment in any other action; **or**
- 28 (2) prosecute any other action for the same matter while the
- 29 plaintiff is foreclosing the mortgagee's mortgage or prosecuting
- 30 a judgment of foreclosure; **or**
- 31 **(3) proceed to foreclose a mortgage (as defined in**
- 32 **IC 32-30-10.5-5) until the notice under IC 32-30-10.5-8(a) has**
- 33 **been sent, if required.**

34 SECTION 11. IC 32-30-10.5 IS ADDED TO THE INDIANA  
35 CODE AS A NEW CHAPTER TO READ AS FOLLOWS  
36 [EFFECTIVE JULY 1, 2009]:

37 **Chapter 10.5. Foreclosure Prevention Agreements for**  
38 **Residential Mortgages**

39 **Sec. 1. (a) The general assembly makes the following findings:**

- 40 **(1) Indiana faces a serious threat to its state economy and to**
- 41 **the economies of its political subdivisions because of Indiana's**
- 42 **high rate of residential mortgage foreclosures, which**

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constitutes an emergency.  
(2) Indiana's high rate of residential mortgage foreclosures has adversely affected property values in Indiana, and may have an even greater adverse effect on property values if the foreclosure rate continues to rise.

(3) It is in the public interest for the state to modify the foreclosure process to require creditors and debtors to engage in good faith negotiations designed to avoid foreclosure by allowing debtors to repay their mortgages.

(b) The purpose of this chapter is to avoid unnecessary foreclosures of residential properties and thereby provide stability to Indiana's statewide and local economies by:

- (1) requiring early contact and communications between creditors, their authorized agents, and debtors in order to engage in negotiations that could avoid foreclosure; and
- (2) facilitating the modification of residential mortgages in appropriate circumstances.

Sec. 2. As used in this chapter, "creditor" refers to:

- (1) the creditor (as defined in IC 24-4.4-1-301(2)); or
- (2) a mortgage servicer;

in a first lien mortgage transaction (as defined in IC 24-4.4-1-301(6)).

Sec. 3. As used in this chapter, "debtor" refers to the mortgagor in a first lien mortgage transaction (as defined in IC 24-4.4-1-301(6)).

Sec. 4. As used in this chapter, "foreclosure prevention agreement" means a written agreement that:

- (1) is executed by both the creditor and the debtor; and
- (2) offers the debtor an individualized plan that may include:
  - (A) a temporary forbearance with respect to the mortgage;
  - (B) a reduction of any arrearage owed by the debtor;
  - (C) a reduction of the interest rate that applies to the mortgage;
  - (D) a repayment plan;
  - (E) a deed in lieu of foreclosure;
  - (F) reinstatement of the mortgage upon the debtor's payment of any arrearage;
  - (G) a sale of the property; or
  - (H) any loss mitigation arrangement or debtor relief plan established by federal law.

Sec. 5. As used in this chapter, "mortgage" refers to a first lien mortgage transaction (as defined in IC 24-4.4-1-301(6)).

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1           **Sec. 6. As used in this chapter, "mortgage foreclosure**  
 2 **counselor" means a foreclosure prevention counselor who is part**  
 3 **of, or has been trained or certified by, the Indiana Foreclosure**  
 4 **Prevention Network.**

5           **Sec. 7. As used in this chapter, "mortgage servicer" means the**  
 6 **last person to whom:**

- 7           (1) a debtor in a mortgage; or  
 8           (2) the debtor's successor in interest;  
 9 **has been instructed to send payments on the mortgage.**

10           **Sec. 8. (a) After June 30, 2009, except as provided in subsection**  
 11 **(d) and section 10(f) of this chapter, before a creditor files an**  
 12 **action for foreclosure, the creditor shall send to the debtor by**  
 13 **certified mail, return receipt requested, a presuit notice in a form**  
 14 **prescribed by the Indiana housing and community development**  
 15 **authority established by IC 5-20-1-3 that informs the debtor that**  
 16 **the creditor intends to initiate a foreclosure and that the debtor**  
 17 **may obtain assistance from a foreclosure counselor and that**  
 18 **provides information on how to contact a housing counselor.**

19           **(b) The notice required by subsection (a) shall be sent to:**

- 20           (1) the address of the mortgaged property; or  
 21           (2) the last known mailing address of the debtor if the  
 22           creditor's records indicate that the mailing address of the  
 23           debtor is other than the address of the mortgaged property.

24           **(c) Except as provided in subsection (d) and section 10(f) of this**  
 25 **chapter, if a creditor files an action to foreclose a mortgage, the**  
 26 **creditor shall include with the complaint served on the debtor a**  
 27 **notice that informs the debtor of a right to participate in a**  
 28 **settlement conference. The notice shall be served with the**  
 29 **complaint and in a form prescribed by the Indiana housing and**  
 30 **community development authority established by IC 5-20-1-3. The**  
 31 **notice must inform the debtor that the debtor may schedule a**  
 32 **settlement conference by notifying the court of the debtor's intent**  
 33 **to participate in a settlement conference not later than thirty (30)**  
 34 **days after the notice is served.**

35           **(d) A creditor is not required to send the notices described in**  
 36 **this section if:**

- 37           (1) the loan is secured by a dwelling that is not the debtor's  
 38           primary residence;  
 39           (2) the loan has been the subject of a prior foreclosure  
 40           prevention plan;  
 41           (3) bankruptcy law prohibits the creditor from participating  
 42           in a settlement conference under this chapter with respect to

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the loan; or  
(4) the court finds that a settlement conference would be of limited value based on the result of a prior loss mitigation effort between the debtor and the creditor.

