

Adopted	Rejected
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COMMITTEE REPORT

YES:	7
NO:	0

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:*

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 24-5.5-1-1, AS AMENDED BY P.L.105-2009,
- 4 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 5 JULY 1, 2010]: Sec. 1. ~~Except for IC 24-5.5-3-1,~~ This article does not
- 6 apply to the following:
- 7 (1) A person organized or chartered under the laws of this state,
- 8 any other state, or the United States that relate to a bank, a trust
- 9 company, a savings association, a savings bank, a credit union, or
- 10 an industrial loan and investment company.
- 11 (2) The Federal National Mortgage Association, the Federal
- 12 Home Loan Mortgage Corporation, or a Federal Home Loan
- 13 Bank.

- 1 (3) A department or agency of the United States or of Indiana.
 2 (4) A person that is servicing or enforcing a loan that it owns.
 3 (5) A person that is servicing a loan:
 4 (A) for a person described in subdivisions (1) through (4); or
 5 (B) insured by the Department of Housing and Urban
 6 Development or guaranteed by the Veterans Administration.
 7 (6) An attorney licensed to practice law in Indiana who is
 8 representing a mortgagor.

9 SECTION 2. IC 32-29-7-3, AS AMENDED BY P.L.100-2008,
 10 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2010]: Sec. 3. (a) In a proceeding for the foreclosure of a
 12 mortgage executed on real estate, process may not issue for the
 13 execution of a judgment or decree of sale for a period of three (3)
 14 months after the filing of a complaint in the proceeding. However:

- 15 (1) the period is:
 16 (A) twelve (12) months in a proceeding for the foreclosure of
 17 a mortgage executed before January 1, 1958; and
 18 (B) six (6) months in a proceeding for the foreclosure of a
 19 mortgage executed after December 31, 1957, but before July
 20 1, 1975; and
 21 (2) if the court **or an enforcement authority (as defined in**
 22 **IC 36-7-9-2)** finds that the mortgaged real estate is residential
 23 real estate and has been abandoned, a judgment or decree of sale
 24 may be executed on the date the judgment of foreclosure or
 25 decree of sale is entered, regardless of the date the mortgage is
 26 executed.

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

35 (c) Upon receiving a certified judgment under subsection (b), the
 36 sheriff shall, subject to section 4 of this chapter, sell the mortgaged
 37 premises or as much of the mortgaged premises as necessary to satisfy
 38 the judgment, interest, and costs at public auction at the office of the

1 sheriff or at another location that is reasonably likely to attract higher
2 competitive bids. The sheriff shall schedule the date and time of the
3 sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m.
4 on any day of the week except Sunday.

5 (d) Before selling mortgaged property, the sheriff must advertise the
6 sale by publication once each week for three (3) successive weeks in
7 a daily or weekly newspaper of general circulation. The sheriff shall
8 publish the advertisement in at least one (1) newspaper published and
9 circulated in each county where the real estate is situated. The first
10 publication shall be made at least thirty (30) days before the date of
11 sale. At the time of placing the first advertisement by publication, the
12 sheriff shall also serve a copy of the written or printed notice of sale
13 upon each owner of the real estate. Service of the written notice shall
14 be made as provided in the Indiana Rules of Trial Procedure governing
15 service of process upon a person. The sheriff shall charge a fee of ten
16 dollars (\$10) to one (1) owner and three dollars (\$3) to each additional
17 owner for service of written notice under this subsection. The fee is:

18 (1) a cost of the proceeding;

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

20 and

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

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

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

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

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

- 1 (1) payable by the person seeking to enforce the judgment and
 2 decree; and
 3 (2) due at the time of filing of the praecipe;
 4 under subsection (b)."

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

- 18 (1) Inform the debtor that:
 19 (A) the debtor is in default; ~~and~~
 20 (B) the debtor is encouraged to obtain assistance from a
 21 mortgage foreclosure counselor; and
 22 **(C) if the creditor proceeds to file a foreclosure action and**
 23 **obtains a foreclosure judgment, the debtor has a right to**
 24 **do the following before a sheriff's sale is conducted:**
 25 **(i) Appeal a finding of abandonment by a court or an**
 26 **enforcement authority under IC 32-29-7-3(a)(2).**
 27 **(ii) Redeem the real estate from the judgment under**
 28 **IC 32-29-7-7.**
 29 **(iii) Retain possession of the property under**
 30 **IC 32-29-7-11(b), subject to the conditions set forth in**
 31 **IC 32-29-7-11(b).**
 32 (2) Provide the contact information for the Indiana Foreclosure
 33 Prevention Network.
 34 **(3) Include the following statement printed in at least 14 point**
 35 **boldface type:**

36 **"NOTICE REQUIRED BY STATE LAW**
 37 **Mortgage foreclosure is a complex process. People may**
 38 **approach you about "saving" your home. You should be**

1 **careful about any such promises. There are government**
 2 **agencies and nonprofit organizations you may contact**
 3 **for helpful information about the foreclosure process.**
 4 **For the name and telephone number of an organization**
 5 **near you, please call the Indiana housing and community**
 6 **development authority."**

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

8 (1) the address of the mortgaged property; or

9 (2) the last known mailing address of the debtor if the creditor's
 10 records indicate that the mailing address of the debtor is other
 11 than the address of the mortgaged property.

