February 20, 2009

HOUSE BILL No. 1633

DIGEST OF HB 1633 (Updated February 18, 2009 4:08 pm - DI 101)

Citations Affected: IC 24-5.5; IC 32-29; IC 32-30.

Synopsis: Foreclosure of residential mortgages. Provides that in the case of a residential mortgage transaction in which the debtor defaults after June 30, 2009, the creditor shall provide a written notice to the debtor that informs the debtor of the default and offers the debtor the opportunity to participate in a conference with the creditor to negotiate a foreclosure prevention agreement. Requires the debtor to contact the creditor not later than 30 days after the date of the notice to schedule a conference. Provides that the debtor has the right to be represented by an attorney or a mortgage foreclosure counselor at the conference. Requires the creditor to ensure that any person representing the creditor at the conference or in any negotiations with the debtor has authority to bind the creditor. Upon the conclusion of a conference, requires the creditor to report to the housing and community development authority (authority) on whether the parties were able to agree on the terms of a foreclosure prevention agreement. Provides that after June 30, 2009, a creditor may not proceed to file a residential mortgage foreclosure action unless: (1) the creditor has given the required notice offering a conference to the debtor; (2) either the debtor did not respond to the creditor's notice not later than 30 days after the date of the notice, or the parties were unable to negotiate a mortgage prevention agreement after a conference is held; and (3) at least 90 days have elapsed since the date of the creditor's notice. Provides that in a residential mortgage foreclosure action filed after June 30, 2009, the court may not enter a judgment of foreclosure until 60 days after the date the complaint is

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Effective: July 1, 2009.

Bardon, Day

January 16, 2009, read first time and referred to Committee on Financial Institutions.
February 19, 2009, reported — Do Pass.

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filed, in a case in which the debtor did not respond to the creditor's notice not later than 30 days after the date of the notice. Provides that, upon petition by the creditor, the court may waive the 60 day period under certain circumstances. Provides that in the case of a residential mortgage foreclosure action that: (1) is pending on July 1, 2009; or (2) is filed after June 30, 2009; the court having jurisdiction of the action shall serve notice of a settlement conference on the parties to the action. Provides that the notice must set forth a date and time by which the parties must conduct a settlement conference. Provides that the date specified in the notice may not be earlier than 25 days after the date of the notice or later than 60 days after the date of the notice. Provides that the notice must require: (1) the debtor to contact a mortgage foreclosure counselor before the settlement conference and bring to the settlement conference certain documents; and (2) the creditor to bring to the settlement conference a complete transaction history for the mortgage upon which the foreclosure action is based. Provides that each party has the right to be represented by an attorney or a mortgage foreclosure counselor at the settlement conference. Provides that the settlement conference must be held at the county courthouse at the date and time specified in the court's notice unless the parties agree to hold the settlement conference: (1) by telephone; or (2) in person at a location agreed to by the parties; at a time and date agreed to by the parties, but not later than the time and date specified in the notice. Provides that any party may file: (1) objections to the settlement conference; or (2) a petition for the court to review a proposed foreclosure prevention agreement offered by the creditor to the debtor in connection with the conference held before the filing of the complaint; not later than 15 days after the date of the court's notice. Provides that after reviewing a proposed agreement offered by the creditor in connection with the previous conference, the court may order the parties to appear before the court for a hearing, instead of holding a settlement conference. Provides that the creditor shall ensure that any person representing the creditor at the settlement conference has the authority to bind the creditor. Provides that if the parties agree to enter into a foreclosure prevention agreement as a result of the settlement conference, the creditor must report that fact to: (1) the court; and (2) the authority; not later than seven business days after the signing of the agreement. Provides that if, after conducting a settlement conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement: (1) the creditor must report that fact to the court and the authority not later than seven business days after the date of the settlement conference; and (2) the foreclosure action filed by the creditor may proceed as allowed by law.

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February 20, 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.

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HOUSE BILL No. 1633

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 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 24-5.5-3-1,** 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.

(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 32-29-7-3, AS AMENDED BY P.L.100-2008, SECTION 1, 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,** 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

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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. **Except as provided in IC 32-30-10.5 for first lien mortgage transactions,** 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 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 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

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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).

SECTION 4. 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 5. IC 32-30-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. **Subject to IC 32-30-10.5 with respect to first lien mortgage transactions,** in rendering judgment of foreclosure, the courts shall:

(1) give personal judgment against any party to the suit liable upon any agreement for the payment of any sum of money secured by the mortgage; and

(2) order the mortgaged premises, or as much of the mortgaged premises as may be necessary to satisfy the mortgage and court costs, to be sold first before the sale of other property of the defendant.

