



January 25, 2010

HOUSE BILL No. 1122

DIGEST OF HB 1122 (Updated January 20, 2010 6:40 pm - DI 101)

Citations Affected: IC 24-5.5; IC 32-29; IC 32-30; IC 36-7.

Synopsis: Abatement of vacant or abandoned structures. Provides that the court or a local enforcement authority may find that residential real estate is abandoned for purposes of the statute that allows a judgment or decree of sale to be executed on the date a judgment of foreclosure or decree of sale is entered, in the case of abandoned residential real estate. (Current law provides for only the court to make a finding of abandonment.) Combines two separate Indiana Code provisions concerning the presuit notice required in residential foreclosure proceedings into one section. Repeals one of the provisions being combined. Provides that the presuit notice must inform the debtor that if the creditor obtains a foreclosure judgment, the debtor has a right to do the following before a sheriff's sale is conducted: (1) Appeal a finding of abandonment by a court or an enforcement authority. (2) Redeem the real estate from the judgment. (3) Retain possession of the property, subject to certain conditions. Provides that a county or municipality that adopts the statute concerning the abatement of vacant structures and abandoned structures may issue an abatement notice and order to a foreclosure judgment holder in a residential mortgage foreclosure proceeding if the foreclosure judgment holder has not filed a praecipe to initiate a sheriff's sale within 180 days after the entry of the foreclosure judgment. (Current law provides for the issuance of an abatement notice and order only with respect to the owner of the property.) Provides that an abatement notice and order may order the owner or foreclosure judgment holder to perform certain actions that

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Effective: Upon passage; July 1, 2010.

Riecken, Sullivan, Barnes

January 7, 2010, read first time and referred to Committee on Financial Institutions.
January 25, 2010, amended, reported — Do Pass.

HB 1122—LS 6802/DI 101+



may be ordered under the unsafe building law. Provides that an enforcement authority may administer and enforce the unsafe building law and the law concerning the abatement of vacant structures and abandoned structures in conjunction with the law concerning the removal of weeds and rank vegetation and with certain other laws. Provides that a foreclosure judgement holder that performs, or causes to be performed, any work or action required by an abatement notice or order issued under the law concerning the abatement of vacant structures and abandoned structures is not liable to the property owner, the enforcement authority, or any other person in connection with the work performed. Specifies that for purposes of the limits on the amount of civil penalties that can be imposed in a year for structures that remain vacant or abandoned for specified periods after the issuance of an abatement notice and order, a year is measured from the date of the order. Provides that if the abatement notice and order has been issued against a foreclosure judgment holder, the foreclosure judgment holder may avoid the civil penalties that would otherwise apply by filing, not later than 180 days after the date of issuance of the abatement notice and order, a praecipe with the county clerk to initiate a sheriff's sale. Provides that if a foreclosure judgment holder files a praecipe to initiate a sheriff's sale within 180 days after the issuance of the abatement notice and order and subsequently cancels the sale, the foreclosure judgment holder is liable for: (1) any civil penalties that otherwise would have applied during the 180 day period; (2) any civil penalties that accrue after the 180 day period; and (3) certain costs incurred by the sheriff in preparing for the sheriff's sale before its cancellation. Provides that a foreclosure judgment holder is not liable for civil penalties that would otherwise apply upon cancellation of a sheriff's sale, if the sale is canceled because: (1) the owner of the vacant structure or abandoned structure has filed for bankruptcy, or the sale is otherwise prohibited by federal bankruptcy law; (2) the sale is prohibited by a federal or state moratorium on foreclosure actions or proceedings; or (3) the foreclosure judgment holder and the owner of the vacant structure or abandoned structure have entered into a written agreement for the refinancing, restructuring, or workout of the owner's indebtedness, and the agreement is filed with the clerk of the court. Provides that civil penalties collected for structures that remain vacant or abandoned shall be deposited in: (1) the local unsafe building fund; or (2) another fund or account specified in the rules and procedures adopted by the legislative body. Provides that if any civil penalties assessed against a foreclosure judgment holder remain unpaid after a subsequent sheriff's sale of the property, the unpaid civil penalties shall be paid from the proceeds of the sheriff's sale. Requires a county or municipality that, before July 1, 2010, has adopted: (1) the statute concerning the abatement of vacant structures and abandoned structures; and (2) rules and procedures to enforce the statute; to amend its rules and procedures not later than August 1, 2010, to comply with changes to the statute.