**Sec. 9. (a) After June 30, 2009, a court may not issue a judgment of foreclosure under IC 32-30-10 on a mortgage subject to this chapter unless all of the following apply:**

- (1) The creditor has given the notice required under section 8(c) of this chapter.**
- (2) The debtor either:**
  - (A) does not contact the court within the thirty (30) day period described in section (8)(c) of this chapter to schedule a settlement conference under section (8)(c) of this chapter; or**
  - (B) contacts the court within the thirty (30) day period described in section (8)(c) of this chapter to schedule a conference under section (8)(c) of this chapter and, upon the conclusion of the conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement.**

**(b) In a foreclosure action filed under IC 32-30-10-3, the creditor shall attach to the complaint filed with the court a copy of the notice sent to the debtor under section (8)(a) of this chapter.**

**(c) In a foreclosure action filed after June 30, 2009, the court may not render a judgment of foreclosure until sixty (60) days after the date the notice required by section 8(a) of this chapter was sent unless the mortgaged property is vacant.**

**Sec. 10. (a) Unless a settlement conference is not required under this chapter, the court shall issue a notice of a settlement conference if the debtor contacts the court to schedule a settlement conference as described in section 8(c) of this chapter. The court's notice of a settlement conference must do the following:**

- (1) Order the creditor and the debtor to conduct a settlement conference on or before a date and time specified in the notice, which date must not be earlier than twenty-five (25) days after the date of the notice or later than sixty (60) days after the date of the notice, for the purpose of attempting to negotiate a foreclosure prevention agreement.**
- (2) Require the debtor to contact a mortgage foreclosure counselor before the date of the settlement conference. The notice must provide the contact information for the Indiana Foreclosure Prevention Network.**

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**(3) Require the debtor to bring to the settlement conference the following documents needed to engage in good faith negotiations with the creditor:**

**(A) Documentation of the debtor's present and future income, expenses, assets, and liabilities, including documentation of the debtor's employment history.**

**(B) Any other documentation or information that the court determines is needed for the debtor to engage in good faith negotiations with the creditor. The court shall identify any documents required under this clause with enough specificity to allow the debtor to obtain the documents before the scheduled settlement conference.**

**(4) Require the creditor to bring to the settlement conference a complete transaction history for the mortgage upon which the mortgage foreclosure action is based.**

**(5) Inform the parties that:**

**(A) each party has the right to be represented by an attorney or assisted by a mortgage foreclosure counselor at the settlement conference; and**

**(B) an attorney or a mortgage foreclosure counselor may participate in the settlement conference in person or by telephone.**

**(6) Inform the parties that the settlement conference will be conducted by telephone on the date and time specified in the notice under subdivision (1) unless the parties submit to the court a stipulation to modify the date, time, and place of the settlement conference.**

**(b) The court may require any person that is a party to the foreclosure action to appear at or participate in a settlement conference held under this section, and, for cause shown, the court may order the creditor and the debtor to reconvene a settlement conference at any time before judgment is entered.**

**(c) At the court's discretion, a settlement conference may or may not be attended by a judicial officer.**

**(d) The creditor shall ensure that any person representing the creditor:**

**(1) at a settlement conference scheduled under subsection (a); or**

**(2) in any negotiations with the debtor designed to reach agreement on the terms of a foreclosure prevention agreement;**

**has authority to conduct negotiations.**

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1 (e) If, as a result of a settlement conference held under this  
2 section, the debtor and the creditor agree to enter into a  
3 foreclosure prevention agreement, the agreement shall be reduced  
4 to writing and signed by both parties, and each party shall retain  
5 a copy of the signed agreement. Not later than seven (7) business  
6 days after the signing of the foreclosure prevention agreement, the  
7 creditor shall file with the court a notice indicating that a  
8 foreclosure prevention agreement has been reached. At the election  
9 of the creditor, the foreclosure shall be dismissed or stayed for as  
10 long as the debtor complies with the terms of the foreclosure  
11 prevention plan.

12 (f) If a foreclosure is dismissed and a default in the terms of the  
13 foreclosure prevention plan later occurs, the creditor or its assigns  
14 may bring a foreclosure action without being required to send the  
15 notices described in section 8 of this chapter.

16 (g) Participation in a settlement conference under this section  
17 satisfies any mediation or alternative dispute resolution  
18 requirement established by court rule.

19 **Sec. 11. (a) This section applies to a mortgage foreclosure action**  
20 **with respect to which the creditor has filed the complaint in the**  
21 **proceeding before July 1, 2009, and the court having jurisdiction**  
22 **over the proceeding has not rendered a judgment of foreclosure**  
23 **before July 1, 2009.**

24 (b) In a mortgage foreclosure action to which this section  
25 applies, the court having jurisdiction of the action shall serve  
26 notice of the availability of a settlement conference under section  
27 8(c) of this chapter.

28 SECTION 12. IC 32-30-12-1 IS AMENDED TO READ AS  
29 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Except as provided**  
30 **in IC 32-30-10.5 for first lien mortgage transactions,** it is not  
31 necessary in any action upon a mortgage or lien to give time for:

- 32 (1) the payment of money; or
- 33 (2) performing any other act.

34 Final judgment may be given in the first instance.

35 SECTION 13. IC 33-37-4-4, AS AMENDED BY P.L.174-2006,  
36 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
37 UPON PASSAGE]: Sec. 4. (a) The clerk shall collect a civil costs fee  
38 of one hundred dollars (\$100) from a party filing a civil action. This  
39 subsection does not apply to the following civil actions:

- 40 (1) Proceedings to enforce a statute defining an infraction under  
41 IC 34-28-5 (or IC 34-4-32 before its repeal).
- 42 (2) Proceedings to enforce an ordinance under IC 34-28-5 (or

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- 1 IC 34-4-32 before its repeal).
- 2 (3) Proceedings in juvenile court under IC 31-34 or IC 31-37.
- 3 (4) Proceedings in paternity under IC 31-14.
- 4 (5) Proceedings in small claims court under IC 33-34.
- 5 (6) Proceedings in actions described in section 7 of this chapter.