The judgment is satisfied by the payment of the mortgage debt, with interest and costs, at any time before sale.

SECTION 6. 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:

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(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

(C) unless one (1) of the conditions set forth in IC 32-30-10.5-10(a) applies, in the case of a first lien mortgage transaction; 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.

SECTION 7. 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 will have an even greater adverse effect on property values if the foreclosure rate continues to rise.

(3) As more mortgage debtors default on their mortgages and more homes enter foreclosure, less property tax revenue is available for local schools, public safety needs, and other vital local services.

(4) The high rate of foreclosed properties in areas throughout the state necessitates excessive and disproportionate expenditures of public funds for crime prevention, public health and safety, fire and accident prevention, and other public services.

(5) It is often in the best interests of creditors in residential mortgage transactions to modify existing mortgages to enable debtors to repay the mortgages, rather than to proceed with a foreclosure action.

(6) The administration and regulation of the foreclosure process in Indiana are public and governmental functions.

(7) It is necessary and 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

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foreclosure by allowing debtors to repay their mortgages. Placing conditions on a creditor's ability to access the state's foreclosure process is essential to ensure that the process does not result in more foreclosed properties entering the Indiana housing market when a foreclosure could have been avoided.

(8) Placing conditions on a creditor's ability to access the state's foreclosure process will do the following:

(A) Benefit the health, safety, morals, and welfare of the state and its political subdivisions.

(B) Serve to prevent the further decline in property values throughout the state.

(C) Reduce public expenditures required for governmental functions such as police and fire protection and other services.

(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 a person obligated to repay a mortgage, including a coborrower, cosigner, or guarantor.

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:

(A) is designed to allow the debtor to repay the mortgage based on:

(i) reasonable lending practices; and

(ii) the debtor's present and future income, expenses, assets, and liabilities; and

(B) may include:

(i) a temporary forbearance with respect to the mortgage;

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(ii) a reduction of any arrearage owed by the debtor;
(iii) a reduction of the interest rate that applies to the mortgage;
(iv) a repayment plan;
(v) a deed in lieu of foreclosure;
(vi) reinstatement of the mortgage upon the debtor's payment of any arrearage; or
(vii) a sale of the property.

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. As used in this chapter, "reporting agency" means the Indiana housing and community development authority created by IC 5-20-1-3.

Sec. 9. (a) After June 30, 2009, if a debtor defaults in the performance of any condition contained in a mortgage, the creditor shall send to the debtor by certified mail, return receipt requested, a written notice that does the following:
(1) Informs the debtor of the default.
(2) Offers the debtor an opportunity to participate in a conference with the creditor to negotiate a foreclosure prevention agreement.
(3) Informs the debtor that the debtor:
(A) may obtain assistance from a mortgage foreclosure counselor at any time; and
(B) has the right to be represented by a mortgage foreclosure counselor or an attorney at the conference offered under subdivision (2).
The notice must provide the contact information for the Indiana Foreclosure Prevention Network and for any other mortgage foreclosure counselor serving the area in which the property that is the subject of the mortgage is located, to the extent determinable by the creditor upon a good faith effort to identify such counselors serving the area.

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(4) Requires the debtor, or an attorney or a mortgage foreclosure counselor acting on the debtor's behalf, to contact the creditor:

(A) not later than thirty (30) days after the date of the notice; and

(B) by writing to an address or calling a toll free telephone number specified in the notice;

to schedule the conference offered under subdivision (2).

(5) Identifies an individual who will act on behalf of the creditor:

(A) at the conference offered under subdivision (2); and

(B) in all negotiations with the debtor designed to reach agreement on the terms of a foreclosure prevention agreement.

The notice must identify the individual by first and last name and provide an address, a telephone number, and an electronic mail address at which the individual may be contacted. The individual identified under this subdivision must have authority to bind the creditor in negotiating a foreclosure prevention agreement with the debtor, as required by subsection (e).

(6) Informs the debtor that the creditor may not file a foreclosure action with respect to the mortgage unless:

(A) the debtor does not contact the creditor not later than thirty (30) days after the date of the notice to schedule the conference offered by the creditor under subdivision (2); or

(B) the parties are unable to reach agreement on the terms of a foreclosure prevention agreement after conducting the conference offered by the creditor under subdivision (2).