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January 25, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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HOUSE BILL No. 1122

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

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

- 1 SECTION 1. IC 24-5.5-1-1, AS AMENDED BY P.L.105-2009,
- 2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2010]: Sec. 1. ~~Except for IC 24-5.5-3-1~~, 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

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1 (B) insured by the Department of Housing and Urban
 2 Development or guaranteed by the Veterans Administration.
 3 (6) An attorney licensed to practice law in Indiana who is
 4 representing a mortgagor.
 5 SECTION 2. IC 32-29-7-3, AS AMENDED BY P.L.100-2008,
 6 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2010]: Sec. 3. (a) In a proceeding for the foreclosure of a
 8 mortgage executed on real estate, process may not issue for the
 9 execution of a judgment or decree of sale for a period of three (3)
 10 months after the filing of a complaint in the proceeding. However:
 11 (1) the period is:
 12 (A) twelve (12) months in a proceeding for the foreclosure of
 13 a mortgage executed before January 1, 1958; and
 14 (B) six (6) months in a proceeding for the foreclosure of a
 15 mortgage executed after December 31, 1957, but before July
 16 1, 1975; and
 17 (2) if the court **or an enforcement authority (as defined in**
 18 **IC 36-7-9-2)** finds that the mortgaged real estate is residential
 19 real estate and has been abandoned, a judgment or decree of sale
 20 may be executed on the date the judgment of foreclosure or
 21 decree of sale is entered, regardless of the date the mortgage is
 22 executed.
 23 (b) A judgment and decree in a proceeding to foreclose a mortgage
 24 that is entered by a court having jurisdiction may be filed with the clerk
 25 in any county as provided in IC 33-32-3-2. After the period set forth in
 26 subsection (a) expires, a person who may enforce the judgment and
 27 decree may file a praecipe with the clerk in any county where the
 28 judgment and decree is filed, and the clerk shall promptly issue and
 29 certify to the sheriff of that county a copy of the judgment and decree
 30 under the seal of the court.
 31 (c) Upon receiving a certified judgment under subsection (b), the
 32 sheriff shall, subject to section 4 of this chapter, sell the mortgaged
 33 premises or as much of the mortgaged premises as necessary to satisfy
 34 the judgment, interest, and costs at public auction at the office of the
 35 sheriff or at another location that is reasonably likely to attract higher
 36 competitive bids. The sheriff shall schedule the date and time of the
 37 sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m.
 38 on any day of the week except Sunday.
 39 (d) Before selling mortgaged property, the sheriff must advertise the
 40 sale by publication once each week for three (3) successive weeks in
 41 a daily or weekly newspaper of general circulation. The sheriff shall
 42 publish the advertisement in at least one (1) newspaper published and

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1 circulated in each county where the real estate is situated. The first
2 publication shall be made at least thirty (30) days before the date of
3 sale. At the time of placing the first advertisement by publication, the
4 sheriff shall also serve a copy of the written or printed notice of sale
5 upon each owner of the real estate. Service of the written notice shall
6 be made as provided in the Indiana Rules of Trial Procedure governing
7 service of process upon a person. The sheriff shall charge a fee of ten
8 dollars (\$10) to one (1) owner and three dollars (\$3) to each additional
9 owner for service of written notice under this subsection. The fee is:

- 10 (1) a cost of the proceeding;
- 11 (2) to be collected as other costs of the proceeding are collected;
- 12 and
- 13 (3) to be deposited in the county general fund for appropriation
- 14 for operating expenses of the sheriff's department.

15 (e) The sheriff also shall post written or printed notices of the sale
16 at the door of the courthouse of each county in which the real estate is
17 located.

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

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

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

- 31 (1) payable by the person seeking to enforce the judgment and
- 32 decree; and
- 33 (2) due at the time of filing of the praecipe;

34 under subsection (b).

35 SECTION 3. IC 32-30-10-14, AS AMENDED BY
36 P.L.182-2009(ss), SECTION 390, IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 14. The proceeds of a
38 sale described in IC 32-29-7 or section 8 or 12(b) of this chapter must
39 be applied in the following order:

- 40 (1) Expenses of the offer and sale, including expenses incurred
- 41 under IC 32-29-7-4 or section 9 of this chapter (or IC 34-1-53-6.5
- 42 or IC 32-15-6-6.5 before their repeal).