6 (b) In addition to the civil costs fee collected under this section, the  
 7 clerk shall collect the following fees, if they are required under  
 8 IC 33-37-5:

- 9 (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or  
 10 IC 33-37-5-4).
- 11 (2) A support and maintenance fee (IC 33-37-5-6).
- 12 (3) A document storage fee (IC 33-37-5-20).
- 13 (4) An automated record keeping fee (IC 33-37-5-21).
- 14 (5) A public defense administration fee (IC 33-37-5-21.2).
- 15 (6) A judicial insurance adjustment fee (IC 33-37-5-25).
- 16 (7) A judicial salaries fee (IC 33-37-5-26).
- 17 (8) A court administration fee (IC 33-37-5-27).
- 18 (9) A service fee (IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2)).
- 19 (10) A garnishee service fee (IC 33-37-5-28(b)(3) or  
 20 IC 33-37-5-28(b)(4)).

21 **(11) For a mortgage foreclosure action filed after June 30,**  
 22 **2009, and before January 1, 2013, a mortgage foreclosure**  
 23 **counseling and education fee (IC 33-37-5-30 (before its**  
 24 **expiration on January 1, 2013)).**

25 SECTION 14. IC 33-37-5-30 IS ADDED TO THE INDIANA  
 26 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 27 [EFFECTIVE UPON PASSAGE]: **Sec. 30. (a) This section applies to**  
 28 **a civil action in which the clerk is required to collect a civil costs**  
 29 **fee under IC 33-37-4-4(a). The clerk shall collect a fifty dollar (\$50)**  
 30 **mortgage foreclosure counseling and education fee from a party**  
 31 **filing an action to foreclose a mortgage after June 30, 2009, and**  
 32 **before January 1, 2013.**

33 **(b) This section expires January 1, 2013.**

34 SECTION 15. IC 33-37-7-2, AS AMENDED BY P.L.122-2008,  
 35 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 36 UPON PASSAGE]: **Sec. 2. (a) The clerk of a circuit court shall**  
 37 **distribute semiannually to the auditor of state as the state share for**  
 38 **deposit in the state general fund seventy percent (70%) of the amount**  
 39 **of fees collected under the following:**

- 40 (1) IC 33-37-4-1(a) (criminal costs fees).
- 41 (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- 42 (3) IC 33-37-4-3(a) (juvenile costs fees).

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- 1 (4) IC 33-37-4-4(a) (civil costs fees).
- 2 (5) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
- 3 (6) IC 33-37-4-7(a) (probate costs fees).
- 4 (7) IC 33-37-5-17 (deferred prosecution fees).
- 5 (b) The clerk of a circuit court shall distribute semiannually to the
- 6 auditor of state for deposit in the state user fee fund established in
- 7 IC 33-37-9-2 the following:
- 8 (1) Twenty-five percent (25%) of the drug abuse, prosecution,
- 9 interdiction, and correction fees collected under
- 10 IC 33-37-4-1(b)(5).
- 11 (2) Twenty-five percent (25%) of the alcohol and drug
- 12 countermeasures fees collected under IC 33-37-4-1(b)(6),
- 13 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- 14 (3) Fifty percent (50%) of the child abuse prevention fees
- 15 collected under IC 33-37-4-1(b)(7).
- 16 (4) One hundred percent (100%) of the domestic violence
- 17 prevention and treatment fees collected under IC 33-37-4-1(b)(8).
- 18 (5) One hundred percent (100%) of the highway work zone fees
- 19 collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).
- 20 (6) One hundred percent (100%) of the safe schools fee collected
- 21 under IC 33-37-5-18.
- 22 (7) One hundred percent (100%) of the automated record keeping
- 23 fee (IC 33-37-5-21).
- 24 (c) The clerk of a circuit court shall distribute monthly to the county
- 25 auditor the following:
- 26 (1) Seventy-five percent (75%) of the drug abuse, prosecution,
- 27 interdiction, and correction fees collected under
- 28 IC 33-37-4-1(b)(5).
- 29 (2) Seventy-five percent (75%) of the alcohol and drug
- 30 countermeasures fees collected under IC 33-37-4-1(b)(6),
- 31 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- 32 The county auditor shall deposit fees distributed by a clerk under this
- 33 subsection into the county drug free community fund established under
- 34 IC 5-2-11.
- 35 (d) The clerk of a circuit court shall distribute monthly to the county
- 36 auditor fifty percent (50%) of the child abuse prevention fees collected
- 37 under IC 33-37-4-1(b)(7). The county auditor shall deposit fees
- 38 distributed by a clerk under this subsection into the county child
- 39 advocacy fund established under IC 12-17-17.
- 40 (e) The clerk of a circuit court shall distribute monthly to the county
- 41 auditor one hundred percent (100%) of the late payment fees collected
- 42 under IC 33-37-5-22. The county auditor shall deposit fees distributed

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1 by a clerk under this subsection as follows:

2 (1) If directed to do so by an ordinance adopted by the county

3 fiscal body, the county auditor shall deposit forty percent (40%)

4 of the fees in the clerk's record perpetuation fund established

5 under IC 33-37-5-2 and sixty percent (60%) of the fees in the

6 county general fund.

7 (2) If the county fiscal body has not adopted an ordinance

8 described in subdivision (1), the county auditor shall deposit all

9 the fees in the county general fund.

10 (f) The clerk of the circuit court shall distribute semiannually to the

11 auditor of state for deposit in the sexual assault victims assistance

12 account established by IC 5-2-6-23(h) one hundred percent (100%) of

13 the sexual assault victims assistance fees collected under

14 IC 33-37-5-23.

15 (g) The clerk of a circuit court shall distribute monthly to the county

16 auditor the following:

17 (1) One hundred percent (100%) of the support and maintenance

18 fees for cases designated as non-Title IV-D child support cases in

19 the Indiana support enforcement tracking system (ISETS)

20 collected under IC 33-37-5-6.

21 (2) The percentage share of the support and maintenance fees for

22 cases designated as IV-D child support cases in ISETS collected

23 under IC 33-37-5-6 that is reimbursable to the county at the

24 federal financial participation rate.

25 The county clerk shall distribute monthly to the office of the secretary

26 of family and social services the percentage share of the support and

27 maintenance fees for cases designated as Title IV-D child support cases

28 in ISETS collected under IC 33-37-5-6 that is not reimbursable to the

29 county at the applicable federal financial participation rate.