(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) If the debtor contacts the creditor within the time specified in subsection (a)(4) to request a conference offered by the creditor under subsection (a)(2), the creditor shall schedule the conference:

(1) for a date that is not later than thirty (30) days after the date on which the debtor contacted the creditor under subsection (a)(4); and

(2) at a time that is convenient for both the debtor and the

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creditor.

(d) A conference that is scheduled under subsection (c) may be conducted by telephone or in person at a location that is acceptable to both parties. If the conference is conducted by telephone, the creditor shall provide any technology needed to allow:

(1) a mortgage foreclosure counselor; or

(2) an attorney;

representing the debtor to participate in the call simultaneously with the debtor.

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

(1) at a conference scheduled under subsection (c); or

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

has authority to bind the creditor in negotiating a foreclosure prevention agreement with the debtor.

(f) If, as a result of a conference scheduled under subsection (c), 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 reporting agency, on a form prescribed by the reporting agency, a notice indicating that a foreclosure prevention agreement has been reached.

(g) If, as a result of a conference held under subsection (c), the debtor and the creditor are unable to reach an agreement on the terms of a foreclosure prevention agreement, the creditor shall, not later than seven (7) business days after the date of the conference, file with the reporting agency, on a form prescribed by the reporting agency, a notice indicating:

(1) that a conference was held in accordance with this section;

(2) that the debtor and the creditor were unable to agree on the terms of a foreclosure prevention agreement;

(3) the terms of any foreclosure prevention agreement offered by the creditor before or at the conference; and

(4) the debtor's stated reasons for rejecting the agreement, to the extent known.

Sec. 10. (a) After June 30, 2009, a creditor may not proceed under IC 32-30-10-3 to foreclose a mortgage subject to this chapter by filing a complaint in a court having jurisdiction unless all of the

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following apply:

(1) The creditor has given the notice required under section 9(a) of this chapter.

(2) The debtor either:

(A) does not contact the creditor within the thirty (30) day period described in section 9(a)(4) of this chapter to schedule a conference offered by the debtor under section 9(a)(2) of this chapter; or

(B) contacts the creditor within the thirty (30) day period described in section 9(a)(4) of this chapter to schedule a conference offered by the debtor under section 9(a)(2) of this chapter and, upon the conclusion of such conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement.

(3) At least ninety (90) days have elapsed since the date of the notice sent by the creditor under section 9(a) of this chapter.

(b) In a foreclosure action filed under subsection (a), the creditor shall attach to the complaint filed with the court a copy of the notice sent to the debtor under section 9(a) of this chapter.

(c) Except as provided in subsection (d), in a foreclosure action filed under subsection (a) after June 30, 2009, the court may not render a judgment of foreclosure until:

(1) sixty (60) days after the date the complaint is filed, in the case of a complaint filed under subsection (a)(2)(A); or

(2) the action may proceed under section 11(j) of this chapter, in the case of a complaint filed under subsection (a)(2)(B).

(d) Upon petition by the creditor, the court may waive the sixty (60) day period described in subsection (c)(1) under any of the following circumstances:

(1) All of the following occur:

(A) The debtor does not respond to the creditor's notice under section 9(a) of this chapter not later than thirty (30) days after the date of the notice.

(B) The creditor demonstrates to the court that the creditor has made a reasonable effort to verify the 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) The court is satisfied that service was perfected.

However, the court may deny a creditor's petition under this subsection and order the creditor to provide the notice required under section 9(a) of this chapter using another

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method of service.

(2) The court determines that the property that is the subject of the mortgage has been abandoned.

(3) The debtor has defaulted on a previous foreclosure prevention agreement or other workout agreement with the creditor and, after reviewing the terms of such agreement, the court determines that a waiver of the sixty (60) day period described in subsection (c)(1) is appropriate and in the interest of justice.

Sec. 11. (a) This section applies to a mortgage foreclosure action with respect to which:

(1) the creditor has filed the complaint in the proceeding before July 1, 2009, and the court having jurisdiction over the proceeding:

(A) has not rendered a judgment of foreclosure before July 1, 2009; or

(B) has rendered a judgment of foreclosure before July 1, 2009, but the period set forth in IC 32-29-7-3(a) after which the judgment may be enforced has not yet expired; or

(2) the creditor has filed the complaint in the proceeding after June 30, 2009, under section 10(a) of this chapter after the creditor and the debtor were unable to agree on the terms of a foreclosure prevention agreement, as described in section 10(a)(2)(B) of this chapter.

