



April 5, 2011

**ENGROSSED
SENATE BILL No. 582**

DIGEST OF SB 582 (Updated March 31, 2011 5:19 pm - DI 101)

Citations Affected: IC 5-14; IC 5-20; IC 32-30; IC 33-37; IC 34-30; noncode.

Synopsis: Settlement conferences in residential foreclosures. Amends the definition of "mortgage" in the statute governing settlement conferences in residential mortgage foreclosure actions to specify that the term does not include a land contract. For purposes of the statute, defines "loss mitigation package" as a set of documents, the components of which: (1) are specified by the Indiana housing and community development authority (authority); (2) provide certain financial information about a debtor; and (3) are necessary for a creditor to make underwriting decisions in connection with a potential foreclosure prevention agreement. Provides that in a residential foreclosure action filed after June 30, 2011, the creditor shall include with the complaint filed with the court the following most recent contact information for the debtor that the creditor has on file: (1) All telephone numbers and electronic mail addresses for the debtor. (2) Any mailing address for the debtor other than the address of the mortgaged property. Provides that the following are excepted from the
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Effective: Upon passage; July 1, 2011.

Tallian, Bray, Randolph

(HOUSE SPONSORS — BURTON, RIECKEN)

January 20, 2011, read first time and referred to Committee on Judiciary.
February 14, 2011, amended, reported favorably — Do Pass.
February 15, 2011, read second time, amended, ordered engrossed.
February 16, 2011, engrossed.
February 17, 2011, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

March 28, 2011, read first time and referred to Committee on Financial Institutions.
April 4, 2011, amended, reported — Do Pass.

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ES 582—LS 7510/DI 101+



act governing access to public records and may not be disclosed: (1) The debtor's contact information. (2) Any document submitted to the court as part of the debtor's loss mitigation package. Requires the following with respect to a residential foreclosure action filed after June 30, 2011: (1) That the creditor include on the first page of the summons that is served on the debtor a notice that informs the debtor of the debtor's right to participate in a settlement conference. (Current law requires that a separate notice be included with the complaint served on the debtor.) (2) That upon the filing of the complaint by the creditor, the court shall send to the debtor a notice that informs the debtor of the debtor's right to participate in a settlement conference. (3) That a debtor who requests a settlement conference must provide a copy of the debtor's loss mitigation package to: (A) the creditor's attorney; and (B) the court; not later than 30 days before the date of the settlement conference. (4) That if the debtor requests a settlement conference, the creditor must send to the debtor, by certified mail and not later than 30 days before the date of the settlement conference: (A) a payment record substantiating the default; and (B) an itemization of all amounts claimed by the creditor as being owed on the mortgage. Provides that not later than June 1, 2011, the authority shall prescribe a list of documents that must be included as part of a debtor's loss mitigation package in a foreclosure action filed after June 30, 2011. Provides that the authority may amend the list: (1) in response to changes in any federal loan modification programs; or (2) as otherwise determined to be necessary by the authority. Requires: (1) the authority to make the list available on the authority's Internet web site; and (2) the division of state court administration to make the list available on the Internet web site maintained by the state's judicial branch. Provides that in a residential foreclosure action in which the debtor requests a settlement conference, the court shall do the following: (1) Stay the granting of any dispositive motion in the action until the court receives notice that the settlement conference has concluded and that the creditor and debtor either have agreed to enter into a foreclosure prevention agreement, or were unable to agree on the terms of an agreement. (2) Treat the debtor's request for a settlement conference as the entry of an appearance in the action. Provides that in a residential foreclosure action, any: (1) costs to a creditor associated with a settlement conference; or (2) civil penalty imposed on a creditor by the court for violation of a court order; may not be charged to or collected from the debtor. Provides that during the pendency of a residential foreclosure action filed after June 30, 2011, if the debtor continues to occupy the mortgaged dwelling, the court may issue an order requiring the debtor to continue to make monthly payments with respect to the mortgage on which the action is based. Provides that the court shall determine the amount of the payment, which: (1) may be based on debtor's ability to pay; and (2) may not exceed the debtor's monthly obligation under the mortgage. Provides that any payments made: (1) shall be held in trust for the parties by the clerk of the court or in an attorney trust account; and (2) may be disbursed only upon order of the court. Provides that any payments held shall be credited: (1) to the debtor if the parties subsequently enter into a foreclosure prevention agreement; or (2) against the amount of the judgment entered or the amount owed if a judgment of foreclosure is subsequently entered. Provides that any civil penalties imposed and collected by a court for violation of a court order in a residential foreclosure action shall be deposited in the home ownership education account to support programs conducted by specified entities to facilitate settlement conferences in residential foreclosure actions. Provides that a person who is not the owner of real property, and who suspects that the property may be vacant or abandoned, may enter upon the premises to do the following: (1) Visually inspect the property to determine whether the property may be vacant or abandoned. (2) Perform certain

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specified actions to secure and maintain the property. Provides that a person who enters the property and, after performing a visual inspection, determines that the property may be vacant or abandoned, may notify the appropriate enforcement authority and request that the enforcement authority determine whether the property is in fact vacant or abandoned. Provides that a person that enters upon the property for one of the permitted purposes: (1) is immune from civil liability for an act or omission related to the entry or to any permitted action; and (2) shall be held harmless with respect to any claims of civil or criminal trespass. Urges the legislative council to assign the following topics of study to the commission on courts or to another appropriate study committee: (1) Short sale procedures in real estate transactions in Indiana. (2) Specified topics concerning nonjudicial mortgage foreclosure procedures. Provides that any committee assigned the topics must issue a final report on the topics not later than November 1, 2011.

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April 5, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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ENGROSSED SENATE BILL No. 582

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 5-14-3-4, AS AMENDED BY P.L.94-2010,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 4. (a) The following public records are excepted
4 from section 3 of this chapter and may not be disclosed by a public
5 agency, unless access to the records is specifically required by a state
6 or federal statute or is ordered by a court under the rules of discovery:
7 (1) Those declared confidential by state statute.
8 (2) Those declared confidential by rule adopted by a public
9 agency under specific authority to classify public records as
10 confidential granted to the public agency by statute.
11 (3) Those required to be kept confidential by federal law.
12 (4) Records containing trade secrets.
13 (5) Confidential financial information obtained, upon request,
14 from a person. However, this does not include information that is
15 filed with or received by a public agency pursuant to state statute.

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- 1 (6) Information concerning research, including actual research
- 2 documents, conducted under the auspices of a state educational
- 3 institution, including information:
- 4 (A) concerning any negotiations made with respect to the
- 5 research; and
- 6 (B) received from another party involved in the research.
- 7 (7) Grade transcripts and license examination scores obtained as
- 8 part of a licensure process.
- 9 (8) Those declared confidential by or under rules adopted by the
- 10 supreme court of Indiana.
- 11 (9) Patient medical records and charts created by a provider,
- 12 unless the patient gives written consent under IC 16-39 or as
- 13 provided under IC 16-41-8.
- 14 (10) Application information declared confidential by the board
- 15 of the Indiana economic development corporation under
- 16 IC 5-28-16.
- 17 (11) A photograph, a video recording, or an audio recording of an
- 18 autopsy, except as provided in IC 36-2-14-10.
- 19 (12) A Social Security number contained in the records of a
- 20 public agency.
- 21 **(13) The following information that is part of a foreclosure**
- 22 **action subject to IC 32-30-10.5:**
- 23 **(A) Contact information for a debtor, as described in**
- 24 **IC 32-30-10.5-8(d)(2)(B).**
- 25 **(B) Any document submitted to the court as part of the**
- 26 **debtor's loss mitigation package under**
- 27 **IC 32-30-10.5-10(a)(3).**
- 28 (b) Except as otherwise provided by subsection (a), the following
- 29 public records shall be excepted from section 3 of this chapter at the
- 30 discretion of a public agency:
- 31 (1) Investigatory records of law enforcement agencies. However,
- 32 certain law enforcement records must be made available for
- 33 inspection and copying as provided in section 5 of this chapter.
- 34 (2) The work product of an attorney representing, pursuant to
- 35 state employment or an appointment by a public agency:
- 36 (A) a public agency;
- 37 (B) the state; or
- 38 (C) an individual.
- 39 (3) Test questions, scoring keys, and other examination data used
- 40 in administering a licensing examination, examination for
- 41 employment, or academic examination before the examination is
- 42 given or if it is to be given again.

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(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the Indiana economic development corporation, the ports of Indiana, the Indiana state department of agriculture, the Indiana finance authority, an economic development commission, a local economic development organization (as defined in IC 5-28-11-2(3)), or a governing body of a political subdivision with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the ports of Indiana, the Indiana finance authority, an economic development commission, or a governing body of a political subdivision to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

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1 However, all personnel file information shall be made available
2 to the affected employee or the employee's representative. This
3 subdivision does not apply to disclosure of personnel information
4 generally on all employees or for groups of employees without the
5 request being particularized by employee name.
6 (9) Minutes or records of hospital medical staff meetings.
7 (10) Administrative or technical information that would
8 jeopardize a record keeping or security system.
9 (11) Computer programs, computer codes, computer filing
10 systems, and other software that are owned by the public agency
11 or entrusted to it and portions of electronic maps entrusted to a
12 public agency by a utility.
13 (12) Records specifically prepared for discussion or developed
14 during discussion in an executive session under IC 5-14-1.5-6.1.
15 However, this subdivision does not apply to that information
16 required to be available for inspection and copying under
17 subdivision (8).
18 (13) The work product of the legislative services agency under
19 personnel rules approved by the legislative council.
20 (14) The work product of individual members and the partisan
21 staffs of the general assembly.
22 (15) The identity of a donor of a gift made to a public agency if:
23 (A) the donor requires nondisclosure of the donor's identity as
24 a condition of making the gift; or
25 (B) after the gift is made, the donor or a member of the donor's
26 family requests nondisclosure.
27 (16) Library or archival records:
28 (A) which can be used to identify any library patron; or
29 (B) deposited with or acquired by a library upon a condition
30 that the records be disclosed only:
31 (i) to qualified researchers;
32 (ii) after the passing of a period of years that is specified in
33 the documents under which the deposit or acquisition is
34 made; or
35 (iii) after the death of persons specified at the time of the
36 acquisition or deposit.
37 However, nothing in this subdivision shall limit or affect contracts
38 entered into by the Indiana state library pursuant to IC 4-1-6-8.
39 (17) The identity of any person who contacts the bureau of motor
40 vehicles concerning the ability of a driver to operate a motor
41 vehicle safely and the medical records and evaluations made by
42 the bureau of motor vehicles staff or members of the driver

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1 licensing medical advisory board regarding the ability of a driver
2 to operate a motor vehicle safely. However, upon written request
3 to the commissioner of the bureau of motor vehicles, the driver
4 must be given copies of the driver's medical records and
5 evaluations.

6 (18) School safety and security measures, plans, and systems,
7 including emergency preparedness plans developed under 511
8 IAC 6.1-2-2.5.