30 (h) The clerk of a circuit court shall distribute monthly to the county

31 auditor the following:

32 (1) One hundred percent (100%) of the small claims service fee

33 under IC 33-37-4-6(a)(1)(B) or IC 33-37-4-6(a)(2) for deposit in

34 the county general fund.

35 (2) One hundred percent (100%) of the small claims garnishee

36 service fee under IC 33-37-4-6(a)(1)(C) or IC 33-37-4-6(a)(3) for

37 deposit in the county general fund.

38 (i) This subsection does not apply to court administration fees

39 collected in small claims actions filed in a court described in IC 33-34.

40 The clerk of a circuit court shall semiannually distribute to the auditor

41 of state for deposit in the state general fund one hundred percent

42 (100%) of the following:

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- 1 (1) The public defense administration fee collected under
- 2 IC 33-37-5-21.2.
- 3 (2) The judicial salaries fees collected under IC 33-37-5-26.
- 4 (3) The DNA sample processing fees collected under
- 5 IC 33-37-5-26.2.
- 6 (4) The court administration fees collected under IC 33-37-5-27.
- 7 (j) The clerk of a circuit court shall semiannually distribute to the
- 8 auditor of state for deposit in the judicial branch insurance adjustment
- 9 account established by IC 33-38-5-8.2 one hundred percent (100%) of
- 10 the judicial insurance adjustment fee collected under IC 33-37-5-25.
- 11 (k) The proceeds of the service fee collected under
- 12 IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2) shall be distributed as
- 13 follows:
- 14 (1) The clerk shall distribute one hundred percent (100%) of the
- 15 service fees collected in a circuit, superior, county, or probate
- 16 court to the county auditor for deposit in the county general fund.
- 17 (2) The clerk shall distribute one hundred percent (100%) of the
- 18 service fees collected in a city or town court to the city or town
- 19 fiscal officer for deposit in the city or town general fund.
- 20 (l) The proceeds of the garnishee service fee collected under
- 21 IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4) shall be distributed as
- 22 follows:
- 23 (1) The clerk shall distribute one hundred percent (100%) of the
- 24 garnishee service fees collected in a circuit, superior, county, or
- 25 probate court to the county auditor for deposit in the county
- 26 general fund.
- 27 (2) The clerk shall distribute one hundred percent (100%) of the
- 28 garnishee service fees collected in a city or town court to the city
- 29 or town fiscal officer for deposit in the city or town general fund.
- 30 **(m) The clerk of the circuit court shall distribute semiannually**
- 31 **to the auditor of state for deposit in the home ownership education**
- 32 **account established by IC 5-20-1-27 one hundred percent (100%)**
- 33 **of the mortgage foreclosure counseling and education fees collected**
- 34 **under IC 33-37-5-30 (before its expiration on January 1, 2013).**
- 35 SECTION 16. IC 5-20-1-27, AS AMENDED BY P.L.145-2008,
- 36 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 37 UPON PASSAGE]: Sec. 27. (a) The home ownership education
- 38 account within the state general fund is established to support: ~~the~~
- 39 (1) home ownership education programs established under section
- 40 4(d) of this chapter; **and**
- 41 (2) **mortgage foreclosure counseling and education programs**
- 42 **established under IC 5-20-6-2.**

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1 The account is administered by the authority.  
 2 (b) The home ownership education account consists of:  
 3 (1) **court** fees collected under ~~IC 24-9-9~~; **IC 33-37-5-30 (before**  
 4 **its expiration on January 1, 2013)**; and  
 5 (2) civil penalties imposed and collected under:  
 6 (A) IC 6-1.1-12-43(g)(2)(B); or  
 7 (B) IC 27-7-3-15.5(e).  
 8 (c) The expenses of administering the home ownership education  
 9 account shall be paid from money in the account.  
 10 (d) The treasurer of state shall invest the money in the home  
 11 ownership education account not currently needed to meet the  
 12 obligations of the account in the same manner as other public money  
 13 may be invested.  
 14 SECTION 17. IC 5-20-6-3, AS ADDED BY P.L.176-2007,  
 15 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16 UPON PASSAGE]: Sec. 3. **In addition to money provided for the**  
 17 **program from court fees under IC 33-37-5-30 (before its expiration**  
 18 **on January 1, 2013)**, the authority may solicit contributions and grants  
 19 from the private sector, nonprofit entities, and the federal government  
 20 to assist in carrying out the purposes of this chapter.  
 21 SECTION 18. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1637, 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 8, line 5, strike "(1) fees collected under IC 24-9-9;"

Page 8, line 6, strike "(2)" and insert "(1)".

Page 8, line 9, delete "(3)" and insert "(2)".

Page 8, line 20, delete "IC 5-20-1-27," and insert "IC 5-13-12-12,"

and when so amended that said bill do pass.

(Reference is to HB 1637 as introduced.)

BARDON, Chair

Committee Vote: yeas 7, nays 4.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1637, 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.

CRAWFORD, Chair

Committee Vote: yeas 14, nays 4.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1637 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Page 1, delete lines 1 through 17, begin a new paragraph, and insert:

"SECTION 1. IC 33-37-4-4, AS AMENDED BY P.L.174-2006, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The clerk shall collect a civil costs fee of one hundred dollars (\$100) from a party filing a civil action. This subsection does not apply to the following civil actions:

**EH 1637—LS 7043/DI 51+**

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- (1) Proceedings to enforce a statute defining an infraction under IC 34-28-5 (or IC 34-4-32 before its repeal).
  - (2) Proceedings to enforce an ordinance under IC 34-28-5 (or IC 34-4-32 before its repeal).
  - (3) Proceedings in juvenile court under IC 31-34 or IC 31-37.
  - (4) Proceedings in paternity under IC 31-14.
  - (5) Proceedings in small claims court under IC 33-34.
  - (6) Proceedings in actions described in section 7 of this chapter.
- (b) In addition to the civil costs fee collected under this section, the clerk shall collect the following fees, if they are required under IC 33-37-5:

- (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).
- (2) A support and maintenance fee (IC 33-37-5-6).
- (3) A document storage fee (IC 33-37-5-20).
- (4) An automated record keeping fee (IC 33-37-5-21).
- (5) A public defense administration fee (IC 33-37-5-21.2).
- (6) A judicial insurance adjustment fee (IC 33-37-5-25).
- (7) A judicial salaries fee (IC 33-37-5-26).
- (8) A court administration fee (IC 33-37-5-27).
- (9) A service fee (IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2)).
- (10) A garnishee service fee (IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4)).
- (11) A mortgage foreclosure counseling and education fee (IC 33-37-5-30).**

SECTION 2. IC 33-37-5-30 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 30. This section applies to a civil action in which the clerk is required to collect a civil costs fee under IC 33-37-4-4(a). The clerk shall collect a fifty dollar (\$50) mortgage foreclosure counseling and education fee from a party filing an action to foreclose a mortgage.**

SECTION 3. IC 33-37-7-2, AS AMENDED BY P.L.122-2008, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The clerk of a circuit court shall distribute semiannually to the auditor of state as the state share for deposit in the state general fund seventy percent (70%) of the amount of fees collected under the following:

- (1) IC 33-37-4-1(a) (criminal costs fees).
- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-3(a) (juvenile costs fees).
- (4) IC 33-37-4-4(a) (civil costs fees).



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- (5) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
- (6) IC 33-37-4-7(a) (probate costs fees).
- (7) IC 33-37-5-17 (deferred prosecution fees).

(b) The clerk of a circuit court shall distribute semiannually to the auditor of state for deposit in the state user fee fund established in IC 33-37-9-2 the following:

- (1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5).
- (2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- (3) Fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7).
- (4) One hundred percent (100%) of the domestic violence prevention and treatment fees collected under IC 33-37-4-1(b)(8).
- (5) One hundred percent (100%) of the highway work zone fees collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).
- (6) One hundred percent (100%) of the safe schools fee collected under IC 33-37-5-18.
- (7) One hundred percent (100%) of the automated record keeping fee (IC 33-37-5-21).

(c) The clerk of a circuit court shall distribute monthly to the county auditor the following:

- (1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5).
- (2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(d) The clerk of a circuit court shall distribute monthly to the county auditor fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7). The county auditor shall deposit fees distributed by a clerk under this subsection into the county child advocacy fund established under IC 12-17-17.

(e) The clerk of a circuit court shall distribute monthly to the county auditor one hundred percent (100%) of the late payment fees collected under IC 33-37-5-22. The county auditor shall deposit fees distributed by a clerk under this subsection as follows:

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(1) If directed to do so by an ordinance adopted by the county fiscal body, the county auditor shall deposit forty percent (40%) of the fees in the clerk's record perpetuation fund established under IC 33-37-5-2 and sixty percent (60%) of the fees in the county general fund.

(2) If the county fiscal body has not adopted an ordinance described in subdivision (1), the county auditor shall deposit all the fees in the county general fund.

(f) The clerk of the circuit court shall distribute semiannually to the auditor of state for deposit in the sexual assault victims assistance account established by IC 5-2-6-23(h) one hundred percent (100%) of the sexual assault victims assistance fees collected under IC 33-37-5-23.

(g) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) One hundred percent (100%) of the support and maintenance fees for cases designated as non-Title IV-D child support cases in the Indiana support enforcement tracking system (ISETS) collected under IC 33-37-5-6.

(2) The percentage share of the support and maintenance fees for cases designated as IV-D child support cases in ISETS collected under IC 33-37-5-6 that is reimbursable to the county at the federal financial participation rate.

The county clerk shall distribute monthly to the office of the secretary of family and social services the percentage share of the support and maintenance fees for cases designated as Title IV-D child support cases in ISETS collected under IC 33-37-5-6 that is not reimbursable to the county at the applicable federal financial participation rate.

(h) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) One hundred percent (100%) of the small claims service fee under IC 33-37-4-6(a)(1)(B) or IC 33-37-4-6(a)(2) for deposit in the county general fund.

(2) One hundred percent (100%) of the small claims garnishee service fee under IC 33-37-4-6(a)(1)(C) or IC 33-37-4-6(a)(3) for deposit in the county general fund.

(i) This subsection does not apply to court administration fees collected in small claims actions filed in a court described in IC 33-34. The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the following:

(1) The public defense administration fee collected under

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IC 33-37-5-21.2.

(2) The judicial salaries fees collected under IC 33-37-5-26.

(3) The DNA sample processing fees collected under IC 33-37-5-26.2.

(4) The court administration fees collected under IC 33-37-5-27.

(j) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the judicial branch insurance adjustment account established by IC 33-38-5-8.2 one hundred percent (100%) of the judicial insurance adjustment fee collected under IC 33-37-5-25.

(k) The proceeds of the service fee collected under IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2) shall be distributed as follows:

(1) The clerk shall distribute one hundred percent (100%) of the service fees collected in a circuit, superior, county, or probate court to the county auditor for deposit in the county general fund.

(2) The clerk shall distribute one hundred percent (100%) of the service fees collected in a city or town court to the city or town fiscal officer for deposit in the city or town general fund.

(l) The proceeds of the garnishee service fee collected under IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4) shall be distributed as follows:

(1) The clerk shall distribute one hundred percent (100%) of the garnishee service fees collected in a circuit, superior, county, or probate court to the county auditor for deposit in the county general fund.

(2) The clerk shall distribute one hundred percent (100%) of the garnishee service fees collected in a city or town court to the city or town fiscal officer for deposit in the city or town general fund.

**(m) The clerk of the circuit court shall distribute semiannually to the auditor of state for deposit in the home ownership education account established by IC 5-20-1-27 one hundred percent (100%) of the mortgage foreclosure counseling and education fees collected under IC 33-37-5-30."**

Delete pages 2 through 6.