(b) In a mortgage foreclosure action to which this section applies, the court having jurisdiction of the action:

(1) shall serve notice of a settlement conference described this section on the parties to the action not later than:

(A) August 1, 2009, in the case of an action described in subsection (a)(1)(A);

(B) the expiration of the period set forth in IC 32-29-7-3(a) after which the judgment may be enforced in the action, in the case of an action described in subsection (a)(1)(B); or

(C) thirty (30) days after the filing of the complaint, in an action described in subsection (a)(2); and

(2) may not:

(A) proceed to render a judgment of foreclosure in an action described in subsection (a)(1)(A) or (a)(2); or

(B) proceed under IC 32-29-7-3(b) to issue and certify to the sheriff of the county a copy of the judgment and decree in an action described in subsection (a)(1)(B);

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unless, upon the conclusion of a settlement conference described in this section, the parties are unable to agree on the terms of a foreclosure prevention agreement.

(c) A notice of a settlement conference issued under subsection (b) by a court having jurisdiction in a mortgage foreclosure action 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 and for any other mortgage foreclosure counselor serving the area in which the property that is the subject of the mortgage is located.

(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. The transaction history required by this subdivision must include a record of the following:

(A) All payments on the mortgage made by or on behalf of the borrower during the life of the mortgage, including the amount of each payment and the date the payment was received by the creditor.

(B) All fees, penalties, or other charges imposed by the creditor during the life of the mortgage, including:

(i) the amount of the fee, penalty, or other charge;

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(ii) the reason for its imposition; and

(iii) the amount, if any, of the fee, penalty, or other charge that was paid by the borrower and the date on which the payment was received by the creditor.

(5) Inform the parties that:

(A) each party has the right to be represented by an attorney or 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 at the county courthouse on the date and time specified in the notice under subdivision (1) unless the parties submit to the court not later than twenty (20) days after the date of the court's notice a statement that:

(A) is signed by all parties identified in the court's notice; and

(B) indicates that the parties have agreed to hold the settlement conference:

(i) by telephone at a date and time agreed to by the parties, which date and time must not be later than the date and time specified in the notice under subdivision (1); or

(ii) in person at a location agreed to by the parties and at a date and time agreed to by the parties, which date and time must not be later than the date and time specified in the notice under subdivision (1).

(7) Inform the parties that any party to the foreclosure action may file written objections to the settlement conference or a petition for review described in subsection (d) not later than fifteen (15) days after the date of the notice by filing such objections or petition with the court and serving all other persons listed in the notice with a copy of the objections or petition.

(d) In the case of a foreclosure action described in subsection (a)(2), the court may, upon the petition of any party, or an attorney or a mortgage foreclosure consultant representing the debtor, review a proposed foreclosure prevention agreement that the creditor offered to the debtor in connection with the conference held under section 9 of this chapter, along with any other documents in connection with that conference that the court may

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require, including a statement of the borrower's reasons for rejecting the proposed agreement. After reviewing a petition and any accompanying documents submitted under this subsection, the court may order the parties to appear before the court for a hearing on the matter, instead of holding a settlement conference under this section.

(e) 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.

(f) At the court's discretion, a settlement conference held at a county courthouse under subsection (c)(6) may or may not be attended by a judicial officer.

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

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

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

has authority to bind the creditor in negotiating a foreclosure prevention agreement with the debtor.

(h) If the parties elect under subsection (c)(6) to conduct a settlement conference by telephone, the parties shall ensure the availability of any technology needed to allow:

(1) a mortgage foreclosure counselor; or

(2) an attorney;

representing any party in the proceeding to participate in the call simultaneously with the parties.

(i) 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 and the reporting agency, on a form prescribed by the reporting agency, a notice indicating that a foreclosure prevention agreement has been reached.

(j) If, as a result of a settlement conference held under this section, the debtor and the creditor are unable to agree on the terms of a foreclosure prevention agreement:

(1) the creditor shall, not later than seven (7) business days after the date of the settlement conference, file with the court

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and the reporting agency, on a form prescribed by the reporting agency, a notice indicating:

(A) the terms of any foreclosure prevention agreement offered by the creditor before or at the settlement conference; and

(B) the debtor's stated reasons for rejecting the agreement, to the extent known; and

(2) the foreclosure action filed by the creditor and described in subsection (a) may proceed as otherwise allowed by law.

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1633, 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.

BARDON, Chair

Committee Vote: yeas 6, nays 4.

C o p y