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- 1 (2) The amount of any property taxes on the property sold:
- 2 (A) that are due and owing; and
- 3 (B) for which the due date has passed as of the date of the
- 4 sheriff's sale.

5 The sheriff shall transfer the amounts collected under this
 6 subdivision to the county treasurer not more than ten (10) days
 7 after the date of the sheriff's sale.

8 **(3) For a sale that occurs after June 30, 2010, the amount of**
 9 **any unpaid civil penalties against the foreclosure judgment**
 10 **holder under IC 36-7-36-10(g).**

11 ~~(3)~~ (4) Any amount of redemption where a certificate of sale is
 12 outstanding.

13 ~~(4)~~ (5) The payment of the principal due, interest, and costs not
 14 described in subdivision (1).

15 ~~(5)~~ (6) The residue secured by the mortgage and not due.

16 ~~(6)~~ (7) If the residue referred to in subdivision ~~(5)~~ (6) does not
 17 bear interest, a deduction must be made by discounting the legal
 18 interest.

19 In all cases in which the proceeds of sale exceed the amounts described
 20 in subdivisions (1) through ~~(6)~~; (7), the surplus must be paid to the
 21 clerk of the court to be transferred, as the court directs, to the mortgage
 22 debtor, mortgage debtor's heirs, or other persons assigned by the
 23 mortgage debtor.

24 SECTION 4. IC 32-30-10.5-8, AS ADDED BY P.L.105-2009,
 25 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2010]: Sec. 8. (a) This section applies to a foreclosure action
 27 that is filed after June 30, 2009. Except as provided in subsection (e)
 28 and section 10(g) of this chapter, not later than thirty (30) days before
 29 a creditor files an action for foreclosure, the creditor shall send to the
 30 debtor by certified mail a presuit notice on a form prescribed by the
 31 Indiana housing and community development authority created by
 32 IC 5-20-1-3. ~~In prescribing the form required by this section, the~~
 33 ~~Indiana housing and community development authority shall include~~
 34 ~~in the notice the statement set forth in IC 24-5.5-3-1. In addition, The~~
 35 notice required by this subsection must **do the following:**

- 36 (1) Inform the debtor that:
- 37 (A) the debtor is in default; ~~and~~
- 38 (B) the debtor is encouraged to obtain assistance from a
- 39 mortgage foreclosure counselor; and
- 40 **(C) if the creditor proceeds to file a foreclosure action and**
- 41 **obtains a foreclosure judgment, the debtor has a right to**
- 42 **do the following before a sheriff's sale is conducted:**

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(i) Appeal a finding of abandonment by a court or an enforcement authority under IC 32-29-7-3(a)(2).

(ii) Redeem the real estate from the judgment under IC 32-29-7-7.

(iii) Retain possession of the property under IC 32-29-7-11(b), subject to the conditions set forth in IC 32-29-7-11(b).

(2) Provide the contact information for the Indiana Foreclosure Prevention Network.

(3) Include the following 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."**

- (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.

If the creditor provides evidence that the notice required by subsection (a) was sent by certified mail, return receipt requested, and as prescribed by this subsection, it is not necessary that the debtor accept receipt of the notice for an action to proceed as allowed under this chapter.

(c) Except as provided in subsection (e) and section 10(g) 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 the debtor's right to participate in a settlement conference. The notice must be in a form prescribed by the Indiana housing and community development authority created by IC 5-20-1-3. The notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court, not later than thirty (30) days after the notice is served, of the debtor's intent to participate in a settlement conference.

(d) In a foreclosure action filed under IC 32-30-10-3 after June 30, 2009, the creditor shall attach to the complaint filed with the court a