Page 7, delete lines 1 through 36.

Page 8, line 5, reset in roman "(1)".

Page 8, line 5, after "(1)" insert "**court**".

Page 8, line 5, reset in roman "fees collected under".

Page 8, line 5, after "IC 24-9-9;" insert "**IC 33-37-5-30;**".

Page 8, line 5, reset in roman "and".

Page 8, line 6, reset in roman "(2)".

Page 8, line 6, delete "(1)".

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Page 8, line 8, delete "; and" and insert ".".  
Page 8, delete lines 9 through 10.  
Page 8, line 20, after "program" insert "**from court fees**".  
Page 8, line 20, delete "IC 5-13-12-12," and insert "**IC 33-37-5-30,**".  
Renumber all SECTIONS consecutively.

(Reference is to HB 1637 as printed February 20, 2009.)

BARDON

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1637, 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 and be reassigned to the Senate Committee on Appropriations.

(Reference is made to House Bill 1637 as printed February 24, 2009.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred Engrossed House Bill No. 1637, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 24-5.5-1-1, AS ADDED BY P.L.209-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Except for IC 24-5.5-3**, this article does not apply to the following:

- (1) A person organized or chartered under the laws of this state, any other state, or the United States that relate to a bank, a trust company, a savings association, a savings bank, a credit union, or an industrial loan and investment company.

**EH 1637—LS 7043/DI 51+**

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- (2) The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a Federal Home Loan Bank.
- (3) A department or agency of the United States or of Indiana.
- (4) A person that is servicing or enforcing a loan that it owns.
- (5) A person that is servicing a loan:
  - (A) for a person described in subdivisions (1) through (4); ~~of this section;~~ or
  - (B) insured by the Department of Housing and Urban Development or guaranteed by the Veterans Administration.
- (6) An attorney licensed to practice law in Indiana who is representing a mortgagor.

SECTION 2. IC 24-5.5-3-1, AS ADDED BY P.L.209-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Subject to IC 32-30-10.5 with respect to first lien mortgage transactions and** in addition to any other notice required by law, a mortgagee, or the mortgagee's assignee, that proceeds under IC 32-30-10 to foreclose a mortgage or deed of trust shall, at the time of filing the complaint in the action, provide the following written notice to the mortgagor in a statement printed in at least 14 point boldface type:

"NOTICE REQUIRED BY STATE LAW

Mortgage foreclosure is a complex process. People may approach you about "saving" your home. You should be careful about any such promises. There are government agencies and nonprofit organizations you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please call the Indiana housing and community development authority."

Service of the written notice required by this chapter shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person.

SECTION 3. IC 24-5.5-5-7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7. A foreclosure consultant shall retain all records and documents related to services performed on behalf of a homeowner for at least three (3) years after the termination or conclusion of a contract with the homeowner.**

SECTION 4. IC 24-9-2-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 12.5. "Real estate transaction" has the meaning set**



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**forth in IC 25-34.1-10-8.**

SECTION 5. IC 24-9-3-7, AS AMENDED BY P.L.141-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. A person may not:

- (1) divide a loan transaction into separate parts with the intent of evading a provision of this article;
- (2) structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the loan would be a high cost home loan if the home loan had been structured as a closed-end loan; or
- (3) engage in a deceptive act in connection with a:
  - (A) home loan; or
  - (B) loan described in IC 24-9-1-1.
- (3) engage or solicit to engage in a real estate transaction or a consumer credit mortgage transaction without a permit or license required by law; or**
- (4) represent that a real estate transaction or a consumer credit mortgage transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits that:**
  - (A) the real estate transaction or consumer credit mortgage does not have; and**
  - (B) the person knows or reasonably should know the real estate transaction or consumer credit mortgage does not have.**

SECTION 6. IC 25-1-11-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. A practitioner may petition the board to accept the surrender of the practitioner's license instead of having a hearing before the board. The practitioner may not surrender the practitioner's license without the written approval of the board, and the board may impose any conditions appropriate to the surrender or reinstatement of a surrendered license. **The board may not accept the surrender of a practitioner's license if the office of attorney general:**

- (1) has filed an administrative complaint concerning the practitioner's license; and**
- (2) opposes the surrender of the license.**

SECTION 7. IC 25-1-11-18, AS AMENDED BY P.L.194-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to disciplinary sanctions may be required by a board to pay the costs of the proceeding. The practitioner's ability to pay shall be considered

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when costs are assessed. If the practitioner fails to pay the costs, a suspension may not be imposed solely upon the practitioner's inability to pay the amount assessed. These costs are limited to costs for the following:

- (1) Court reporters.
- (2) Transcripts.
- (3) Certification of documents.
- (4) Photo duplication.
- (5) Witness attendance and mileage fees.
- (6) Postage.
- (7) Expert witnesses.
- (8) Depositions.
- (9) Notarizations.
- (10) Administrative law judges.
- (11) Real estate appraisals.**

SECTION 8. IC 25-34.1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who:

- (1) performs the acts of a salesperson without a salesperson license;
- (2) performs the acts of a broker without a broker license; or
- (3) conducts, or solicits or accepts enrollment of students for, a course as prescribed in IC 25-34.1-3 without course approval;

commits a Class A infraction. Upon conviction for an offense under this section, the court shall add to any fine imposed, the amount of any fee or other compensation earned in the commission of the offense. Each transaction constitutes a separate offense.

(b) In all actions for the collection of a fee or other compensation for performing acts regulated by this article, it must be alleged and proved that, at the time the cause of action arose, the party seeking relief was not in violation of this section.

(c) The commission may issue a cease and desist order to prevent violations of this section.

(1) If the commission determines that a person is violating this section, or is believed to be violating this section, the commission may issue an order to that person setting forth the time and place for a hearing at which the affected person may appear and show cause as to why the challenged activities are not in violation of this section.

(2) After an opportunity for hearing, if the commission determines that the person is violating this section, the commission shall issue a cease and desist order which shall describe the person and activities which are the subject of the order.