9 (19) A record or a part of a record, the public disclosure of which
10 would have a reasonable likelihood of threatening public safety
11 by exposing a vulnerability to terrorist attack. A record described
12 under this subdivision includes:

13 (A) a record assembled, prepared, or maintained to prevent,
14 mitigate, or respond to an act of terrorism under IC 35-47-12-1
15 or an act of agricultural terrorism under IC 35-47-12-2;

16 (B) vulnerability assessments;

17 (C) risk planning documents;

18 (D) needs assessments;

19 (E) threat assessments;

20 (F) intelligence assessments;

21 (G) domestic preparedness strategies;

22 (H) the location of community drinking water wells and
23 surface water intakes;

24 (I) the emergency contact information of emergency
25 responders and volunteers;

26 (J) infrastructure records that disclose the configuration of
27 critical systems such as communication, electrical, ventilation,
28 water, and wastewater systems; and

29 (K) detailed drawings or specifications of structural elements,
30 floor plans, and operating, utility, or security systems, whether
31 in paper or electronic form, of any building or facility located
32 on an airport (as defined in IC 8-21-1-1) that is owned,
33 occupied, leased, or maintained by a public agency. A record
34 described in this clause may not be released for public
35 inspection by any public agency without the prior approval of
36 the public agency that owns, occupies, leases, or maintains the
37 airport. The public agency that owns, occupies, leases, or
38 maintains the airport:

39 (i) is responsible for determining whether the public
40 disclosure of a record or a part of a record has a reasonable
41 likelihood of threatening public safety by exposing a
42 vulnerability to terrorist attack; and

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1 (ii) must identify a record described under item (i) and
 2 clearly mark the record as "confidential and not subject to
 3 public disclosure under IC 5-14-3-4(b)(19)(J) without
 4 approval of (insert name of submitting public agency)".
 5 This subdivision does not apply to a record or portion of a record
 6 pertaining to a location or structure owned or protected by a
 7 public agency in the event that an act of terrorism under
 8 IC 35-47-12-1 or an act of agricultural terrorism under
 9 IC 35-47-12-2 has occurred at that location or structure, unless
 10 release of the record or portion of the record would have a
 11 reasonable likelihood of threatening public safety by exposing a
 12 vulnerability of other locations or structures to terrorist attack.
 13 (20) The following personal information concerning a customer
 14 of a municipally owned utility (as defined in IC 8-1-2-1):
 15 (A) Telephone number.
 16 (B) Address.
 17 (C) Social Security number.
 18 (21) The following personal information about a complainant
 19 contained in records of a law enforcement agency:
 20 (A) Telephone number.
 21 (B) The complainant's address. However, if the complainant's
 22 address is the location of the suspected crime, infraction,
 23 accident, or complaint reported, the address shall be made
 24 available for public inspection and copying.
 25 (22) Notwithstanding subdivision (8)(A), the name,
 26 compensation, job title, business address, business telephone
 27 number, job description, education and training background,
 28 previous work experience, or dates of first employment of a law
 29 enforcement officer who is operating in an undercover capacity.
 30 (23) Records requested by an offender that:
 31 (A) contain personal information relating to:
 32 (i) a correctional officer (as defined in IC 5-10-10-1.5);
 33 (ii) the victim of a crime; or
 34 (iii) a family member of a correctional officer or the victim
 35 of a crime; or
 36 (B) concern or could affect the security of a jail or correctional
 37 facility.
 38 (c) Nothing contained in subsection (b) shall limit or affect the right
 39 of a person to inspect and copy a public record required or directed to
 40 be made by any statute or by any rule of a public agency.
 41 (d) Notwithstanding any other law, a public record that is classified
 42 as confidential, other than a record concerning an adoption or patient

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1 medical records, shall be made available for inspection and copying
 2 seventy-five (75) years after the creation of that record.

3 (e) Only the content of a public record may form the basis for the
 4 adoption by any public agency of a rule or procedure creating an
 5 exception from disclosure under this section.

6 (f) Except as provided by law, a public agency may not adopt a rule
 7 or procedure that creates an exception from disclosure under this
 8 section based upon whether a public record is stored or accessed using
 9 paper, electronic media, magnetic media, optical media, or other
 10 information storage technology.

11 (g) Except as provided by law, a public agency may not adopt a rule
 12 or procedure nor impose any costs or liabilities that impede or restrict
 13 the reproduction or dissemination of any public record.

14 (h) Notwithstanding subsection (d) and section 7 of this chapter:
 15 (1) public records subject to IC 5-15 may be destroyed only in
 16 accordance with record retention schedules under IC 5-15; or
 17 (2) public records not subject to IC 5-15 may be destroyed in the
 18 ordinary course of business.

19 SECTION 2. IC 5-20-1-4, AS AMENDED BY P.L.105-2009,
 20 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2011]: Sec. 4. (a) The authority has all of the powers
 22 necessary or convenient to carry out and effectuate the purposes and
 23 provisions of this chapter, including the power:
 24 (1) to make or participate in the making of construction loans for
 25 multiple family residential housing under terms that are approved
 26 by the authority;
 27 (2) to make or participate in the making of mortgage loans for
 28 multiple family residential housing under terms that are approved
 29 by the authority;
 30 (3) to purchase or participate in the purchase from mortgage
 31 lenders of mortgage loans made to persons of low and moderate
 32 income for residential housing;
 33 (4) to make loans to mortgage lenders for the purpose of
 34 furnishing funds to such mortgage lenders to be used for making
 35 mortgage loans for persons and families of low and moderate
 36 income. However, the obligation to repay loans to mortgage
 37 lenders shall be general obligations of the respective mortgage
 38 lenders and shall bear such date or dates, shall mature at such
 39 time or times, shall be evidenced by such note, bond, or other
 40 certificate of indebtedness, shall be subject to prepayment, and
 41 shall contain such other provisions consistent with the purposes
 42 of this chapter as the authority shall by rule or resolution

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- 1 determine;
- 2 (5) to collect and pay reasonable fees and charges in connection
- 3 with making, purchasing, and servicing of its loans, notes, bonds,
- 4 commitments, and other evidences of indebtedness;
- 5 (6) to acquire real property, or any interest in real property, by
- 6 conveyance, including purchase in lieu of foreclosure, or
- 7 foreclosure, to own, manage, operate, hold, clear, improve, and
- 8 rehabilitate such real property and sell, assign, exchange, transfer,
- 9 convey, lease, mortgage, or otherwise dispose of or encumber
- 10 such real property where such use of real property is necessary or
- 11 appropriate to the purposes of the authority;
- 12 (7) to sell, at public or private sale, all or any part of any mortgage
- 13 or other instrument or document securing a construction loan, a
- 14 land development loan, a mortgage loan, or a loan of any type
- 15 permitted by this chapter;
- 16 (8) to procure insurance against any loss in connection with its
- 17 operations in such amounts and from such insurers as it may deem
- 18 necessary or desirable;
- 19 (9) to consent, subject to the provisions of any contract with
- 20 noteholders or bondholders which may then exist, whenever it
- 21 deems it necessary or desirable in the fulfillment of its purposes
- 22 to the modification of the rate of interest, time of payment of any
- 23 installment of principal or interest, or any other terms of any
- 24 mortgage loan, mortgage loan commitment, construction loan,
- 25 loan to lender, or contract or agreement of any kind to which the
- 26 authority is a party;
- 27 (10) to enter into agreements or other transactions with any
- 28 federal, state, or local governmental agency for the purpose of
- 29 providing adequate living quarters for such persons and families
- 30 in cities and counties where a need has been found for such
- 31 housing;
- 32 (11) to include in any borrowing such amounts as may be deemed
- 33 necessary by the authority to pay financing charges, interest on
- 34 the obligations (for a period not exceeding the period of
- 35 construction and a reasonable time thereafter or if the housing is
- 36 completed, two (2) years from the date of issue of the
- 37 obligations), consultant, advisory, and legal fees and such other
- 38 expenses as are necessary or incident to such borrowing;
- 39 (12) to make and publish rules respecting its lending programs
- 40 and such other rules as are necessary to effectuate the purposes of
- 41 this chapter;
- 42 (13) to provide technical and advisory services to sponsors,

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1 builders, and developers of residential housing and to residents
 2 and potential residents, including housing selection and purchase
 3 procedures, family budgeting, property use and maintenance,
 4 household management, and utilization of community resources;
 5 (14) to promote research and development in scientific methods
 6 of constructing low cost residential housing of high durability;
 7 (15) to encourage community organizations to participate in
 8 residential housing development;
 9 (16) to make, execute, and effectuate any and all agreements or
 10 other documents with any governmental agency or any person,
 11 corporation, association, partnership, limited liability company,
 12 or other organization or entity necessary or convenient to
 13 accomplish the purposes of this chapter;
 14 (17) to accept gifts, devises, bequests, grants, loans,
 15 appropriations, revenue sharing, other financing and assistance
 16 and any other aid from any source whatsoever and to agree to, and
 17 to comply with, conditions attached thereto;
 18 (18) to sue and be sued in its own name, plead and be impleaded;
 19 (19) to maintain an office in the city of Indianapolis and at such
 20 other place or places as it may determine;
 21 (20) to adopt an official seal and alter the same at pleasure;
 22 (21) to adopt and from time to time amend and repeal bylaws for
 23 the regulation of its affairs and the conduct of its business and to
 24 prescribe rules and policies in connection with the performance
 25 of its functions and duties;
 26 (22) to employ fiscal consultants, engineers, attorneys, real estate
 27 counselors, appraisers, and such other consultants and employees
 28 as may be required in the judgment of the authority and to fix and
 29 pay their compensation from funds available to the authority
 30 therefor;
 31 (23) notwithstanding IC 5-13, but subject to the requirements of
 32 any trust agreement entered into by the authority, to invest:
 33 (A) the authority's money, funds, and accounts;
 34 (B) any money, funds, and accounts in the authority's custody;
 35 and
 36 (C) proceeds of bonds or notes;
 37 in the manner provided by an investment policy established by
 38 resolution of the authority;
 39 (24) to make or participate in the making of construction loans,
 40 mortgage loans, or both, to individuals, partnerships, limited
 41 liability companies, corporations, and organizations for the
 42 construction of residential facilities for individuals with a

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1 developmental disability or for individuals with a mental illness
 2 or for the acquisition or renovation, or both, of a facility to make
 3 it suitable for use as a new residential facility for individuals with
 4 a developmental disability or for individuals with a mental illness;
 5 (25) to make or participate in the making of construction and
 6 mortgage loans to individuals, partnerships, corporations, limited
 7 liability companies, and organizations for the construction,
 8 rehabilitation, or acquisition of residential facilities for children;
 9 (26) to purchase or participate in the purchase of mortgage loans
 10 from:

11 (A) public utilities (as defined in IC 8-1-2-1); or

12 (B) municipally owned gas utility systems organized under
 13 IC 8-1.5;

14 if those mortgage loans were made for the purpose of insulating
 15 and otherwise weatherizing single family residences in order to
 16 conserve energy used to heat and cool those residences;

17 (27) to provide financial assistance to mutual housing
 18 associations (IC 5-20-3) in the form of grants, loans, or a
 19 combination of grants and loans for the development of housing
 20 for low and moderate income families;

21 (28) to service mortgage loans made or acquired by the authority
 22 and to impose and collect reasonable fees and charges in
 23 connection with such servicing;

24 (29) subject to the authority's investment policy, to enter into
 25 swap agreements (as defined in IC 8-9.5-9-4) in accordance with
 26 IC 8-9.5-9-5 and IC 8-9.5-9-7;

27 (30) to promote and foster community revitalization through
 28 community services and real estate development;

29 (31) to coordinate and establish linkages between governmental
 30 and other social services programs to ensure the effective delivery
 31 of services to low income individuals and families, including
 32 individuals or families facing or experiencing homelessness;

33 (32) to cooperate with local housing officials and plan
 34 commissions in the development of projects that the officials or
 35 commissions have under consideration;

36 **(33) to prescribe, in accordance with IC 32-30-10.5-10(i), a list**
 37 **of documents that must be included as part of a debtor's loss**
 38 **mitigation package in a foreclosure action filed under**
 39 **IC 32-30-10.5 after June 30, 2011;**

40 ~~(33)~~ (34) to take actions necessary to implement its powers that
 41 the authority determines to be appropriate and necessary to ensure
 42 the availability of state or federal financial assistance; and

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1 ~~(34)~~ (35) to administer any program or money designated by the
2 state or available from the federal government or other sources
3 that is consistent with the authority's powers and duties.
4 The omission of a power from the list in this subsection does not imply
5 that the authority lacks that power. The authority may exercise any
6 power that is not listed in this subsection but is consistent with the
7 powers listed in this subsection to the extent that the power is not
8 expressly denied by the Constitution of the State of Indiana or by
9 another statute.

10 (b) The authority shall ensure that a mortgage loan acquired by the
11 authority under subsection (a)(3) or made by a mortgage lender with
12 funds provided by the authority under subsection (a)(4) is not
13 knowingly made to a person whose adjusted family income, as
14 determined by the authority, exceeds one hundred twenty-five percent
15 (125%) of the median income for the geographic area involved.
16 However, if the authority determines that additional encouragement is
17 needed for the development of the geographic area involved, a
18 mortgage loan acquired or made under subsection (a)(3) or (a)(4) may
19 be made to a person whose adjusted family income, as determined by
20 the authority, does not exceed one hundred forty percent (140%) of the
21 median income for the geographic area involved. The authority shall
22 establish procedures that the authority determines are appropriate to
23 structure and administer any program conducted under subsection
24 (a)(3) or (a)(4) for the purpose of acquiring or making mortgage loans
25 to persons of low or moderate income. In determining what constitutes
26 low income, moderate income, or median income for purposes of any
27 program conducted under subsection (a)(3) or (a)(4), the authority shall
28 consider:

29 (1) the appropriate geographic area in which to measure income
30 levels; and
31 (2) the appropriate method of calculating low income, moderate
32 income, or median income levels including:

33 (A) sources of;
34 (B) exclusions from; and
35 (C) adjustments to;
36 income.

37 (c) The authority, when directed by the governor, shall administer
38 programs and funds under 42 U.S.C. 1437 et seq.