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1 copy of the notices sent to the debtor under subsections (a) and (c).
 2 (e) A creditor is not required to send the notices described in this
 3 section if:
 4 (1) the ~~loan~~ **mortgage** is secured by a dwelling that is not the
 5 debtor's primary residence;
 6 (2) the ~~loan~~ **mortgage** has been the subject of a prior foreclosure
 7 prevention agreement under this chapter and the debtor has
 8 defaulted with respect to the terms of that foreclosure prevention
 9 agreement; or
 10 (3) bankruptcy law prohibits the creditor from participating in a
 11 settlement conference under this chapter with respect to the ~~loan~~
 12 **mortgage**.
 13 SECTION 5. IC 36-7-9-3.5 IS ADDED TO THE INDIANA CODE
 14 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
 15 1, 2010]: **Sec. 3.5. (a) An enforcement authority may administer
 16 and enforce this chapter in conjunction with any enforcement or
 17 civil action under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-1-6,
 18 IC 36-7-10.1, or IC 36-7-36.**
 19 **(b) Under all enforcement and civil actions designated under
 20 subsection (a), the enforcement authority is entitled to recover
 21 court costs and attorney's fees.**
 22 SECTION 6. IC 36-7-9-14, AS AMENDED BY P.L.169-2006,
 23 SECTION 66, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2010]: Sec. 14. (a) The enforcement authority shall establish
 25 in its operating budget a fund designated as the unsafe building fund.
 26 Any balance remaining at the end of a fiscal year shall be carried over
 27 in the fund for the following year and does not revert to the general
 28 fund.
 29 (b) Money for the unsafe building fund may be received from any
 30 source, including appropriations by local, state, or federal governments,
 31 and donations. The following money shall be deposited in the fund:
 32 (1) Money received as payment for or settlement of obligations or
 33 judgments established under sections 9 through 13 and 17
 34 through 22 of this chapter.
 35 (2) Money received from bonds posted under section 7 of this
 36 chapter.
 37 (3) Money received in satisfaction of receivers' notes or
 38 certificates that were issued under section 20 of this chapter and
 39 were purchased with money from the unsafe building fund.
 40 (4) Money received for payment or settlement of civil penalties or
 41 fines imposed under section 7 of this chapter **or under**
 42 **IC 36-7-36-10.**

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1 (5) Money received from the collection of special assessments
 2 under section 13.5 of this chapter.
 3 (c) Money in the unsafe building fund may be used for the expenses
 4 incurred in carrying out the purposes of this chapter **or IC 36-7-36,**
 5 including:
 6 (1) the cost of obtaining reliable information about the identity
 7 and location of each person who owns a substantial property
 8 interest in unsafe premises;
 9 (2) the cost of an examination of an unsafe building by a
 10 registered architect or registered engineer not employed by the
 11 department;
 12 (3) the cost of surveys necessary to determine the location and
 13 dimensions of real property on which an unsafe building is
 14 located;
 15 (4) the cost of giving notice of orders, notice of statements of
 16 rescission, notice of continued hearing, and notice of statements
 17 that public bids are to be let in the manner prescribed by section
 18 25 of this chapter;
 19 (5) the bid price of work by a contractor under section 10 or
 20 sections 17 through 22 of this chapter;
 21 (6) the cost of emergency action under section 9 of this chapter;
 22 ~~and~~
 23 (7) the cost of notes or receivers' certificates issued under section
 24 20 of this chapter; **and**
 25 **(8) any costs incurred under IC 36-7-36 with respect to a**
 26 **vacant structure or an abandoned structure under IC 36-7-36.**
 27 (d) Payment of money from the unsafe building fund must be made
 28 in accordance with applicable law.
 29 SECTION 7. IC 36-7-36-2.5 IS ADDED TO THE INDIANA CODE
 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 31 1, 2010]: **Sec. 2.5. As used in this chapter, "foreclosure judgment**
 32 **holder" means a person who may enforce a judgment and decree**
 33 **of sale issued after June 30, 2010, in a mortgage foreclosure**
 34 **proceeding subject to IC 32-30-10.5.**
 35 SECTION 8. IC 36-7-36-7, AS ADDED BY P.L.88-2009,
 36 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 UPON PASSAGE]: Sec. 7. **(a)** The legislative body of a municipality
 38 or county:
 39 (1) may adopt this chapter by ordinance; and
 40 (2) if the legislative body adopts this chapter by ordinance, shall
 41 adopt rules and procedures for its enforcement.
 42 **(b) This subsection applies to a legislative body that, under**

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subsection (a) and before July 1, 2010, has adopted:
(1) an ordinance to adopt this chapter, as in effect July 1, 2009; and
(2) rules and procedures for the enforcement of this chapter, as in effect July 1, 2009.

Not later than January 1, 2011, a legislative body to which this subsection applies shall amend the rules and procedures that, before July 1, 2010, were adopted under subsection (a). The amended rules and procedures must comply with sections 9 and 10 of this chapter, both as in effect July 1, 2010. This subsection expires July 1, 2011.

SECTION 9. IC 36-7-36-8, AS ADDED BY P.L.88-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) An enforcement authority may administer and enforce this chapter in conjunction with any enforcement or civil action under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-1-6, **IC 36-7-10.1**, or IC 36-7-9.