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(3) A cease and desist order issued under this section is enforceable in the circuit courts of this state.

(d) The attorney general, the commission, or the prosecuting attorney of any county in which a violation occurs may maintain an action in the name of the state to enjoin a person from violating this section.

(e) In charging any person in a complaint for an injunction or in affidavit, information, or indictment with the violation of the provisions of this section, it is sufficient, without averring any further or more particular facts, to charge that the person upon a certain day and in a certain county either acted as a real estate broker or salesperson not having a license or conducted, or solicited or accepted enrollment of students for, a broker or salesperson course without course approval.

**(f) A licensee who violates IC 24-5-15 or IC 24-5.5 may be disciplined under IC 25-1-11 and this section.**

~~(f)~~ (g) Each enforcement procedure established in this section is supplemental to other enforcement procedures established in this section.

SECTION 9. IC 32-30-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **Except as provided in IC 32-30-10.5 for first lien mortgage transactions**, if a mortgagor defaults in the performance of any condition contained in a mortgage, the mortgagee or the mortgagee's assigns may proceed in the circuit court of the county where the real estate is located to foreclose the equity of redemption contained in the mortgage.

(b) If the real estate is located in more than one (1) county, the circuit court of any county in which the real estate is located has jurisdiction for an action for the foreclosure of the equity of redemption contained in the mortgage.

SECTION 10. IC 32-30-10-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. A plaintiff may not:

- (1) proceed to foreclose the mortgagee's mortgage:
  - (A) while the plaintiff is prosecuting any other action for the same debt or matter that is secured by the mortgage; or
  - (B) while the plaintiff is seeking to obtain execution of any judgment in any other action; **or**
- (2) prosecute any other action for the same matter while the plaintiff is foreclosing the mortgagee's mortgage or prosecuting a judgment of foreclosure; **or**
- (3) **proceed to foreclose a mortgage (as defined in IC 32-30-10.5-5) until the notice under IC 32-30-10.5-8(a) has been sent, if required.**

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SECTION 11. IC 32-30-10.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

**Chapter 10.5. Foreclosure Prevention Agreements for Residential Mortgages**

**Sec. 1. (a) The general assembly makes the following findings:**

- (1) Indiana faces a serious threat to its state economy and to the economies of its political subdivisions because of Indiana's high rate of residential mortgage foreclosures, which constitutes an emergency.
- (2) Indiana's high rate of residential mortgage foreclosures has adversely affected property values in Indiana, and may have an even greater adverse effect on property values if the foreclosure rate continues to rise.
- (3) It is in the public interest for the state to modify the foreclosure process to require creditors and debtors to engage in good faith negotiations designed to avoid foreclosure by allowing debtors to repay their mortgages.

**(b) The purpose of this chapter is to avoid unnecessary foreclosures of residential properties and thereby provide stability to Indiana's statewide and local economies by:**

- (1) requiring early contact and communications between creditors, their authorized agents, and debtors in order to engage in negotiations that could avoid foreclosure; and
- (2) facilitating the modification of residential mortgages in appropriate circumstances.

**Sec. 2. As used in this chapter, "creditor" refers to:**

- (1) the creditor (as defined in IC 24-4.4-1-301(2)); or
- (2) a mortgage servicer;

**in a first lien mortgage transaction (as defined in IC 24-4.4-1-301(6)).**

**Sec. 3. As used in this chapter, "debtor" refers to the mortgagor in a first lien mortgage transaction (as defined in IC 24-4.4-1-301(6)).**

**Sec. 4. As used in this chapter, "foreclosure prevention agreement" means a written agreement that:**

- (1) is executed by both the creditor and the debtor; and
- (2) offers the debtor an individualized plan that may include:
  - (A) a temporary forbearance with respect to the mortgage;
  - (B) a reduction of any arrearage owed by the debtor;
  - (C) a reduction of the interest rate that applies to the mortgage;

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- (D) a repayment plan;
- (E) a deed in lieu of foreclosure;
- (F) reinstatement of the mortgage upon the debtor's payment of any arrearage;
- (G) a sale of the property; or
- (H) any loss mitigation arrangement or debtor relief plan established by federal law.

Sec. 5. As used in this chapter, "mortgage" refers to a first lien mortgage transaction (as defined in IC 24-4.4-1-301(6)).

Sec. 6. As used in this chapter, "mortgage foreclosure counselor" means a foreclosure prevention counselor who is part of, or has been trained or certified by, the Indiana Foreclosure Prevention Network.

Sec. 7. As used in this chapter, "mortgage servicer" means the last person to whom:

- (1) a debtor in a mortgage; or
- (2) the debtor's successor in interest;

has been instructed to send payments on the mortgage.

Sec. 8. (a) After June 30, 2009, except as provided in subsection (d) and section 10(f) of this chapter, before a creditor files an action for foreclosure, the creditor shall send to the debtor by certified mail, return receipt requested, a presuit notice in a form prescribed by the Indiana housing and community development authority established by IC 5-20-1-3 that informs the debtor that the creditor intends to initiate a foreclosure and that the debtor may obtain assistance from a foreclosure counselor and that provides information on how to contact a housing counselor.

(b) The notice required by subsection (a) shall be sent to:

- (1) the address of the mortgaged property; or
- (2) the last known mailing address of the debtor if the creditor's records indicate that the mailing address of the debtor is other than the address of the mortgaged property.

(c) Except as provided in subsection (d) and section 10(f) of this chapter, if a creditor files an action to foreclose a mortgage, the creditor shall include with the complaint served on the debtor a notice that informs the debtor of a right to participate in a settlement conference. The notice shall be served with the complaint and in a form prescribed by the Indiana housing and community development authority established by IC 5-20-1-3. The notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court of the debtor's intent to participate in a settlement conference not later than thirty (30)

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days after the notice is served.

(d) A creditor is not required to send the notices described in this section if:

- (1) the loan is secured by a dwelling that is not the debtor's primary residence;
- (2) the loan has been the subject of a prior foreclosure prevention plan;
- (3) bankruptcy law prohibits the creditor from participating in a settlement conference under this chapter with respect to the loan; or
- (4) the court finds that a settlement conference would be of limited value based on the result of a prior loss mitigation effort between the debtor and the creditor.