39 (d) The authority shall identify, promote, assist, and fund:
40 (1) home ownership education programs; and
41 (2) mortgage foreclosure counseling and education programs
42 under IC 5-20-6;

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1 conducted throughout Indiana by nonprofit counseling agencies that the
2 authority has certified, or by any other public, private, or nonprofit
3 entity in partnership with a nonprofit agency that the authority has
4 certified, using funds appropriated under section 27 of this chapter. The
5 attorney general and the entities listed in IC 4-6-12-4(a)(1) through
6 IC 4-6-12-4(a)(10) shall cooperate with the authority in implementing
7 this subsection.

8 (e) The authority shall:

9 (1) oversee and encourage a regional homeless delivery system
10 that:

11 (A) considers the need for housing and support services;

12 (B) implements strategies to respond to gaps in the delivery
13 system; and

14 (C) ensures individuals and families are matched with optimal
15 housing solutions;

16 (2) facilitate the dissemination of information to assist individuals
17 and families accessing local resources, programs, and services
18 related to homelessness, housing, and community development;
19 and

20 (3) each year, estimate and reasonably determine the number of
21 the following:

22 (A) Individuals in Indiana who are homeless.

23 (B) Individuals in Indiana who are homeless and less than
24 eighteen (18) years of age.

25 (C) Individuals in Indiana who are homeless and not residents
26 of Indiana.

27 SECTION 3. IC 5-20-1-27, AS AMENDED BY P.L.105-2009,
28 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
29 UPON PASSAGE]: Sec. 27. (a) The home ownership education
30 account within the state general fund is established to support:

31 (1) home ownership education programs established under section
32 4(d) of this chapter; ~~and~~

33 (2) mortgage foreclosure counseling and education programs
34 established under IC 5-20-6-2; **and**

35 **(3) programs conducted by one (1) or a combination of the**
36 **following to facilitate settlement conferences in residential**
37 **foreclosure actions under IC 32-30-10.5:**

38 (A) **The judiciary.**

39 (B) **Pro bono legal services agencies.**

40 (C) **Mortgage foreclosure counselors (as defined in**
41 **IC 32-30-10.5-6).**

42 (D) **Other nonprofit entities certified by the authority**

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under section 4(d) of this chapter.

The account is administered by the authority.

(b) The home ownership education account consists of:

(1) court fees collected under IC 33-37-5-30 (before its expiration on January 1, 2013); ~~and~~

(2) civil penalties imposed and collected under:

(A) IC 6-1.1-12-43(g)(2)(B); or

(B) IC 27-7-3-15.5(e); **and**

(3) any civil penalties imposed and collected by a court for a violation of a court order in a foreclosure action under IC 32-30-10.5.

(c) The expenses of administering the home ownership education account shall be paid from money in the account.

(d) The treasurer of state shall invest the money in the home ownership education account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

SECTION 4. IC 5-20-6-3, AS AMENDED BY P.L.105-2009, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. In addition to using money provided for the program from:

(1) court fees under IC 33-37-5-30 (before its expiration on January 1, 2013);

(2) **civil penalties imposed and collected under:**

(A) **IC 6-1.1-12-43(g)(2)(B); or**

(B) **IC 27-7-3-15.5(e); and**

(3) any civil penalties imposed and collected by a court for a violation of a court order in a foreclosure action under IC 32-30-10.5;

the authority may solicit contributions and grants from the private sector, nonprofit entities, and the federal government to assist in carrying out the purposes of this chapter.

SECTION 5. IC 32-30-10.5-1.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.2. As used in this chapter, "authority" refers to the Indiana housing and community development authority created by IC 5-20-1-3.**

SECTION 6. IC 32-30-10.5-4.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.7. As used in this chapter, "loss mitigation package" means a set of documents, the components of which:**

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- 1 **(1) are specified by the authority under section 10(i) of this**
- 2 **chapter;**
- 3 **(2) provide information about a debtor's present and**
- 4 **projected future income, expenses, assets, and liabilities; and**
- 5 **(3) are necessary for a creditor to make underwriting**
- 6 **decisions or other determinations in connection with a**
- 7 **potential foreclosure prevention agreement with the debtor to**
- 8 **whom the documents apply.**

9 SECTION 7. IC 32-30-10.5-5, AS ADDED BY P.L.105-2009,
 10 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2011]: Sec. 5. As used in this chapter, "mortgage" means a
 12 loan in which a first mortgage; or a land contract that constitutes a first
 13 lien; is created or retained against land upon which there is a dwelling
 14 that is or will be used by the debtor primarily for personal, family, or
 15 household purposes **and that is secured by a mortgage that**
 16 **constitutes a first lien on a dwelling or on residential real estate**
 17 **upon which a dwelling is constructed or intended to be constructed.**
 18 **The term does not include a land contract or similar agreement in**
 19 **which the debtor does not possess a deed.**

20 SECTION 8. IC 32-30-10.5-8, AS AMENDED BY P.L.68-2010,
 21 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 UPON PASSAGE]: Sec. 8. (a) This section applies to a foreclosure
 23 action that is filed after June 30, 2009. Except as provided in
 24 subsection (e) and section 10(g) of this chapter, not later than thirty
 25 (30) days before a creditor files an action for foreclosure, the creditor
 26 shall send to the debtor by certified mail a presuit notice on a form
 27 prescribed by the ~~Indiana housing and community development~~
 28 ~~authority. created by IC 5-20-1-3.~~ The notice required by this
 29 subsection must do the following:

- 30 (1) Inform the debtor that:
- 31 (A) the debtor is in default;
- 32 (B) the debtor is encouraged to obtain assistance from a
- 33 mortgage foreclosure counselor; and
- 34 (C) if the creditor proceeds to file a foreclosure action and
- 35 obtains a foreclosure judgment, the debtor has a right to do the
- 36 following before a sheriff's sale is conducted:
 - 37 (i) Appeal a finding of abandonment by a court under
 - 38 IC 32-29-7-3(a)(2).
 - 39 (ii) Redeem the real estate from the judgment under
 - 40 IC 32-29-7-7.
 - 41 (iii) Retain possession of the property under
 - 42 IC 32-29-7-11(b), subject to the conditions set forth in

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- 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 Foreclosure Prevention Network."

- (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 **in accordance with** 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:

- (1) in the case of a foreclosure action filed after June 30, 2009, but before July 1, 2011, include with the complaint served on the debtor, on a form prescribed by the authority; and**
- (2) subject to subsection (f), in the case of a foreclosure action filed after June 30, 2011, include on the first page of the summons that is served on the debtor in conjunction with the complaint;**

a notice that informs the debtor of the debtor's right to participate in a settlement conference, **subject to section 9(b) of this chapter. 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 **under subdivision (1) or (2)** 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 complaint** is served **on the debtor**, 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;~~

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1 2009, If a creditor files an action to foreclose a mortgage, the
 2 creditor shall attach to include with the complaint filed with the court:
 3 (1) except as provided in subsection (e) and section 10(g) of
 4 this chapter, a copy of the notices sent to the debtor under
 5 subsections (a) and (c), if the foreclosure action is filed after
 6 June 30, 2009, but before July 1, 2011; or
 7 (2) the following, if the foreclosure action is filed after June
 8 30, 2011:
 9 (A) Except as provided in subsection (e) and section 10(g)
 10 of this chapter, a copy of the notice sent to the debtor
 11 under subsection (a).
 12 (B) The following most recent contact information for the
 13 debtor that the creditor has on file:
 14 (i) All telephone numbers and electronic mail addresses
 15 for the debtor.
 16 (ii) Any mailing address described in subsection (b)(2).
 17 The contact information provided under this clause is
 18 confidential under IC 5-14-3-4(a)(13).
 19 Subject to section 9(b) of this chapter, in the case of a foreclosure
 20 action filed after June 30, 2011, upon the filing of the complaint by
 21 the creditor, the court shall send to the debtor, by United States
 22 mail and to the address of the mortgaged property, or to an
 23 address for the debtor provided by the creditor under subdivision
 24 (2)(B)(ii), if applicable, a notice that informs the debtor of the
 25 debtor's right to participate in a settlement conference. The court's
 26 notice must inform the debtor that the debtor may schedule a
 27 settlement conference by notifying the court of the debtor's intent
 28 to participate in a settlement conference. The court's notice must
 29 specify a date by which the debtor must request a settlement
 30 conference, which date must be the date that is thirty (30) days
 31 after the date of the creditor's service of the complaint on the
 32 debtor under subsection (c), as determined by the court from the
 33 service list included with the complaint filed with the court. The
 34 court may not delegate the duty to send the notice the court is
 35 required to provide under this subsection to the creditor or to any
 36 other person.
 37 (e) A creditor is not required to send the notices described in this
 38 section if:
 39 (1) the mortgage is secured by a dwelling that is not the debtor's
 40 primary residence;
 41 (2) the mortgage has been the subject of a prior foreclosure
 42 prevention agreement under this chapter and the debtor has

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1 defaulted with respect to the terms of that foreclosure prevention
2 agreement; or

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

6 **(f) Not later than June 1, 2011, the authority, in consultation**
7 **with the division of state court administration, shall prescribe**
8 **language for the notice required under subsection (c)(2) to be**
9 **included on the first page of the summons that is served on the**
10 **debtor in a foreclosure action filed after June 30, 2011. The**
11 **language must convey the same information as the form prescribed**
12 **by the authority under subsection (c)(1) for foreclosure actions**
13 **filed after June 30, 2009, but before July 1, 2011. The authority**
14 **shall make the language prescribed under this subsection available**
15 **on the authority's Internet web site. A creditor complies with**
16 **subsection (c)(2) in a foreclosure action filed after June 30, 2011,**
17 **if the creditor includes on the first page of the summons served on**
18 **the debtor:**

19 **(1) the language that is prescribed by the authority under this**
20 **subsection and made available on the authority's Internet web**
21 **site; or**

22 **(2) language that conveys the same information as the**
23 **language that is prescribed by the authority under this**
24 **subsection and made available on the authority's Internet web**
25 **site.**

26 SECTION 9. IC 32-30-10.5-8.5 IS ADDED TO THE INDIANA
27 CODE AS A NEW SECTION TO READ AS FOLLOWS
28 [EFFECTIVE UPON PASSAGE]: **Sec. 8.5. (a) This section applies to**
29 **the following:**

30 **(1) A mortgage foreclosure action with respect to which:**

31 **(A) the creditor has filed the complaint in the proceeding**
32 **before July 1, 2011;**

33 **(B) the debtor has contacted the court under section 8(c) of**
34 **this chapter or under section 11(b) of this chapter to**
35 **schedule a settlement conference under this chapter; and**

36 **(C) the court having jurisdiction over the action has not:**

37 **(i) issued a stay in the foreclosure proceedings pending**
38 **the conclusion of the settlement conference under this**
39 **chapter;**

40 **(ii) issued a default judgment against the debtor in the**
41 **action; or**

42 **(iii) rendered a judgment of foreclosure in the action.**

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- (2) A mortgage foreclosure action with respect to which:**
 - (A) the creditor has filed the complaint in the proceeding after June 30, 2011; and**
 - (B) the debtor has contacted the court under section 8(c) of this chapter to schedule a settlement conference under this chapter.**

(b) In a mortgage foreclosure action to which this section applies, the court, notwithstanding Indiana Trial Rule 56, shall stay the granting of any dispositive motion until one (1) of the following occurs, subject to the court's right under section 10(b) of this chapter to order the creditor and the debtor to reconvene a settlement conference at any time before judgment is entered:

- (1) The court receives notice under section 10(e) of this chapter that after the conclusion of a settlement conference held under this chapter:**
 - (A) the debtor and the creditor have agreed to enter into a foreclosure prevention agreement; and**
 - (B) the creditor has elected under section 10(e) of this chapter to dismiss the foreclosure action for as long as the debtor complies with the terms of the foreclosure prevention agreement.**
- (2) The court receives notice under section 10(f) of this chapter that after the conclusion of a settlement conference held under this chapter, the creditor and the debtor are unable to agree on the terms of a foreclosure prevention agreement.**

(c) If the debtor requests a settlement conference under this chapter, the court shall treat the request as the entry of an appearance under Indiana Trial Rule 3.1(B).

SECTION 10. IC 32-30-10.5-8.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.6. (a) This section applies to a mortgage foreclosure action that is filed after June 30, 2011.