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

17 (c) Except as provided in subsection (e) and section 10(g) of this
 18 chapter, if a creditor files an action to foreclose a mortgage, the creditor
 19 shall include with the complaint served on the debtor a notice that
 20 informs the debtor of the debtor's right to participate in a settlement
 21 conference. The notice must be in a form prescribed by the Indiana
 22 housing and community development authority created by IC 5-20-1-3.
 23 The notice must inform the debtor that the debtor may schedule a
 24 settlement conference by notifying the court, not later than thirty (30)
 25 days after the notice is served, of the debtor's intent to participate in a
 26 settlement conference.

27 (d) In a foreclosure action filed under IC 32-30-10-3 after June 30,
 28 2009, the creditor shall attach to the complaint filed with the court a
 29 copy of the notices sent to the debtor under subsections (a) and (c).

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

32 (1) the ~~loan~~ **mortgage** is secured by a dwelling that is not the
 33 debtor's primary residence;

34 (2) the ~~loan~~ **mortgage** has been the subject of a prior foreclosure
 35 prevention agreement under this chapter and the debtor has
 36 defaulted with respect to the terms of that foreclosure prevention
 37 agreement; or

38 (3) bankruptcy law prohibits the creditor from participating in a

1 settlement conference under this chapter with respect to the ~~loan~~
2 **mortgage.**

3 SECTION 4. IC 36-7-9-3.5 IS ADDED TO THE INDIANA CODE
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 2010]: **Sec. 3.5. (a) An enforcement authority may administer
6 and enforce this chapter in conjunction with any enforcement or
7 civil action under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-1-6,
8 IC 36-7-10.1, or IC 36-7-36.**

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

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

13 "SECTION 8. IC 36-7-36-8, AS ADDED BY P.L.88-2009,
14 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2010]: **Sec. 8. (a) An enforcement authority may administer
16 and enforce this chapter in conjunction with any enforcement or civil
17 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 36-7-9.**

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

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

25 Page 4, strike lines 17 through 18.

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

28 Page 4, strike lines 20 through 23.

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

31 Page 4, line 24, delete "and".

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

34 **"(1) IC 36-7-9-5(a)(2).**

35 **(2) IC 36-7-9-5(a)(3).**

36 **(3) IC 36-7-9-5(a)(4).**

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

- 1 Page 5, line 27, after "indicates" insert "
2 (A)".
- 3 Page 5, line 29, after "property;" insert "**or**
4 **(B) the owner or the foreclosure judgment holder has**
5 **taken the actions described in IC 36-7-9-5(a)(8), with**
6 **respect to the exterior of the vacant structure or**
7 **abandoned structure, if the vacant structure or abandoned**
8 **structure will be sealed for a period of more than ninety**
9 **(90) days;**".
- 10 Page 5, line 42, after "chapter" insert ";".
- 11 Page 5, line 42, delete "and any".
- 12 Page 6, delete line 1.
- 13 Page 6, line 2, delete "9(a)(3) of this chapter;".
- 14 Page 5, run in line 42, through page 6, line 2.
- 15 Page 6, line 40, delete "If" and insert "**Except as provided in**
16 **subsection (h), if**".
- 17 Page 8, between lines 7 and 8, begin a new paragraph and insert:
18 "**(h) Subsection (d) does not apply if a sheriff's sale is canceled**
19 **because:**
- 20 **(1) the owner of the vacant structure or abandoned structure**
21 **has filed for bankruptcy, or the sale of the vacant structure or**
22 **abandoned structure is otherwise prohibited by federal**
23 **bankruptcy law;**
- 24 **(2) the sale of the vacant structure or abandoned structure is**
25 **prohibited by a moratorium on foreclosure actions or**
26 **proceedings imposed by a federal or state law, regulation,**
27 **rule, or order; or**
- 28 **(3) the foreclosure judgment holder and the owner of the**
29 **vacant structure or abandoned structure have entered into a**
30 **written agreement that:**
- 31 **(A) provides for the refinancing, restructuring, or workout**
32 **of the owner's indebtedness under the mortgage that was**
33 **the subject of the foreclosure action; and**
- 34 **(B) is filed with the clerk of the court in which the**
35 **judgment and decree is filed.**

- 1 SECTION 11. IC 24-5.5-3 IS REPEALED [EFFECTIVE JULY 1,
- 2 2010].".
- 3 Renumber all SECTIONS consecutively.
(Reference is to HB 1122 as introduced.)

and when so amended that said bill do pass.

Representative Bardon