(b) Under all enforcement and civil actions designated under subsection (a), the enforcement authority is entitled to recover court costs and attorney's fees.

SECTION 10. IC 36-7-36-9, AS ADDED BY P.L.88-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 9. (a) If an enforcement authority determines that a vacant structure or an abandoned structure exists, an abatement notice and order may be ~~sent~~ **given in the manner specified in IC 36-7-9-25, or by any other method specified in the rules and procedures adopted by the legislative body under section 7 of this chapter, to the owner or, if subsection (b) applies, to a foreclosure judgment holder, that directs the owner or the foreclosure judgment holder to perform any action described in any of the following, with respect to the vacant structure or abandoned structure:**

- (1) abate the vacant structure or abandoned structure by cleaning and securing or boarding up the vacant structure or abandoned structure and the premises upon which it is located; and
 - (2) erect fences, barriers, berms, or other suitable means to discourage:
 - (A) access to the vacant structure or abandoned structure; and
 - (B) illegal dumping or littering on the premises upon which the vacant structure or abandoned structure exists;
- (1) IC 36-7-9-5(a)(2).
 (2) IC 36-7-9-5(a)(3).
 (3) IC 36-7-9-5(a)(4).

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1 **(4) IC 36-7-9-5(a)(8), with respect to the exterior of the vacant**
2 **structure or abandoned structure.**
3 **(b) Subject to subsection (c), an abatement notice and order**
4 **described in subsection (a) may be issued to a foreclosure judgment**
5 **holder if the enforcement authority determines that:**
6 **(1) a judgment and decree of sale concerning the vacant**
7 **structure or abandoned structure has been issued after June**
8 **30, 2010, in a mortgage foreclosure proceeding subject to**
9 **IC 32-30-10.5; and**
10 **(2) the foreclosure judgment holder has not filed a praecipe**
11 **with the county clerk to initiate a sheriff's sale, in accordance**
12 **with the procedure set forth in IC 32-29-7-3(b), not later than**
13 **one hundred eighty (180) days after the entry of the judgment**
14 **by the court.**
15 **(c) A foreclosure judgment holder, or any director, officer,**
16 **manager, employee, or agent of a foreclosure judgment holder,**
17 **that performs, or causes to be performed, any work or other action**
18 **required by an abatement notice and order issued to the**
19 **foreclosure judgment holder under subsection (b) is not liable to**
20 **any of the following upon any claim, legal or equitable, whether**
21 **arising out of contract or tort, with respect to the work or action**
22 **performed:**
23 **(1) The owner of the property.**
24 **(2) The enforcement authority.**
25 **(3) Any other person.**
26 **SECTION 11. IC 36-7-36-10, AS ADDED BY P.L.88-2009,**
27 **SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
28 **JULY 1, 2010]: Sec. 10. (a) ~~An owner of~~ Subject to subsection (b), if**
29 **a property ~~that~~ remains a vacant structure or an abandoned structure for**
30 **at least ninety (90) consecutive calendar days at any time after the**
31 **issuance of an abatement notice and order under section 9 of this**
32 **chapter, the owner or a foreclosure judgment holder, as**
33 **appropriate, may be liable for a civil penalty in the amount of five**
34 **hundred dollars (\$500) per vacant structure or abandoned structure, not**
35 **to exceed five thousand dollars (\$5,000) per structure per year, as**
36 **measured from the date of the abatement notice and order issued**
37 **under section 9 of this chapter and as specified in subsection (e),**
38 **unless:**
39 **(1) documentation has been filed and approved by the**
40 **enforcement authority that indicates:**
41 **(A) the owner's or foreclosure judgment holder's intent to**
42 **eliminate the vacant structure or abandoned structure status of**