(b) During the pendency of an action to which this section applies, regardless of any stay that is issued by the court under section 8.5 of this chapter, if the debtor continues to occupy the dwelling that is the subject of the mortgage upon which the action is based, the court may issue a provisional order that requires the debtor to continue to make monthly payments with respect to the mortgage on which the action is based. The amount of the monthly payment:

- (1) shall be determined by the court, which may base its**

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1 determination on the debtor's ability to pay; and
 2 (2) may not exceed the debtor's monthly obligation under the
 3 mortgage at the time the action is filed.
 4 (c) Payments made by a debtor under an order issued by the
 5 court under subsection (b) shall be made to:
 6 (1) the clerk of the court, who shall hold the payments in trust
 7 for the parties; or
 8 (2) an attorney trust account;
 9 as directed by the court. The funds held by the clerk or in an
 10 attorney trust account under this subsection may not be disbursed
 11 unless the court issues an order for their disbursement.
 12 (d) If the debtor and the creditor agree to enter into a
 13 foreclosure prevention agreement under section 10(e) of this
 14 chapter at any time after the debtor has made payments under an
 15 order issued by the court under subsection (b), the debtor is
 16 entitled to a credit of any amounts paid under the order.
 17 (e) In an action to which this section applies, if:
 18 (1) a judgment of foreclosure is issued by the court after the
 19 conditions set forth in section 9 of this chapter are met;
 20 (2) the debtor and the creditor agree to a deed in lieu of
 21 foreclosure; or
 22 (3) the debtor otherwise forfeits the dwelling that is the
 23 subject of the mortgage upon which the action is based;
 24 the debtor is not entitled to a refund of any payments made under
 25 an order issued by the court under subsection (b), and any amounts
 26 held in trust by the clerk of the court or in an attorney trust fund
 27 shall be disbursed to the creditor and credited against the amount
 28 of the judgment entered against the debtor or the amount
 29 otherwise owed by the debtor.
 30 SECTION 11. IC 32-30-10.5-9, AS ADDED BY P.L.105-2009,
 31 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 UPON PASSAGE]: Sec. 9. (a) Except as provided in subsection (b)
 33 **and subject to section 8.5 of this chapter**, after June 30, 2009, a court
 34 may not issue a judgment of foreclosure under IC 32-30-10 on a
 35 mortgage subject to this chapter unless all of the following apply:
 36 (1) The creditor has given the notice required under section 8(c)
 37 of this chapter.
 38 (2) ~~The debtor either:~~ **One (1) of the following applies:**
 39 (A) **The debtor** does not contact the court within the thirty
 40 (30) day period described in section 8(c) of this chapter to
 41 schedule a settlement conference under ~~section 8(c)~~ of this
 42 chapter. ~~or~~

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1 (B) **The debtor** contacts the court within the thirty (30) day
2 period described in section 8(c) of this chapter to schedule a
3 **settlement** conference under ~~section 8(c)~~ of this chapter and,
4 upon conclusion of the **settlement** conference, the parties are
5 unable to reach agreement on the terms of a foreclosure
6 prevention agreement.

7 (C) **In a foreclosure action filed after June 30, 2011, the**
8 **debtor:**

9 (i) **contacts the court within the thirty (30) day period**
10 **described in section 8(c) of this chapter to schedule a**
11 **settlement conference under this chapter; and**

12 (ii) **does not provide to the creditor and the court at least**
13 **one (1) of the documents required as part of the debtor's**
14 **loss mitigation package, as specified by the authority in**
15 **the listing developed under section 10(i) of this chapter**
16 **and included with the court's notice under section**
17 **10(a)(8) of this chapter, within the time specified in the**
18 **court's notice under section 10(a)(3)(A) of this chapter.**

19 (3) **Except as provided in sections 8(e) and 10(g) of this**
20 **chapter,** at least sixty (60) days have elapsed since the date the
21 notice required by section 8(a) of this chapter was sent, unless the
22 mortgaged property is abandoned.

23 (b) If the court finds that a settlement conference would be of
24 limited value based on the result of a prior loss mitigation effort
25 between the creditor and the debtor:

- 26 (1) a settlement conference is not required under this chapter; and
- 27 (2) the conditions set forth in subsection (a) do not apply, and the
28 foreclosure action may proceed as otherwise allowed by law.

29 SECTION 12. IC 32-30-10.5-10, AS ADDED BY P.L.105-2009,
30 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 UPON PASSAGE]: Sec. 10. (a) Unless a settlement conference is not
32 required under this chapter, the court shall issue a notice of a
33 settlement conference if the debtor contacts the court to schedule a
34 settlement conference as described in section 8(c) of this chapter. The
35 court's notice of a settlement conference must do the following:

36 (1) Order the creditor and the debtor to conduct a settlement
37 conference on or before a date and time specified in the notice,
38 which date:

39 (A) must not be earlier than twenty-five (25) days after the
40 date of the notice **under this section** or later than sixty (60)
41 days after the date of the notice **under this section, in the case**
42 **of a foreclosure action filed after June 30, 2009, but before**

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**July 1, 2011; and
(B) must not be earlier than forty (40) days after the date
of the notice under this section or later than sixty (60) days
after the date of the notice under this section, in the case of
a foreclosure action filed after June 30, 2011;**

for the purpose of attempting to negotiate a foreclosure prevention agreement.

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

(3) Require the debtor to bring to the settlement conference the following documents needed to engage in good faith negotiations with the creditor: (A) Documentation of the debtor's present and projected 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.
do the following:

(A) In the case of a foreclosure action filed after June 30, 2011, provide, not later than a date specified in the order, which date must be the date that is thirty (30) days before the date of the settlement conference specified by the court under subdivision (1), a copy of the debtor's loss mitigation package to the following:

- (i) The creditor's attorney, as identified by the creditor in the complaint, at the address specified in the complaint.**
- (ii) The court, at an address specified by the court.**

In setting forth the requirement described in this clause, the court shall reference the listing that must be included as an attachment to the notice under subdivision (8), and shall direct the debtor to consult the attachment in compiling the debtor's loss mitigation package.

(B) Bring the following to the settlement conference:
(i) In the case of a foreclosure action filed after June 30, 2009, but before July 1, 2011, documents needed to engage in good faith negotiations with the creditor, including documentation of the debtor's present and

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projected future income, expenses, assets, and liabilities (including documentation of the debtor's employment history), and 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 item with enough specificity to allow the debtor to obtain the documents before the scheduled settlement conference.

(ii) In the case of a foreclosure action filed after June 30, 2011, the debtor's loss mitigation package.

Any document submitted to the court under this subdivision as part of the debtor's loss mitigation package is confidential under IC 5-14-3-4(a)(13).

(4) Require the creditor to do the following:

(A) In the case of a foreclosure action filed after June 30, 2011, send to the debtor, by certified mail and not later than a date specified in the order, which date must be the date that is thirty (30) days before the date of the settlement conference specified by the court under subdivision (1), the following transaction history for the mortgage:

- (i) A payment record substantiating the default, such as a payment history.
- (ii) An itemization of all amounts claimed by the creditor as being owed on the mortgage, such as an account payoff statement.

If the creditor provides evidence that the transaction history required by this clause was sent by certified mail, return receipt requested, it is not necessary that the debtor accept receipt of the transaction history for an action to proceed as allowed under this chapter.

(B) Bring the following to the settlement conference: the following transaction history for the mortgage:

- ~~(A)~~ (i) A copy of the original note and mortgage.
- ~~(B)~~ (ii) A payment record substantiating the default, **such as a payment history.**
- ~~(C)~~ (iii) An itemization of all amounts claimed by the creditor as being owed on the mortgage, **such as an account payoff statement.**
- ~~(D)~~ (iv) Any other documentation that the court determines is needed.

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- 1 (5) Inform the parties that:
- 2 (A) each party has the right to be represented by an attorney or
- 3 assisted by a mortgage foreclosure counselor at the settlement
- 4 conference; and
- 5 (B) **subject to subsection (b)**, an attorney or a mortgage
- 6 foreclosure counselor may participate in the settlement
- 7 conference in person or by telephone.
- 8 (6) Inform the parties that the settlement conference will be
- 9 conducted at the county courthouse, or at another place
- 10 designated by the court, on the date and time specified in the
- 11 notice under subdivision (1) unless the parties submit to the court
- 12 a stipulation to:
- 13 (A) modify the date, time, and place of the settlement
- 14 conference; or
- 15 (B) hold the settlement conference by telephone at a date and
- 16 time agreed to by the parties.
- 17 **(7) In the case of a foreclosure action filed after June 30, 2011,**
- 18 **inform the parties of the following:**
- 19 **(A) That if the parties stipulate under subdivision (6) to**
- 20 **modify the date of the settlement conference:**
- 21 **(i) the debtor must provide the debtor's loss mitigation**
- 22 **package to the creditor and to the court, as described in**
- 23 **subdivision (3), at least thirty (30) days before the**
- 24 **settlement conference date, as modified by the parties;**
- 25 **and**
- 26 **(ii) the creditor must send to the debtor, by certified**
- 27 **mail, the transaction history described in subdivision**
- 28 **(4)(A) at least thirty (30) days before the settlement**
- 29 **conference date, as modified by the parties.**
- 30 **(B) That if the parties stipulate under ~~clause (B)~~ subdivision**
- 31 **(6)(B) to conduct the settlement conference by telephone, the**
- 32 **parties shall ensure the availability of any technology needed**
- 33 **to allow simultaneous participation in the settlement**
- 34 **conference by all participants.**
- 35 **(8) In the case of a foreclosure action filed after June 30, 2011,**
- 36 **include as an attachment the loss mitigation package listing**
- 37 **prescribed by the authority under subsection (i).**
- 38 (b) An attorney for the creditor shall attend the settlement
- 39 conference, and an authorized representative of the creditor shall be
- 40 available by telephone during the settlement conference. In addition,
- 41 the court may require any person that is a party to the foreclosure
- 42 action to appear at or participate in a settlement conference held under

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1 this ~~section~~, **chapter**, and, for cause shown, the court may order the
 2 creditor and the debtor to reconvene a settlement conference at any
 3 time before judgment is entered. **Any:**

4 **(1) costs to a creditor associated with a settlement conference**
 5 **under this chapter; or**

6 **(2) civil penalty imposed on a creditor by the court in**
 7 **connection with a violation of a court order issued in the case;**
 8 **may not be charged to or collected from the debtor, either directly**
 9 **or indirectly.**

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

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

14 (1) at a settlement conference scheduled under ~~subsection (a)~~;
 15 **this section; or**

16 (2) in any negotiations with the debtor designed to reach
 17 agreement on the terms of a foreclosure prevention agreement;
 18 has authority to represent the creditor in negotiating a foreclosure
 19 prevention agreement with the debtor.

20 (e) If, as a result of a settlement conference held under this ~~section~~;
 21 **chapter**, the debtor and the creditor agree to enter into a foreclosure
 22 prevention agreement, the agreement shall be reduced to writing and
 23 signed by both parties, and each party shall retain a copy of the signed
 24 agreement. Not later than seven (7) business days after the signing of
 25 the foreclosure prevention agreement, the creditor shall file with the
 26 court a copy of the signed agreement. At the election of the creditor,
 27 the foreclosure shall be dismissed or stayed for as long as the debtor
 28 complies with the terms of the foreclosure prevention agreement.

29 (f) If, as a result of a settlement conference held under this ~~section~~;
 30 **chapter**, the debtor and the creditor are unable to agree on the terms of
 31 a foreclosure prevention agreement:

32 (1) the creditor shall, not later than seven (7) business days after
 33 the conclusion of the settlement conference, file with the court a
 34 notice indicating that the settlement conference held under this
 35 ~~section~~ **chapter** has concluded and a foreclosure prevention
 36 agreement was not reached; and

37 (2) the foreclosure action filed by the creditor may proceed as
 38 otherwise allowed by law, **subject to the court's right under**
 39 **subsection (b) to order the creditor and the debtor to**
 40 **reconvene a settlement conference at any time before**
 41 **judgment is entered.**

42 (g) If:

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1 (1) a foreclosure is dismissed by the creditor under subsection (e)
2 after a foreclosure prevention agreement is reached; and

3 (2) a default in the terms of the foreclosure prevention agreement
4 later occurs;

5 the creditor or its assigns may bring a foreclosure action ~~under~~
6 ~~FC 32-30-10-3~~ **with respect to the mortgage that is the subject of the**
7 **foreclosure prevention agreement** without sending the notices
8 described in section 8 of this chapter.

9 (h) Participation in a settlement conference under this ~~section~~
10 **chapter** satisfies any mediation or alternative dispute resolution
11 requirement established by court rule.

12 (i) **Not later than June 1, 2011, the authority shall prescribe a**
13 **list of documents that must be included as part of a debtor's loss**
14 **mitigation package in a foreclosure action filed after June 30, 2011.**
15 **In prescribing the list of documents required by this subsection, the**
16 **authority:**

17 (1) shall require those documents that:

18 (A) provide information about a debtor's present and
19 projected future income, expenses, assets, and liabilities;
20 and

21 (B) are necessary for a creditor to make underwriting
22 decisions or other determinations in connection with a
23 potential foreclosure prevention agreement with the debtor
24 to whom the documents apply; and

25 (2) may amend the list:

26 (A) in response to changes in any federal loan modification
27 programs; or

28 (B) as otherwise determined to be necessary by the
29 authority.