Sec. 9. (a) After June 30, 2009, a court may not issue a judgment of foreclosure under IC 32-30-10 on a mortgage subject to this chapter unless all of the following apply:

- (1) The creditor has given the notice required under section 8(c) of this chapter.
- (2) The debtor either:
  - (A) does not contact the court within the thirty (30) day period described in section (8)(c) of this chapter to schedule a settlement conference under section (8)(c) of this chapter; or
  - (B) contacts the court within the thirty (30) day period described in section (8)(c) of this chapter to schedule a conference under section (8)(c) of this chapter and, upon the conclusion of the conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement.

(b) In a foreclosure action filed under IC 32-30-10-3, the creditor shall attach to the complaint filed with the court a copy of the notice sent to the debtor under section (8)(a) of this chapter.

(c) In a foreclosure action filed after June 30, 2009, the court may not render a judgment of foreclosure until sixty (60) days after the date the notice required by section 8(a) of this chapter was sent unless the mortgaged property is vacant.

Sec. 10. (a) Unless a settlement conference is not required under this chapter, the court shall issue a notice of a settlement conference if the debtor contacts the court to schedule a settlement conference as described in section 8(c) of this chapter. The court's notice of a settlement conference must do the following:

- (1) Order the creditor and the debtor to conduct a settlement

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conference on or before a date and time specified in the notice, which date must not be earlier than twenty-five (25) days after the date of the notice or later than sixty (60) days after the date of the notice, for the purpose of attempting to negotiate a foreclosure prevention agreement.

(2) Require the debtor to contact a mortgage foreclosure counselor before the date of the settlement conference. The notice must provide the contact information for the Indiana Foreclosure Prevention Network.

(3) Require the debtor to bring to the settlement conference the following documents needed to engage in good faith negotiations with the creditor:

(A) Documentation of the debtor's present and future income, expenses, assets, and liabilities, including documentation of the debtor's employment history.

(B) Any other documentation or information that the court determines is needed for the debtor to engage in good faith negotiations with the creditor. The court shall identify any documents required under this clause with enough specificity to allow the debtor to obtain the documents before the scheduled settlement conference.

(4) Require the creditor to bring to the settlement conference a complete transaction history for the mortgage upon which the mortgage foreclosure action is based.

(5) Inform the parties that:

(A) each party has the right to be represented by an attorney or assisted by a mortgage foreclosure counselor at the settlement conference; and

(B) an attorney or a mortgage foreclosure counselor may participate in the settlement conference in person or by telephone.

(6) Inform the parties that the settlement conference will be conducted by telephone on the date and time specified in the notice under subdivision (1) unless the parties submit to the court a stipulation to modify the date, time, and place of the settlement conference.

(b) The court may require any person that is a party to the foreclosure action to appear at or participate in a settlement conference held under this section, and, for cause shown, the court may order the creditor and the debtor to reconvene a settlement conference at any time before judgment is entered.

(c) At the court's discretion, a settlement conference may or

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may not be attended by a judicial officer.

(d) The creditor shall ensure that any person representing the creditor:

- (1) at a settlement conference scheduled under subsection (a);
- or
- (2) in any negotiations with the debtor designed to reach agreement on the terms of a foreclosure prevention agreement;

has authority to conduct negotiations.

(e) If, as a result of a settlement conference held under this section, the debtor and the creditor agree to enter into a foreclosure prevention agreement, the agreement shall be reduced to writing and signed by both parties, and each party shall retain a copy of the signed agreement. Not later than seven (7) business days after the signing of the foreclosure prevention agreement, the creditor shall file with the court a notice indicating that a foreclosure prevention agreement has been reached. At the election of the creditor, the foreclosure shall be dismissed or stayed for as long as the debtor complies with the terms of the foreclosure prevention plan.

(f) If a foreclosure is dismissed and a default in the terms of the foreclosure prevention plan later occurs, the creditor or its assigns may bring a foreclosure action without being required to send the notices described in section 8 of this chapter.

(g) Participation in a settlement conference under this section satisfies any mediation or alternative dispute resolution requirement established by court rule.

Sec. 11. (a) This section applies to a mortgage foreclosure action with respect to which the creditor has filed the complaint in the proceeding before July 1, 2009, and the court having jurisdiction over the proceeding has not rendered a judgment of foreclosure before July 1, 2009.

(b) In a mortgage foreclosure action to which this section applies, the court having jurisdiction of the action shall serve notice of the availability of a settlement conference under section 8(c) of this chapter.

SECTION 12. IC 32-30-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Except as provided in IC 32-30-10.5 for first lien mortgage transactions**, it is not necessary in any action upon a mortgage or lien to give time for:

- (1) the payment of money; or
- (2) performing any other act.

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Final judgment may be given in the first instance."

Page 2, line 12, delete "A" and insert "**For a mortgage foreclosure action filed after June 30, 2009, and before January 1, 2013, a**".

Page 2, line 13, delete "(IC 33-37-5-30)" and insert "**(IC 33-37-5-30 (before its expiration on January 1, 2013))**".

Page 2, line 16, after "30." insert "(a)".

Page 2, line 20, delete "mortgage." and insert "**mortgage after June 30, 2009, and before January 1, 2013.**

**(b) This section expires January 1, 2013.**"

Page 5, line 21, delete "IC 33-37-5-30." and insert "**IC 33-37-5-30 (before its expiration on January 1, 2013)**".

Page 5, line 32, delete "IC 33-37-5-30;" and insert "**IC 33-37-5-30 (before its expiration on January 1, 2013);**".

Page 6, line 3, delete "IC 33-37-5-30," and insert "**IC 33-37-5-30 (before its expiration on January 1, 2013)**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to EHB 1637 as printed March 13, 2009.)

KENLEY, Chairperson

Committee Vote: Yeas 9, Nays 2.

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