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1 the property; or
 2 **(B) the owner or the foreclosure judgment holder has**
 3 **taken the actions described in IC 36-7-9-5(a)(8), with**
 4 **respect to the exterior of the vacant structure or**
 5 **abandoned structure, if the vacant structure or abandoned**
 6 **structure will be sealed for a period of more than ninety**
 7 **(90) days;**
 8 (2) ~~the owner is current on all~~ **there are no** property taxes ~~and or~~
 9 special assessments:
 10 **(A) that are due and owing; and**
 11 **(B) for which the due date has passed;**
 12 **with respect to the property; and**
 13 (3) at least one (1) of the following applies:
 14 (A) The structure is the subject of a valid building permit for
 15 repair or rehabilitation and the owner **or foreclosure**
 16 **judgment holder** is proceeding diligently and in good faith to
 17 complete the repair or rehabilitation of the structure as defined
 18 in the enforcement order.
 19 (B) The structure is:
 20 (i) maintained in compliance with this chapter; and
 21 (ii) actively being offered for sale, lease, or rent.
 22 (C) The owner **or foreclosure judgment holder** can
 23 demonstrate that the owner **or foreclosure judgment holder**
 24 made a diligent and good faith effort to implement actions
 25 approved by the enforcement authority.
 26 **(b) Subject to subsections (c) and (d), if the abatement notice**
 27 **and order has been issued to a foreclosure judgment holder, the**
 28 **foreclosure judgment holder is not liable for any civil penalty that**
 29 **may be imposed under subsection (a) or (e) if the foreclosure**
 30 **judgment holder files, not later than one hundred eighty (180) days**
 31 **after the date of issuance of the abatement notice and order, a**
 32 **praecipe with the county clerk to initiate a sheriff's sale, in**
 33 **accordance with the procedure set forth in IC 32-29-7-3(b). The**
 34 **foreclosure judgment holder may avoid the civil penalties for**
 35 **which the foreclosure judgment would otherwise be liable by**
 36 **providing, not later than one hundred eighty (180) days after the**
 37 **date of issuance of the abatement notice and order, evidence to the**
 38 **enforcement authority that the foreclosure judgment holder has**
 39 **met either or both of the following:**
 40 **(1) The exception set forth in this subsection.**
 41 **(2) The conditions set forth in subsection (a).**
 42 **(c) During the one hundred eighty (180) day period described in**

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1 subsection (b), the enforcement authority may not impose any civil
2 penalty against a foreclosure judgment holder that would
3 otherwise apply under subsection (a) or (e). If, after the one
4 hundred eighty (180) day period described in subsection (b), the
5 foreclosure judgment has not provided evidence to the enforcement
6 authority that the foreclosure judgment holder has met:

- 7 (1) the exception set forth in subsection (b);
- 8 (2) the conditions set forth in subsection (a); or
- 9 (3) both subdivisions (1) and (2);

10 the enforcement authority may impose any civil penalty that would
11 have applied under subsection (a) or (e) during the one hundred
12 eighty (180) day period described in subsection (b), in addition to
13 any civil penalties that accrue after the one hundred eighty (180)
14 day period described in subsection (b), subject to the annual limit
15 on civil penalties set forth in subsection (e).

16 (d) Except as provided in subsection (h), if a foreclosure
17 judgment holder files a praecipe with the county clerk to initiate a
18 sheriff's sale within the time specified in subsection (b) and
19 subsequently cancels the sale at any time before the date of the
20 scheduled sale, the foreclosure judgment holder is liable for any
21 civil penalties that otherwise would have applied under subsection
22 (a) or (e) during the one hundred eighty (180) day period described
23 in subsection (b), in addition to any civil penalties that accrue after
24 the one hundred eighty (180) day period described in subsection
25 (b), subject to the annual limit on civil penalties set forth in
26 subsection (e). In addition, the foreclosure judgment holder may be
27 liable for any costs that:

- 28 (1) are actually incurred by the sheriff in preparing for the
- 29 sheriff's sale before its cancellation;
- 30 (2) are not covered by the administrative fee described in
- 31 IC 32-29-7-3(h); and
- 32 (3) would have been payable from the proceeds of the sale
- 33 under IC 32-30-10-14(1).

34 ~~(b)~~ (e) If the structure continues to remain a vacant structure beyond
35 the initial ninety (90) days described in subsection (a) and the owner
36 or foreclosure judgment holder does not meet any of the exceptions
37 set forth in this section, subsection (a) or (b), the enforcement
38 authority may continue to assess penalties each year on each structure
39 in the following amounts:

- 40 (1) One thousand dollars (\$1,000) for the second ninety (90)
- 41 calendar day period each structure remains a vacant structure or
- 42 an abandoned structure.

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- 1 (2) One thousand five hundred dollars (\$1,500) for the third
- 2 ninety (90) calendar day period each structure remains a vacant
- 3 structure or an abandoned structure.
- 4 (3) Two thousand dollars (\$2,000) for the fourth ~~and each~~
- 5 ~~subsequent~~ ninety (90) calendar day period ~~thereafter~~ each
- 6 structure remains a vacant structure or an abandoned structure.
- 7 (4) Five thousand dollars (\$5,000) for the fifth and each
- 8 subsequent ninety (90) calendar day period thereafter each
- 9 structure remains a vacant structure or an abandoned
- 10 structure.