30 **The authority shall make the list prescribed under this subsection**
31 **available on the authority's Internet web site. The division of state**
32 **court administration shall make the list prescribed under this**
33 **subsection available on the Internet web site maintained by the**
34 **state's judicial branch. If the authority determines that an**
35 **amendment to the list is necessary under subdivision (2), the**
36 **authority shall notify the division of state court administration of**
37 **the amendment as soon as practicable before the amendment takes**
38 **effect and shall update the list on the authority's Internet web site**
39 **not later than the effective date of the amendment. Upon receiving**
40 **notice of an amendment to the list from the authority, the division**
41 **of state court administration shall update the list on the Internet**
42 **web site maintained by the state's judicial branch not later than the**

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1 **effective date of the amendment.**

2 SECTION 13. IC 32-30-10.5-11, AS ADDED BY P.L.105-2009,
3 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]: Sec. 11. (a) This section applies to a mortgage
5 foreclosure action with respect to which the creditor has filed the
6 complaint in the proceeding before July 1, 2009, and the court having
7 jurisdiction over the proceeding has not rendered a judgment of
8 foreclosure before July 1, 2009.

9 (b) In a mortgage foreclosure action to which this section applies,
10 the court having jurisdiction of the action shall serve notice of the
11 availability of a settlement conference under ~~section 8(c)~~ of this
12 chapter. **The notice required by this section must inform the debtor**
13 **that the debtor:**

14 **(1) has the right to participate in a settlement conference,**
15 **subject to section 9(b) of this chapter; and**

16 **(2) may schedule a settlement conference by notifying the**
17 **court, not later than thirty (30) days after the notice required**
18 **by this section is served, of the debtor's intent to participate**
19 **in a settlement conference.**

20 SECTION 14. IC 33-37-7-2, AS AMENDED BY P.L.182-2009(ss),
21 SECTION 395, IS AMENDED TO READ AS FOLLOWS
22 [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The clerk of a circuit
23 court shall distribute semiannually to the auditor of state as the state
24 share for deposit in the homeowner protection unit account established
25 by IC 4-6-12-9 one hundred percent (100%) of the automated record
26 keeping fees collected under IC 33-37-5-21 with respect to actions
27 resulting in the accused person entering into a pretrial diversion
28 program agreement under IC 33-39-1-8 or a deferral program
29 agreement under IC 34-28-5-1 and for deposit in the state general fund
30 seventy percent (70%) of the amount of fees collected under the
31 following:

- 32 (1) IC 33-37-4-1(a) (criminal costs fees).
33 (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
34 (3) IC 33-37-4-3(a) (juvenile costs fees).
35 (4) IC 33-37-4-4(a) (civil costs fees).
36 (5) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
37 (6) IC 33-37-4-7(a) (probate costs fees).
38 (7) IC 33-37-5-17 (deferred prosecution fees).

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

- 42 (1) Twenty-five percent (25%) of the drug abuse, prosecution,

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- 1 interdiction, and correction fees collected under
 2 IC 33-37-4-1(b)(5).
- 3 (2) Twenty-five percent (25%) of the alcohol and drug
 4 countermeasures fees collected under IC 33-37-4-1(b)(6),
 5 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- 6 (3) Fifty percent (50%) of the child abuse prevention fees
 7 collected under IC 33-37-4-1(b)(7).
- 8 (4) One hundred percent (100%) of the domestic violence
 9 prevention and treatment fees collected under IC 33-37-4-1(b)(8).
- 10 (5) One hundred percent (100%) of the highway work zone fees
 11 collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).
- 12 (6) One hundred percent (100%) of the safe schools fee collected
 13 under IC 33-37-5-18.
- 14 (7) One hundred percent (100%) of the automated record keeping
 15 fee (IC 33-37-5-21) not distributed under subsection (a).
- 16 (c) The clerk of a circuit court shall distribute monthly to the county
 17 auditor the following:
- 18 (1) Seventy-five percent (75%) of the drug abuse, prosecution,
 19 interdiction, and correction fees collected under
 20 IC 33-37-4-1(b)(5).
- 21 (2) Seventy-five percent (75%) of the alcohol and drug
 22 countermeasures fees collected under IC 33-37-4-1(b)(6),
 23 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- 24 The county auditor shall deposit fees distributed by a clerk under this
 25 subsection into the county drug free community fund established under
 26 IC 5-2-11.
- 27 (d) The clerk of a circuit court shall distribute monthly to the county
 28 auditor fifty percent (50%) of the child abuse prevention fees collected
 29 under IC 33-37-4-1(b)(7). The county auditor shall deposit fees
 30 distributed by a clerk under this subsection into the county child
 31 advocacy fund established under IC 12-17-17.
- 32 (e) The clerk of a circuit court shall distribute monthly to the county
 33 auditor one hundred percent (100%) of the late payment fees collected
 34 under IC 33-37-5-22. The county auditor shall deposit fees distributed
 35 by a clerk under this subsection as follows:
- 36 (1) If directed to do so by an ordinance adopted by the county
 37 fiscal body, the county auditor shall deposit forty percent (40%)
 38 of the fees in the clerk's record perpetuation fund established
 39 under IC 33-37-5-2 and sixty percent (60%) of the fees in the
 40 county general fund.
- 41 (2) If the county fiscal body has not adopted an ordinance
 42 described in subdivision (1), the county auditor shall deposit all

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

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

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

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

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

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

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

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

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

35 (1) The public defense administration fee collected under
36 IC 33-37-5-21.2.

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

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

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

41 (j) The clerk of a circuit court shall semiannually distribute to the
42 auditor of state for deposit in the judicial branch insurance adjustment

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1 account established by IC 33-38-5-8.2 one hundred percent (100%) of
2 the judicial insurance adjustment fee collected under IC 33-37-5-25.

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

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

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

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

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

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

22 (m) The clerk of the circuit court shall distribute semiannually to the
23 auditor of state for deposit in the home ownership education account
24 established by IC 5-20-1-27 one hundred percent (100%) of the
25 following:

26 (1) **The mortgage foreclosure counseling and education fees**
27 **collected under IC 33-37-5-30 (before its expiration on January**
28 **1, 2013).**

29 (2) **Any civil penalties imposed and collected by a court for a**
30 **violation of a court order in a foreclosure action under**
31 **IC 32-30-10.5.**

32 SECTION 15. IC 34-30-26 IS ADDED TO THE INDIANA CODE
33 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2011]:

35 **Chapter 26. Real Property Suspected to Be Vacant or**
36 **Abandoned**

37 **Sec. 1. (a) As used in this chapter, "creditor" means a person:**

38 (1) **that regularly engages in Indiana in the extension of**
39 **mortgages that are subject to a credit service charge or loan**
40 **finance charge, as applicable, or are payable by written**
41 **agreement in more than four (4) installments (not including**
42 **a down payment); and**

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1 (2) to whom the obligation arising from a mortgage is initially
2 payable, either on the face of the note or contract, or by
3 agreement if there is not a note or contract.
4 (b) The term includes the following:
5 (1) A mortgage servicer.
6 (2) An agent of a creditor.
7 Sec. 2. As used in this chapter, "enforcement authority" has the
8 meaning set forth in IC 36-7-9-2.
9 Sec. 3. As used in this chapter, "owner", with respect to real
10 property, has the meaning set forth in IC 36-7-36-4.
11 Sec. 4. For purposes of this chapter, real property is "vacant or
12 abandoned" if it qualifies, or would potentially qualify, as either:
13 (1) a vacant structure under IC 36-7-36-6; or
14 (2) an abandoned structure under IC 36-7-36-1.
15 Sec. 5. (a) Except as provided in subsection (d), a person who is
16 not the owner of real property, and who suspects that the property
17 may be vacant or abandoned, may enter upon the premises of the
18 real property to do the following:
19 (1) Without entering any structure located on the real
20 property, visually inspect the real property to determine
21 whether the real property may be vacant or abandoned.
22 (2) Perform any of the following actions:
23 (A) Secure the real property.
24 (B) Remove trash or debris from the grounds of the real
25 property.
26 (C) Landscape, maintain, or mow the grounds of the real
27 property.
28 (b) A person who:
29 (1) enters upon the premises of real property to visually
30 inspect the property, as permitted under subsection (a)(1);
31 and
32 (2) after inspecting the real property, determines that the real
33 property may be vacant or abandoned;
34 may notify the appropriate enforcement authority of the suspected
35 vacant or abandoned status of the property and request that the
36 enforcement authority inspect the property to determine whether
37 the property is in fact vacant or abandoned.
38 (c) A person that enters upon the premises of real property as
39 permitted under this section:
40 (1) is immune from civil liability for an act or omission related
41 to the entry or to any action described in subsection (a)(2),
42 unless the act or omission constitutes gross negligence or

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willful, wanton, or intentional misconduct; and
 (2) shall be held harmless from and against all claims of civil or criminal trespass.

(d) In the case of real property that is subject to a mortgage, the creditor in the mortgage transaction may not enter upon the premises of the real property under subsection (a) if entry is barred by an automatic stay issued by a bankruptcy court.

Sec. 6. For purposes of this chapter, a tax sale certificate holder or an applicant for a tax deed who performs an act described in section 5 of this chapter with respect to the real property for which the person holds the tax sale certificate or has applied for the tax deed, is not considered to be the owner of that real property if:

(1) the only connection the person has to the property is the tax sale certificate or the fact that the person has applied for a tax deed; and
 (2) the only consideration the person receives for the act is the possibility of receiving a tax deed to the property in the future.

SECTION 16. [EFFECTIVE UPON PASSAGE] (a) As used in this chapter, "committee" refers to:

(1) the commission on courts established by IC 33-23-10-1; or
 (2) another study committee to which the legislative council assigns the topics of study described in subsection (b).

(b) The general assembly urges the legislative council to assign the following topics of study to the commission on courts or to another appropriate study committee:

(1) Short sale procedures in real estate transactions in Indiana.
 (2) The experiences of other states that have:
 (A) enacted the Uniform Nonjudicial Foreclosure Act adopted by the National Conference of Commissioners on Uniform State Laws; or
 (B) otherwise adopted a nonjudicial mortgage foreclosure process.
 (3) The feasibility of Indiana adopting a nonjudicial mortgage foreclosure process, including any efforts needed to transition from the existing judicial foreclosure process to a nonjudicial foreclosure process.
 (4) Any other topic relating to:
 (A) short sale procedures; or
 (B) nonjudicial foreclosures;
 assigned by the legislative council, or as directed by the

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committee chair.

(c) If the topics described in subsection (b)(2) through (b)(4) are assigned to a committee under subsection (b), the committee may recommend for introduction in the general assembly proposed legislation to establish a nonjudicial foreclosure process in Indiana.

(d) If the topics described in subsection (b) are assigned to a committee under subsection (b), the committee may consult with or solicit testimony from the following in conducting the study described in subsection (b):

- (1) The office of the attorney general, the department of financial institutions, the Indiana housing and community development authority, the chief justice of the Indiana supreme court, the division of state court administration, any judicial officer or other court personnel of a circuit or superior court, or any officer or employee of the executive or judicial branch.
- (2) Creditors in mortgage transactions and attorneys who represent creditors in mortgage foreclosure actions.
- (3) Debtors in mortgage transactions and attorneys who represent debtors in mortgage foreclosure actions.
- (4) Real estate brokers and salespersons licensed under IC 25-34.1.
- (5) Consumer advocates or consumer advocacy organizations.
- (6) Mortgage foreclosure counselors.
- (7) Academics.
- (8) Officials from other states.
- (9) Any other person whom the committee chair determines to have appropriate expertise.

(e) If the topics described in subsection (b) are assigned under subsection (b) to a committee other than the commission on courts, the committee shall, not later than November 1, 2011, issue a final report to the legislative council concerning the findings and recommendations of the committee on the topics described in subsection (b). If the topics described in subsection (b) are assigned under subsection (b) to the commission on the courts, the commission shall include its findings and recommendations concerning the topics described in subsection (b) in its report to the general assembly under IC 33-23-10-7(5) that is due not later than November 1, 2011.

(f) This SECTION expires December 31, 2011.