11 A civil penalty under this subsection may not exceed five thousand
 12 dollars (\$5,000) per structure per year, **as measured from the date of**
 13 **the abatement notice and order issued under section 9 of this**
 14 **chapter.**

15 (f) A civil penalty collected under subsection (a) or (e) shall be
 16 deposited in:

- 17 (1) an unsafe building fund established under IC 36-7-9-14; or
- 18 (2) any other fund or account specified in the rules and
- 19 procedures adopted by the legislative body under section 7 of
- 20 this chapter.

21 (g) If any civil penalties assessed against a foreclosure judgment
 22 holder under subsection (a) or (e) remain unpaid after a
 23 subsequent sheriff's sale of the property is conducted in connection
 24 with the foreclosure action, the unpaid civil penalties shall be paid
 25 from the proceeds of the sheriff's sale, as specified in
 26 IC 32-30-10-14.

27 (h) Subsection (d) does not apply if a sheriff's sale is canceled
 28 because:

- 29 (1) the owner of the vacant structure or abandoned structure
- 30 has filed for bankruptcy, or the sale of the vacant structure or
- 31 abandoned structure is otherwise prohibited by federal
- 32 bankruptcy law;
- 33 (2) the sale of the vacant structure or abandoned structure is
- 34 prohibited by a moratorium on foreclosure actions or
- 35 proceedings imposed by a federal or state law, regulation,
- 36 rule, or order; or
- 37 (3) the foreclosure judgment holder and the owner of the
- 38 vacant structure or abandoned structure have entered into a
- 39 written agreement that:
- 40 (A) provides for the refinancing, restructuring, or workout
- 41 of the owner's indebtedness under the mortgage that was
- 42 the subject of the foreclosure action; and

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1 **(B) is filed with the clerk of the court in which the**
2 **judgment and decree is filed.**
3 SECTION 12. IC 24-5.5-3 IS REPEALED [EFFECTIVE JULY 1,
4 2010].
5 SECTION 13. **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 1122, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

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

"SECTION 1. IC 24-5.5-1-1, AS AMENDED BY P.L.105-2009, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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); 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 32-29-7-3, AS AMENDED BY P.L.100-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the execution of a judgment or decree of sale for a period of three (3) months after the filing of a complaint in the proceeding. However:

- (1) the period is:
 - (A) twelve (12) months in a proceeding for the foreclosure of a mortgage executed before January 1, 1958; and
 - (B) six (6) months in a proceeding for the foreclosure of a mortgage executed after December 31, 1957, but before July 1, 1975; and
- (2) if the court **or an enforcement authority (as defined in IC 36-7-9-2)** 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. 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 sheriff shall state that the sheriff was not able to procure the

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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)."

Page 2, between lines 16 and 17, begin a new paragraph and insert:
 "SECTION 3. IC 32-30-10.5-8, AS ADDED BY P.L.105-2009, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) This section applies to a foreclosure action that is filed after June 30, 2009. Except as provided in subsection (e) and section 10(g) of this chapter, not later than thirty (30) days before a creditor files an action for foreclosure, the creditor shall send to the debtor by certified mail a presuit notice on a form prescribed by the Indiana housing and community development authority created by IC 5-20-1-3. ~~In prescribing the form required by this section, the Indiana housing and community development authority shall include in the notice the statement set forth in IC 24-5.5-3-1. In addition,~~ The notice required by this subsection must **do the following:**

- (1) Inform the debtor that:
 - (A) the debtor is in default; ~~and~~
 - (B) the debtor is encouraged to obtain assistance from a mortgage foreclosure counselor; and
 - (C) if the creditor proceeds to file a foreclosure action and obtains a foreclosure judgment, the debtor has a right to do the following before a sheriff's sale is conducted:**
 - (i) Appeal a finding of abandonment by a court or an enforcement authority under IC 32-29-7-3(a)(2).**
 - (ii) Redeem the real estate from the judgment under IC 32-29-7-7.**
 - (iii) Retain possession of the property under IC 32-29-7-11(b), subject to the conditions set forth in IC 32-29-7-11(b).**
- (2) Provide the contact information for the Indiana Foreclosure

COPY



Prevention Network.

(3) Include the following 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."

- (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.

If the creditor provides evidence that the notice required by subsection (a) was sent by certified mail, return receipt requested, and as prescribed by this subsection, it is not necessary that the debtor accept receipt of the notice for an action to proceed as allowed under this chapter.

(c) Except as provided in subsection (e) and section 10(g) 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 the debtor's right to participate in a settlement conference. The notice must be in a form prescribed by the Indiana housing and community development authority created by IC 5-20-1-3. The notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court, not later than thirty (30) days after the notice is served, of the debtor's intent to participate in a settlement conference.

(d) In a foreclosure action filed under IC 32-30-10-3 after June 30, 2009, the creditor shall attach to the complaint filed with the court a copy of the notices sent to the debtor under subsections (a) and (c).

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

- (1) the ~~loan~~ mortgage is secured by a dwelling that is not the debtor's primary residence;
- (2) the ~~loan~~ mortgage has been the subject of a prior foreclosure prevention agreement under this chapter and the debtor has defaulted with respect to the terms of that foreclosure prevention

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agreement; or

(3) bankruptcy law prohibits the creditor from participating in a settlement conference under this chapter with respect to the ~~loan~~ **mortgage.**

SECTION 4. IC 36-7-9-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 3.5. (a) An enforcement authority may administer and enforce this chapter in conjunction with any enforcement or civil action under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-1-6, IC 36-7-10.1, or IC 36-7-36.**

(b) Under all enforcement and civil actions designated under subsection (a), the enforcement authority is entitled to recover court costs and attorney's fees."

Page 4, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 8. IC 36-7-36-8, AS ADDED BY P.L.88-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 8. (a) An enforcement authority may administer and enforce this chapter in conjunction with any enforcement or civil action under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-1-6, IC 36-7-10.1, or IC 36-7-9.**

(b) Under all enforcement and civil actions designated under subsection (a), the enforcement authority is entitled to recover court costs and attorney's fees."

Page 4, line 16, delete ":" and insert "**perform any action described in any of the following, with respect to the vacant structure or abandoned structure:**".

Page 4, strike lines 17 through 18.

Page 4, line 19, strike "structure and the premises upon which it is located;"

Page 4, strike lines 20 through 23.

Page 4, line 24, strike "the vacant structure or abandoned structure exists;"

Page 4, line 24, delete "and".

Page 4, delete lines 25 through 31, begin a new line block indented and insert:

- "(1) IC 36-7-9-5(a)(2).**
- (2) IC 36-7-9-5(a)(3).**
- (3) IC 36-7-9-5(a)(4).**
- (4) IC 36-7-9-5(a)(8), with respect to the exterior of the vacant structure or abandoned structure."**

Page 5, line 27, after "indicates" insert ":

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Page 5, line 29, after "property;" insert "or

(B) the owner or the foreclosure judgment holder has taken the actions described in IC 36-7-9-5(a)(8), with respect to the exterior of the vacant structure or abandoned structure, if the vacant structure or abandoned structure will be sealed for a period of more than ninety (90) days;".

Page 5, line 42, after "chapter" insert ";".

Page 5, line 42, delete "and any".

Page 6, delete line 1.

Page 6, line 2, delete "9(a)(3) of this chapter;".

Page 5, run in line 42, through page 6, line 2.

Page 6, line 40, delete "If" and insert "**Except as provided in subsection (h), if**".

Page 8, between lines 7 and 8, begin a new paragraph and insert:

"(h) Subsection (d) does not apply if a sheriff's sale is canceled because:

(1) the owner of the vacant structure or abandoned structure has filed for bankruptcy, or the sale of the vacant structure or abandoned structure is otherwise prohibited by federal bankruptcy law;

(2) the sale of the vacant structure or abandoned structure is prohibited by a moratorium on foreclosure actions or proceedings imposed by a federal or state law, regulation, rule, or order; or

(3) the foreclosure judgment holder and the owner of the vacant structure or abandoned structure have entered into a written agreement that:

(A) provides for the refinancing, restructuring, or workout of the owner's indebtedness under the mortgage that was the subject of the foreclosure action; and

(B) is filed with the clerk of the court in which the judgment and decree is filed.

SECTION 11. IC 24-5.5-3 IS REPEALED [EFFECTIVE JULY 1, 2010]."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1122 as introduced.)

BARDON, Chair

Committee Vote: yeas 7, nays 0.

HB 1122—LS 6802/DI 101+

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