SECTION 17. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 582, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

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

"SECTION 1. IC 5-14-3-4, AS AMENDED BY P.L.94-2010, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

- (1) Those declared confidential by state statute.
- (2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.
- (3) Those required to be kept confidential by federal law.
- (4) Records containing trade secrets.
- (5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.
- (6) Information concerning research, including actual research documents, conducted under the auspices of a state educational institution, including information:
 - (A) concerning any negotiations made with respect to the research; and
 - (B) received from another party involved in the research.
- (7) Grade transcripts and license examination scores obtained as part of a licensure process.
- (8) Those declared confidential by or under rules adopted by the supreme court of Indiana.
- (9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39 or as provided under IC 16-41-8.
- (10) Application information declared confidential by the board of the Indiana economic development corporation under IC 5-28-16.
- (11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.
- (12) A Social Security number contained in the records of a public agency.

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(13) Contact information relating to a defendant in a mortgage foreclosure action under IC 32-30-10.5-8.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the Indiana economic development corporation, the ports of Indiana, the Indiana state department of agriculture, the Indiana finance authority, an economic development commission, a local economic development organization (as defined in IC 5-28-11-2(3)), or a governing body of a political subdivision with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the ports of Indiana, the Indiana finance authority, an economic development commission, or a governing body of a political subdivision to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private

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contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of the donor's identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's

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family requests nondisclosure.

(16) Library or archival records:

- (A) which can be used to identify any library patron; or
- (B) deposited with or acquired by a library upon a condition that the records be disclosed only:
 - (i) to qualified researchers;
 - (ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or
 - (iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing medical advisory board regarding the ability of a driver to operate a motor vehicle safely. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes:

- (A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2;
- (B) vulnerability assessments;
- (C) risk planning documents;
- (D) needs assessments;
- (E) threat assessments;
- (F) intelligence assessments;
- (G) domestic preparedness strategies;
- (H) the location of community drinking water wells and surface water intakes;
- (I) the emergency contact information of emergency responders and volunteers;

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(J) infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems; and

(K) detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency. A record described in this clause may not be released for public inspection by any public agency without the prior approval of the public agency that owns, occupies, leases, or maintains the airport. The public agency that owns, occupies, leases, or maintains the airport:

(i) is responsible for determining whether the public disclosure of a record or a part of a record has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack; and

(ii) must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(b)(19)(J) without approval of (insert name of submitting public agency)".

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

(20) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.

(B) Address.

(C) Social Security number.

(21) The following personal information about a complainant contained in records of a law enforcement agency:

(A) Telephone number.

(B) The complainant's address. However, if the complainant's address is the location of the suspected crime, infraction, accident, or complaint reported, the address shall be made available for public inspection and copying.

(22) Notwithstanding subdivision (8)(A), the name,

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compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first employment of a law enforcement officer who is operating in an undercover capacity.

(23) Records requested by an offender that:

(A) contain personal information relating to:

- (i) a correctional officer (as defined in IC 5-10-10-1.5);
- (ii) the victim of a crime; or
- (iii) a family member of a correctional officer or the victim of a crime; or

(B) concern or could affect the security of a jail or correctional facility.

(c) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(d) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption or patient medical records, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(e) Only the content of a public record may form the basis for the adoption by any public agency of a rule or procedure creating an exception from disclosure under this section.

(f) Except as provided by law, a public agency may not adopt a rule or procedure that creates an exception from disclosure under this section based upon whether a public record is stored or accessed using paper, electronic media, magnetic media, optical media, or other information storage technology.

(g) Except as provided by law, a public agency may not adopt a rule or procedure nor impose any costs or liabilities that impede or restrict the reproduction or dissemination of any public record.

(h) Notwithstanding subsection (d) and section 7 of this chapter:

- (1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or
- (2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

SECTION 2. IC 5-20-1-4, AS AMENDED BY P.L.105-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The authority has all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the power:

- (1) to make or participate in the making of construction loans for multiple family residential housing under terms that are approved

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by the authority;

(2) to make or participate in the making of mortgage loans for multiple family residential housing under terms that are approved by the authority;

(3) to purchase or participate in the purchase from mortgage lenders of mortgage loans made to persons of low and moderate income for residential housing;

(4) to make loans to mortgage lenders for the purpose of furnishing funds to such mortgage lenders to be used for making mortgage loans for persons and families of low and moderate income. However, the obligation to repay loans to mortgage lenders shall be general obligations of the respective mortgage lenders and shall bear such date or dates, shall mature at such time or times, shall be evidenced by such note, bond, or other certificate of indebtedness, shall be subject to prepayment, and shall contain such other provisions consistent with the purposes of this chapter as the authority shall by rule or resolution determine;

(5) to collect and pay reasonable fees and charges in connection with making, purchasing, and servicing of its loans, notes, bonds, commitments, and other evidences of indebtedness;

(6) to acquire real property, or any interest in real property, by conveyance, including purchase in lieu of foreclosure, or foreclosure, to own, manage, operate, hold, clear, improve, and rehabilitate such real property and sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber such real property where such use of real property is necessary or appropriate to the purposes of the authority;

(7) to sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction loan, a land development loan, a mortgage loan, or a loan of any type permitted by this chapter;

(8) to procure insurance against any loss in connection with its operations in such amounts and from such insurers as it may deem necessary or desirable;

(9) to consent, subject to the provisions of any contract with noteholders or bondholders which may then exist, whenever it deems it necessary or desirable in the fulfillment of its purposes to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any mortgage loan, mortgage loan commitment, construction loan, loan to lender, or contract or agreement of any kind to which the

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authority is a party;

(10) to enter into agreements or other transactions with any federal, state, or local governmental agency for the purpose of providing adequate living quarters for such persons and families in cities and counties where a need has been found for such housing;

(11) to include in any borrowing such amounts as may be deemed necessary by the authority to pay financing charges, interest on the obligations (for a period not exceeding the period of construction and a reasonable time thereafter or if the housing is completed, two (2) years from the date of issue of the obligations), consultant, advisory, and legal fees and such other expenses as are necessary or incident to such borrowing;

(12) to make and publish rules respecting its lending programs and such other rules as are necessary to effectuate the purposes of this chapter;

(13) to provide technical and advisory services to sponsors, builders, and developers of residential housing and to residents and potential residents, including housing selection and purchase procedures, family budgeting, property use and maintenance, household management, and utilization of community resources;

(14) to promote research and development in scientific methods of constructing low cost residential housing of high durability;

(15) to encourage community organizations to participate in residential housing development;

(16) to make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, limited liability company, or other organization or entity necessary or convenient to accomplish the purposes of this chapter;

(17) to accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance and any other aid from any source whatsoever and to agree to, and to comply with, conditions attached thereto;

(18) to sue and be sued in its own name, plead and be impleaded;

(19) to maintain an office in the city of Indianapolis and at such other place or places as it may determine;

(20) to adopt an official seal and alter the same at pleasure;

(21) to adopt and from time to time amend and repeal bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules and policies in connection with the performance of its functions and duties;

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(22) to employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor;

(23) notwithstanding IC 5-13, but subject to the requirements of any trust agreement entered into by the authority, to invest:

(A) the authority's money, funds, and accounts;

(B) any money, funds, and accounts in the authority's custody; and

(C) proceeds of bonds or notes;

in the manner provided by an investment policy established by resolution of the authority;

(24) to make or participate in the making of construction loans, mortgage loans, or both, to individuals, partnerships, limited liability companies, corporations, and organizations for the construction of residential facilities for individuals with a developmental disability or for individuals with a mental illness or for the acquisition or renovation, or both, of a facility to make it suitable for use as a new residential facility for individuals with a developmental disability or for individuals with a mental illness;

(25) to make or participate in the making of construction and mortgage loans to individuals, partnerships, corporations, limited liability companies, and organizations for the construction, rehabilitation, or acquisition of residential facilities for children;

(26) to purchase or participate in the purchase of mortgage loans from:

(A) public utilities (as defined in IC 8-1-2-1); or

(B) municipally owned gas utility systems organized under IC 8-1.5;

if those mortgage loans were made for the purpose of insulating and otherwise weatherizing single family residences in order to conserve energy used to heat and cool those residences;

(27) to provide financial assistance to mutual housing associations (IC 5-20-3) in the form of grants, loans, or a combination of grants and loans for the development of housing for low and moderate income families;

(28) to service mortgage loans made or acquired by the authority and to impose and collect reasonable fees and charges in connection with such servicing;

(29) subject to the authority's investment policy, to enter into swap agreements (as defined in IC 8-9.5-9-4) in accordance with

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IC 8-9.5-9-5 and IC 8-9.5-9-7;

(30) to promote and foster community revitalization through community services and real estate development;

(31) to coordinate and establish linkages between governmental and other social services programs to ensure the effective delivery of services to low income individuals and families, including individuals or families facing or experiencing homelessness;

(32) to cooperate with local housing officials and plan commissions in the development of projects that the officials or commissions have under consideration;

(33) to develop a list of documents that a creditor and debtor are required to exchange before attending a settlement conference under IC 32-30-10.5-10;

~~(33)~~ (34) to take actions necessary to implement its powers that the authority determines to be appropriate and necessary to ensure the availability of state or federal financial assistance; and

~~(34)~~ (35) to administer any program or money designated by the state or available from the federal government or other sources that is consistent with the authority's powers and duties.

The omission of a power from the list in this subsection does not imply that the authority lacks that power. The authority may exercise any power that is not listed in this subsection but is consistent with the powers listed in this subsection to the extent that the power is not expressly denied by the Constitution of the State of Indiana or by another statute.

(b) The authority shall ensure that a mortgage loan acquired by the authority under subsection (a)(3) or made by a mortgage lender with funds provided by the authority under subsection (a)(4) is not knowingly made to a person whose adjusted family income, as determined by the authority, exceeds one hundred twenty-five percent (125%) of the median income for the geographic area involved. However, if the authority determines that additional encouragement is needed for the development of the geographic area involved, a mortgage loan acquired or made under subsection (a)(3) or (a)(4) may be made to a person whose adjusted family income, as determined by the authority, does not exceed one hundred forty percent (140%) of the median income for the geographic area involved. The authority shall establish procedures that the authority determines are appropriate to structure and administer any program conducted under subsection (a)(3) or (a)(4) for the purpose of acquiring or making mortgage loans to persons of low or moderate income. In determining what constitutes low income, moderate income, or median income for purposes of any

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program conducted under subsection (a)(3) or (a)(4), the authority shall consider:

- (1) the appropriate geographic area in which to measure income levels; and
- (2) the appropriate method of calculating low income, moderate income, or median income levels including:
 - (A) sources of;
 - (B) exclusions from; and
 - (C) adjustments to;
 income.

(c) The authority, when directed by the governor, shall administer programs and funds under 42 U.S.C. 1437 et seq.

(d) The authority shall identify, promote, assist, and fund:

- (1) home ownership education programs; and
- (2) mortgage foreclosure counseling and education programs under IC 5-20-6;

conducted throughout Indiana by nonprofit counseling agencies that the authority has certified, or by any other public, private, or nonprofit entity in partnership with a nonprofit agency that the authority has certified, using funds appropriated under section 27 of this chapter. The attorney general and the entities listed in IC 4-6-12-4(a)(1) through IC 4-6-12-4(a)(10) shall cooperate with the authority in implementing this subsection.

(e) The authority shall:

- (1) oversee and encourage a regional homeless delivery system that:
 - (A) considers the need for housing and support services;
 - (B) implements strategies to respond to gaps in the delivery system; and
 - (C) ensures individuals and families are matched with optimal housing solutions;
- (2) facilitate the dissemination of information to assist individuals and families accessing local resources, programs, and services related to homelessness, housing, and community development; and
- (3) each year, estimate and reasonably determine the number of the following:
 - (A) Individuals in Indiana who are homeless.
 - (B) Individuals in Indiana who are homeless and less than eighteen (18) years of age.
 - (C) Individuals in Indiana who are homeless and not residents of Indiana."

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Page 2, delete lines 29 through 40, begin a new paragraph and insert:

"SECTION 5. IC 32-30-10.5-5, AS ADDED BY P.L.105-2009, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. As used in this chapter, "mortgage" means a loan in which a first mortgage; ~~or a land contract that constitutes a first lien;~~ is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. **The term does not include a land contract or similar agreement in which the debtor does not possess a deed.**"

Page 4, line 22, delete "of the following:" and insert "**that,**".

Page 4, line 23, delete "(1) For" and insert "**for**".

Page 4, line 24, delete "that".

Page 4, run in lines 22 through 32.

Page 4, delete lines 33 through 42.

Page 5, delete lines 1 through 6.

Page 5, between lines 23 and 24, begin a new line blocked left and insert:

"Notices and debtor contact information required to be included with a complaint under this subsection are confidential."

Page 5, between lines 34 and 35, begin a new paragraph and insert:

"(f) This section does not apply if a creditor is not required under subsection (e) to send the notices described in this section. As soon as practicable after a creditor files an action to foreclose a mortgage, the court shall send a notice informing the defendant that:

(1) a settlement conference between the defendant and plaintiff will be scheduled by the court under section 10 of this chapter; and

(2) the foreclosure action may not proceed until the settlement conference has taken place, subject to the defendant's right to opt out of the settlement conference under section 10(b)(2) of this chapter subject to section 9(b) of this chapter."

Page 6, line 13, delete "court shall issue a stay in the proceedings" and insert "**court, notwithstanding Indiana Trial Rule 56, stay the granting of any dispositive motion**".

Page 6, delete lines 36 through 42, begin a new paragraph and insert:

"(c) If the defendant requests a settlement conference under section 9 of this chapter, the court shall treat the request as the entry of an appearance under Indiana Trial Rule 3.1(B)."



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- Page 7, delete lines 1 through 14.
- Page 9, line 28, delete "Subject to subdivision (2), order" and insert "Order".
- Page 9, line 31, strike "twenty-five (25)" and insert "**forty (40)**".
- Page 9, delete lines 35 through 42.
- Page 10, delete lines 1 through 3.
- Page 10, line 4, reset in roman "(2)".
- Page 10, line 4, delete "(3)".
- Page 10, line 8, reset in roman "(3)".
- Page 10, line 8, delete "(4)".
- Page 10, line 8, strike "to bring to the settlement conference" and insert "**and the creditor to exchange, at least thirty (30) days before the date of the settlement conference, the documents contained on the Indiana housing and community development authority's settlement list under IC 5-20-1-4.**".
- Page 10, strike lines 9 through 12.
- Page 10, line 13, delete "(i)".
- Page 10, line 13, strike "income,".
- Page 10, line 13, delete "including documentation of the debtor's".
- Page 10, delete line 14.
- Page 10, line 15, delete "(ii)".
- Page 10, line 15, strike "expenses;".
- Page 10, line 16, delete "(iii)".
- Page 10, line 16, strike "assets; and".
- Page 10, line 17, delete "(iv)".
- Page 10, line 17, strike "liabilities.".
- Page 10, strike lines 19 through 24.
- Page 10, line 25, delete "(5)".
- Page 10, line 25, strike "Require the creditor to bring to the settlement conference".
- Page 10, strike lines 26 through 32.
- Page 10, line 33, delete "(6)" and insert "**(4)**".
- Page 10, line 40, delete "(7)" and insert "**(5)**".
- Page 11, line 18, delete ":".
- Page 11, delete lines 19 through 22.
- Page 11, line 23, delete "(3)" and insert "**costs to a creditor associated with the use of a third party mediator or**".
- Page 11, line 23, delete ";".

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Page 11, run in lines 18 through 25.
Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.
(Reference is to SB 582 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 582 be amended to read as follows:

- Page 14, delete lines 2 through 17.
- Page 14, line 18, reset in roman "(C)".
- Page 14, line 18, delete "(D)".
- Page 16, line 27, delete "8(c)(1)" and insert "**8(c)**".
- Page 17, delete lines 3 through 6.
- Page 17, line 7, delete "(2)" and insert "(1)".
- Page 17, line 16, delete "(3)" and insert "(2)".
- Page 18, line 34, delete "For a foreclosure action filed after June 30, 2009, but".
- Page 18, line 35, delete "before July 1, 2011,".
- Page 18, line 35, delete "the" and insert "The".
- Page 18, line 37, reset in roman "8(c)".
- Page 18, line 37, delete "8(c)(1)".
- Page 18, line 40, reset in roman "8(c)".
- Page 18, line 40, delete "8(c)(1)".
- Page 19, delete lines 3 through 12.
- Page 19, line 13, reset in roman "(3)".
- Page 19, line 13, delete "(4)".
- Page 19, line 27, delete "as follows:".
- Page 19, delete line 28.
- Page 19, line 29, delete "July 1, 2011,".
- Page 19, run in lines 27 through 29.
- Page 19, line 30, reset in roman "8(c)".

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Page 19, line 30, delete "8(c)(1)".

Page 19, delete lines 32 through 34.

(Reference is to SB 582 as printed February 14, 2011.)

TALLIAN

COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 582, 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 2, line 21, delete "Contact information relating to a defendant in a" and insert "**The following information that is part of a foreclosure action subject to IC 32-30-10.5:**

(A) Contact information for a debtor, as described in IC 32-30-10.5-8(d)(2)(B).

(B) Any document submitted to the court as part of the debtor's loss mitigation package under IC 32-30-10.5-10(a)(3)."

Page 2, delete line 22.

Page 10, line 31, delete "develop a list of documents that a creditor and debtor" and insert "**prescribe, in accordance with IC 32-30-10.5-10(i), a list of documents that must be included as part of a debtor's loss mitigation package in a foreclosure action filed under IC 32-30-10.5 after June 30, 2011;**"

Page 10, delete lines 32 through 33.

Page 13, line 3, delete "civil penalties imposed and collected by a court under" and insert "**any civil penalties imposed and collected by a court for a violation of a court order in a foreclosure action under IC 32-30-10.5.**"

Page 13, delete line 4.

Page 13, line 16, delete "and".

Page 13, between lines 16 and 17, begin a new line block indented and insert:

"(2) civil penalties imposed and collected under:

(A) IC 6-1.1-12-43(g)(2)(B); or

(B) IC 27-7-3-15.5(e); and

(3) any civil penalties imposed and collected by a court for a violation of a court order in a foreclosure action under IC 32-30-10.5;"

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Page 13, delete lines 17 through 18.

Page 13, delete lines 22 through 42, begin a new paragraph and insert:

"SECTION 5. IC 32-30-10.5-1.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.2. As used in this chapter, "authority" refers to the Indiana housing and community development authority created by IC 5-20-1-3.**

SECTION 6. IC 32-30-10.5-4.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.7. As used in this chapter, "loss mitigation package" means a set of documents, the components of which:**

- (1) are specified by the authority under section 10(i) of this chapter;**
- (2) provide information about a debtor's present and projected future income, expenses, assets, and liabilities; and**
- (3) are necessary for a creditor to make underwriting decisions or other determinations in connection with a potential foreclosure prevention agreement with the debtor to whom the documents apply.**

SECTION 7. IC 32-30-10.5-5, AS ADDED BY P.L.105-2009, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 5. As used in this chapter, "mortgage" means a loan in which a first mortgage; or a land contract that constitutes a first lien; is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed. The term does not include a land contract or similar agreement in which the debtor does not possess a deed.**

SECTION 8. IC 32-30-10.5-8, AS AMENDED BY P.L.68-2010, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **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. The notice required by this subsection must do the following:**

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- (1) Inform the debtor that:
- (A) the debtor is in default;
 - (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 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 Foreclosure Prevention Network."
- (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 in accordance with** 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:

- (1) in the case of a foreclosure action filed after June 30, 2009, but before July 1, 2011, include with the complaint served on the debtor, on a form prescribed by the authority; and**

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(2) subject to subsection (f), in the case of a foreclosure action filed after June 30, 2011, include on the first page of the summons that is served on the debtor in conjunction with the complaint;

a notice that informs the debtor of the debtor's right to participate in a settlement conference, **subject to section 9(b) of this chapter.** ~~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 **under subdivision (1) or (2)** 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~~ **complaint** is served **on the debtor**, 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,~~ **If a creditor files an action to foreclose a mortgage,** the creditor shall ~~attach to~~ **include with** the complaint filed with the court:

(1) except as provided in subsection (e) and section 10(g) of this chapter, a copy of the notices sent to the debtor under subsections (a) and (c), **if the foreclosure action is filed after June 30, 2009, but before July 1, 2011; or**

(2) the following, if the foreclosure action is filed after June 30, 2011:

(A) Except as provided in subsection (e) and section 10(g) of this chapter, a copy of the notice sent to the debtor under subsection (a).

(B) The following most recent contact information for the debtor that the creditor has on file:

(i) All telephone numbers and electronic mail addresses for the debtor.

(ii) Any mailing address described in subsection (b)(2).

The contact information provided under this clause is confidential under IC 5-14-3-4(a)(13).

Subject to section 9(b) of this chapter, in the case of a foreclosure action filed after June 30, 2011, upon the filing of the complaint by the creditor, the court shall send to the debtor, by United States mail and to the address of the mortgaged property, or to an address for the debtor provided by the creditor under subdivision (2)(B)(ii), if applicable, a notice that informs the debtor of the debtor's right to participate in a settlement conference. The court's notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court of the debtor's intent to participate in a settlement conference. The court's notice must specify a date by which the debtor must request a settlement

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conference, which date must be the date that is thirty (30) days after the date of the creditor's service of the complaint on the debtor under subsection (c), as determined by the court from the service list included with the complaint filed with the court. The court may not delegate the duty to send the notice the court is required to provide under this subsection to the creditor or to any other person.

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

- (1) the mortgage is secured by a dwelling that is not the debtor's primary residence;
- (2) the 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 agreement; or
- (3) bankruptcy law prohibits the creditor from participating in a settlement conference under this chapter with respect to the mortgage.

(f) Not later than June 1, 2011, the authority, in consultation with the division of state court administration, shall prescribe language for the notice required under subsection (c)(2) to be included on the first page of the summons that is served on the debtor in a foreclosure action filed after June 30, 2011. The language must convey the same information as the form prescribed by the authority under subsection (c)(1) for foreclosure actions filed after June 30, 2009, but before July 1, 2011. The authority shall make the language prescribed under this subsection available on the authority's Internet web site. A creditor complies with subsection (c)(2) in a foreclosure action filed after June 30, 2011, if the creditor includes on the first page of the summons served on the debtor:

- (1) the language that is prescribed by the authority under this subsection and made available on the authority's Internet web site; or
- (2) language that conveys the same information as the language that is prescribed by the authority under this subsection and made available on the authority's Internet web site."

Delete pages 14 through 15.

Page 16, delete lines 1 through 3.

Page 16, line 21, delete "that is filed after June 30," and insert "**with respect to which:**

COPY



(A) the creditor has filed the complaint in the proceeding after June 30, 2011; and

(B) the debtor has contacted the court under section 8(c) of this chapter to schedule a settlement conference under this chapter."

Page 16, delete line 22.

Page 16, line 24, after "56," insert "**shall**".

Page 16, line 26, delete "10(c)" and insert "**10(b)**".

Page 16, line 29, delete "10(f)" and insert "**10(e)**".

Page 16, line 34, delete "10(f)" and insert "**10(e)**".

Page 16, line 38, delete "10(g)" and insert "**10(f)**".

Page 17, line 1, delete "defendant" and insert "**debtor**".

Page 17, line 2, delete "section 9 of".

Page 17, line 29, delete "10(f)" and insert "**10(e)**".

Page 18, delete lines 4 through 42, begin a new paragraph and insert:

"SECTION 11. IC 32-30-10.5-9, AS ADDED BY P.L.105-2009, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) Except as provided in subsection (b) **and subject to section 8.5 of this chapter**, after June 30, 2009, a court may not issue a judgment of foreclosure under IC 32-30-10 on a mortgage subject to this chapter unless all of the following apply:

(1) The creditor has given the notice required under section 8(c) of this chapter.

(2) ~~The debtor either:~~ **One (1) of the following applies:**

(A) **The debtor** does not contact the court within the thirty (30) day period described in section 8(c) of this chapter to schedule a settlement conference under ~~section 8(c)~~ of this chapter. ~~or~~

(B) **The debtor** contacts the court within the thirty (30) day period described in section 8(c) of this chapter to schedule a **settlement** conference under ~~section 8(c)~~ of this chapter and, upon conclusion of the **settlement** conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement.

(C) In a foreclosure action filed after June 30, 2011, the debtor:

(i) contacts the court within the thirty (30) day period described in section 8(c) of this chapter to schedule a settlement conference under this chapter; and

(ii) does not provide to the creditor and the court at least one (1) of the documents required as part of the debtor's

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loss mitigation package, as specified by the authority in the listing developed under section 10(i) of this chapter and included with the court's notice under section 10(a)(8) of this chapter, within the time specified in the court's notice under section 10(a)(3)(A) of this chapter.

(3) Except as provided in sections 8(e) and 10(g) of this chapter, at least sixty (60) days have elapsed since the date the notice required by section 8(a) of this chapter was sent, unless the mortgaged property is abandoned.

(b) If the court finds that a settlement conference would be of limited value based on the result of a prior loss mitigation effort between the creditor and the debtor:

- (1) a settlement conference is not required under this chapter; and
- (2) the conditions set forth in subsection (a) do not apply, and the foreclosure action may proceed as otherwise allowed by law.

SECTION 12. IC 32-30-10.5-10, AS ADDED BY P.L.105-2009, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) Unless a settlement conference is not required under this chapter, the court shall issue a notice of a settlement conference if the debtor contacts the court to schedule a settlement conference as described in section 8(c) of this chapter. The court's notice of a settlement conference must do the following:

(1) Order the creditor and the debtor to conduct a settlement conference on or before a date and time specified in the notice, which date:

(A) must not be earlier than twenty-five (25) days after the date of the notice under this section or later than sixty (60) days after the date of the notice under this section, in the case of a foreclosure action filed after June 30, 2009, but before July 1, 2011; and

(B) must not be earlier than forty (40) days after the date of the notice under this section or later than sixty (60) days after the date of the notice under this section, in the case of a foreclosure action filed after June 30, 2011;

for the purpose of attempting to negotiate a foreclosure prevention agreement.

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

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

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with the creditor. (A) Documentation of the debtor's present and projected 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. do the following:

(A) In the case of a foreclosure action filed after June 30, 2011, provide, not later than a date specified in the order, which date must be the date that is thirty (30) days before the date of the settlement conference specified by the court under subdivision (1), a copy of the debtor's loss mitigation package to the following:

- (i) The creditor's attorney, as identified by the creditor in the complaint, at the address specified in the complaint.
- (ii) The court, at an address specified by the court.

In setting forth the requirement described in this clause, the court shall reference the listing that must be included as an attachment to the notice under subdivision (8), and shall direct the debtor to consult the attachment in compiling the debtor's loss mitigation package.

(B) Bring the following to the settlement conference:

- (i) In the case of a foreclosure action filed after June 30, 2009, but before July 1, 2011, documents needed to engage in good faith negotiations with the creditor, including documentation of the debtor's present and projected future income, expenses, assets, and liabilities (including documentation of the debtor's employment history), and 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 item with enough specificity to allow the debtor to obtain the documents before the scheduled settlement conference.
- (ii) In the case of a foreclosure action filed after June 30, 2011, the debtor's loss mitigation package.

Any document submitted to the court under this subdivision as part of the debtor's loss mitigation package is confidential

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under IC 5-14-3-4(a)(13).

(4) Require the creditor to **do the following:**

(A) In the case of a foreclosure action filed after June 30, 2011, send to the debtor, by certified mail and not later than a date specified in the order, which date must be the date that is thirty (30) days before the date of the settlement conference specified by the court under subdivision (1), the following transaction history for the mortgage:

(i) A payment record substantiating the default, such as a payment history.

(ii) An itemization of all amounts claimed by the creditor as being owed on the mortgage, such as an account payoff statement.

If the creditor provides evidence that the transaction history required by this clause was sent by certified mail, return receipt requested, it is not necessary that the debtor accept receipt of the transaction history for an action to proceed as allowed under this chapter.

(B) Bring the following to the settlement conference: the following transaction history for the mortgage:

~~(A)~~ **(i) A copy of the original note and mortgage.**

~~(B)~~ **(ii) A payment record substantiating the default, such as a payment history.**

~~(C)~~ **(iii) An itemization of all amounts claimed by the creditor as being owed on the mortgage, such as an account payoff statement.**

~~(D)~~ **(iv) Any other documentation that the court determines is needed.**

(5) Inform the parties that:

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

(B) subject to subsection (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, or at another place designated by the court, on the date and time specified in the notice under subdivision (1) unless the parties submit to the court a stipulation to:

(A) modify the date, time, and place of the settlement

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conference; or

(B) hold the settlement conference by telephone at a date and time agreed to by the parties.

(7) In the case of a foreclosure action filed after June 30, 2011, inform the parties of the following:

(A) That if the parties stipulate under subdivision (6) to modify the date of the settlement conference:

(i) the debtor must provide the debtor's loss mitigation package to the creditor and to the court, as described in subdivision (3), at least thirty (30) days before the settlement conference date, as modified by the parties; and

(ii) the creditor must send to the debtor, by certified mail, the transaction history described in subdivision (4)(A) at least thirty (30) days before the settlement conference date, as modified by the parties.

(B) That if the parties stipulate under ~~clause (B)~~ subdivision (6)(B) to conduct the settlement conference by telephone, the parties shall ensure the availability of any technology needed to allow simultaneous participation in the settlement conference by all participants.

(8) In the case of a foreclosure action filed after June 30, 2011, include as an attachment the loss mitigation package listing prescribed by the authority under subsection (i).

(b) An attorney for the creditor shall attend the settlement conference, and an authorized representative of the creditor shall be available by telephone during the settlement conference. In addition, 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~~; **chapter**, and, for cause shown, the court may order the creditor and the debtor to reconvene a settlement conference at any time before judgment is entered. **Any:**

(1) costs to a creditor associated with a settlement conference under this chapter; or

(2) civil penalty imposed on a creditor by the court in connection with a violation of a court order issued in the case; may not be charged to or collected from the debtor, either directly or indirectly.

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

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

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

(2) in any negotiations with the debtor designed to reach agreement on the terms of a foreclosure prevention agreement; has authority to represent the creditor in negotiating a foreclosure prevention agreement with the debtor.

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

(f) If, as a result of a settlement conference held under ~~this section~~; **chapter**, 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 conclusion of the settlement conference, file with the court a notice indicating that the settlement conference held under ~~this section~~ **chapter** has concluded and a foreclosure prevention agreement was not reached; and

(2) the foreclosure action filed by the creditor may proceed as otherwise allowed by law, **subject to the court's right under subsection (b) to order the creditor and the debtor to reconvene a settlement conference at any time before judgment is entered.**

(g) If:

(1) a foreclosure is dismissed by the creditor under subsection (e) after a foreclosure prevention agreement is reached; and

(2) a default in the terms of the foreclosure prevention agreement later occurs;

the creditor or its assigns may bring a foreclosure action ~~under~~ ~~LC 32-30-10-3~~ **with respect to the mortgage that is the subject of the foreclosure prevention agreement** without sending the notices described in section 8 of this chapter.

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

(i) **Not later than June 1, 2011, the authority shall prescribe a list of documents that must be included as part of a debtor's loss**

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mitigation package in a foreclosure action filed after June 30, 2011. In prescribing the list of documents required by this subsection, the authority:

- (1) shall require those documents that:
 - (A) provide information about a debtor's present and projected future income, expenses, assets, and liabilities; and
 - (B) are necessary for a creditor to make underwriting decisions or other determinations in connection with a potential foreclosure prevention agreement with the debtor to whom the documents apply; and
- (2) may amend the list:
 - (A) in response to changes in any federal loan modification programs; or
 - (B) as otherwise determined to be necessary by the authority.

The authority shall make the list prescribed under this subsection available on the authority's Internet web site. The division of state court administration shall make the list prescribed under this subsection available on the Internet web site maintained by the state's judicial branch. If the authority determines that an amendment to the list is necessary under subdivision (2), the authority shall notify the division of state court administration of the amendment as soon as practicable before the amendment takes effect and shall update the list on the authority's Internet web site not later than the effective date of the amendment. Upon receiving notice of an amendment to the list from the authority, the division of state court administration shall update the list on the Internet web site maintained by the state's judicial branch not later than the effective date of the amendment."

Delete pages 19 through 20.

Page 21, delete lines 1 through 36.

Page 25, line 22, delete "the court" and insert "**a court for a violation of a court order in a foreclosure action under IC 32-30-10.5.**".

Page 25, delete line 23, begin a new paragraph and insert:

"SECTION 15. IC 34-30-26 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 26. Real Property Suspected to Be Vacant or Abandoned

Sec. 1. (a) As used in this chapter, "creditor" means a person:

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(1) that regularly engages in Indiana in the extension of mortgages that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

(2) to whom the obligation arising from a mortgage is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

(b) The term includes the following:

(1) A mortgage servicer.

(2) An agent of a creditor.

Sec. 2. As used in this chapter, "enforcement authority" has the meaning set forth in IC 36-7-9-2.

Sec. 3. As used in this chapter, "owner", with respect to real property, has the meaning set forth in IC 36-7-36-4.

Sec. 4. For purposes of this chapter, real property is "vacant or abandoned" if it qualifies, or would potentially qualify, as either:

(1) a vacant structure under IC 36-7-36-6; or

(2) an abandoned structure under IC 36-7-36-1.

Sec. 5. (a) Except as provided in subsection (d), a person who is not the owner of real property, and who suspects that the property may be vacant or abandoned, may enter upon the premises of the real property to do the following:

(1) Without entering any structure located on the real property, visually inspect the real property to determine whether the real property may be vacant or abandoned.

(2) Perform any of the following actions:

(A) Secure the real property.

(B) Remove trash or debris from the grounds of the real property.

(C) Landscape, maintain, or mow the grounds of the real property.

(b) A person who:

(1) enters upon the premises of real property to visually inspect the property, as permitted under subsection (a)(1); and

(2) after inspecting the real property, determines that the real property may be vacant or abandoned;

may notify the appropriate enforcement authority of the suspected vacant or abandoned status of the property and request that the enforcement authority inspect the property to determine whether the property is in fact vacant or abandoned.

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(c) A person that enters upon the premises of real property as permitted under this section:

(1) is immune from civil liability for an act or omission related to the entry or to any action described in subsection (a)(2), unless the act or omission constitutes gross negligence or willful, wanton, or intentional misconduct; and

(2) shall be held harmless from and against all claims of civil or criminal trespass.

(d) In the case of real property that is subject to a mortgage, the creditor in the mortgage transaction may not enter upon the premises of the real property under subsection (a) if entry is barred by an automatic stay issued by a bankruptcy court.

Sec. 6. For purposes of this chapter, a tax sale certificate holder or an applicant for a tax deed who performs an act described in section 5 of this chapter with respect to the real property for which the person holds the tax sale certificate or has applied for the tax deed, is not considered to be the owner of that real property if:

(1) the only connection the person has to the property is the tax sale certificate or the fact that the person has applied for a tax deed; and

(2) the only consideration the person receives for the act is the possibility of receiving a tax deed to the property in the future.

SECTION 16. [EFFECTIVE UPON PASSAGE] (a) As used in this chapter, "committee" refers to:

(1) the commission on courts established by IC 33-23-10-1; or

(2) another study committee to which the legislative council assigns the topics of study described in subsection (b).

(b) The general assembly urges the legislative council to assign the following topics of study to the commission on courts or to another appropriate study committee:

(1) Short sale procedures in real estate transactions in Indiana.

(2) The experiences of other states that have:

(A) enacted the Uniform Nonjudicial Foreclosure Act adopted by the National Conference of Commissioners on Uniform State Laws; or

(B) otherwise adopted a nonjudicial mortgage foreclosure process.

(3) The feasibility of Indiana adopting a nonjudicial mortgage foreclosure process, including any efforts needed to transition from the existing judicial foreclosure process to a nonjudicial

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foreclosure process.

(4) Any other topic relating to:

(A) short sale procedures; or

(B) nonjudicial foreclosures;

assigned by the legislative council, or as directed by the committee chair.

(c) If the topics described in subsection (b)(2) through (b)(4) are assigned to a committee under subsection (b), the committee may recommend for introduction in the general assembly proposed legislation to establish a nonjudicial foreclosure process in Indiana.

(d) If the topics described in subsection (b) are assigned to a committee under subsection (b), the committee may consult with or solicit testimony from the following in conducting the study described in subsection (b):

(1) The office of the attorney general, the department of financial institutions, the Indiana housing and community development authority, the chief justice of the Indiana supreme court, the division of state court administration, any judicial officer or other court personnel of a circuit or superior court, or any officer or employee of the executive or judicial branch.

(2) Creditors in mortgage transactions and attorneys who represent creditors in mortgage foreclosure actions.

(3) Debtors in mortgage transactions and attorneys who represent debtors in mortgage foreclosure actions.

(4) Real estate brokers and salespersons licensed under IC 25-34.1.

(5) Consumer advocates or consumer advocacy organizations.

(6) Mortgage foreclosure counselors.

(7) Academics.

(8) Officials from other states.

(9) Any other person whom the committee chair determines to have appropriate expertise.

(e) If the topics described in subsection (b) are assigned under subsection (b) to a committee other than the commission on courts, the committee shall, not later than November 1, 2011, issue a final report to the legislative council concerning the findings and recommendations of the committee on the topics described in subsection (b). If the topics described in subsection (b) are assigned under subsection (b) to the commission on the courts, the commission shall include its findings and recommendations concerning the topics described in subsection (b) in its report to the

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general assembly under IC 33-23-10-7(5) that is due not later than November 1, 2011.

(f) This SECTION expires December 31, 2011."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 582 as reprinted February 16, 2011.)

BURTON, Chair

Committee Vote: yeas 9, nays 0.

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