

SENATE BILL No. 582

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-20; IC 32-30-10.5; IC 33-37-7-2.

Synopsis: Settlement conferences in residential foreclosures. Amends the definition of "mortgage" in the statute concerning foreclosure prevention agreements for residential mortgages to: (1) specify that the term does not include a land contract; (2) specify that the term includes a first lien on residential real estate upon which a dwelling is constructed or intended to be constructed; and (3) more closely correspond to the definition of the term used in the statute concerning first lien mortgage lending. Provides that in a residential foreclosure action filed after June 30, 2011, the creditor shall include with the complaint filed with the court the most recent contact information for the debtor that the creditor has available or on file, including: (1) all telephone numbers and electronic mail addresses used by the debtor; and (2) any mailing address for the debtor other than the address of the mortgaged property. Provides that in a residential foreclosure action, any: (1) court costs associated with a settlement conference; or (2) attorney's fees incurred by a creditor in connection with a settlement conference; may not be charged to or collected from the debtor. Provides that in a residential foreclosure action filed after June 30, 2011: (1) a settlement conference between the debtor and creditor must be scheduled by the court upon the creditor's filing of the complaint; and (2) the action may not proceed until the settlement conference has taken place, subject to the debtor's right to opt out of the settlement conference. Provides that in a residential foreclosure action that: (1) is filed before July 1, 2011, and with respect to which the debtor has requested a settlement conference and the court has not issued a judgment; or (2) is filed after June 30, 2011; the court shall issue a stay
(Continued next page)

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Effective: Upon passage.

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January 20, 2011, read first time and referred to Committee on Judiciary.



in the proceedings until the settlement conference is concluded or, for an action filed after June 30, 2011, until the court receives notice of the debtor's election to opt out of the settlement conference. Provides that in such cases, the court shall treat the debtor's participation in a settlement conference under this chapter as an appearance by the debtor in the foreclosure action, notwithstanding the court's stay. Requires the court to deny a creditor's motion for a default judgment that is based on the debtor's failure to appear in the action if the motion is filed: (1) before a settlement conference is held, unless the debtor opts out of the conference or fails to participate in a scheduled conference; or (2) after the debtor participates in a settlement conference. 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. In a residential foreclosure action, provides that a court may impose sanctions, including a civil penalty, on any party for a violation of: (1) the statute concerning foreclosure prevention agreements for residential mortgages; or (2) a court order or rule relating to an action subject to the statute. Provides that any civil penalties collected shall be deposited in the home ownership education account to support programs conducted by specified entities to facilitate settlement conferences in residential foreclosure actions. Makes conforming changes.

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Introduced

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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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 5-20-1-27, AS AMENDED BY P.L.105-2009,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 27. (a) The home ownership education
4 account within the state general fund is established to support:
5 (1) home ownership education programs established under section
6 4(d) of this chapter; ~~and~~
7 (2) mortgage foreclosure counseling and education programs
8 established under IC 5-20-6-2; ~~and~~
9 **(3) programs conducted by one (1) or a combination of the**
10 **following to facilitate settlement conferences in residential**
11 **foreclosure actions under IC 32-30-10.5:**
12 **(A) The judiciary.**
13 **(B) Pro bono legal services agencies.**
14 **(C) Mortgage foreclosure counselors (as defined in**
15 **IC 32-30-10.5-6).**



1 **(D) Other nonprofit entities certified by the authority**
2 **under section 4(d) of this chapter.**

3 The account is administered by the authority.

4 (b) The home ownership education account consists of:
5 (1) court fees collected under IC 33-37-5-30 (before its expiration
6 on January 1, 2013); ~~and~~

7 (2) civil penalties imposed and collected under:
8 (A) IC 6-1.1-12-43(g)(2)(B); or
9 (B) IC 27-7-3-15.5(e); **and**

10 **(3) civil penalties imposed and collected by a court under**
11 **IC 32-30-10.5-10(j).**

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

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

18 SECTION 2. IC 5-20-6-3, AS AMENDED BY P.L.105-2009,
19 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 UPON PASSAGE]: Sec. 3. In addition to using money provided for the
21 program from:

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

24 (2) **civil penalties imposed and collected by a court under**
25 **IC 32-30-10.5-10(j);**

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

29 SECTION 3. IC 32-30-10.5-5, AS ADDED BY P.L.105-2009,
30 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 UPON PASSAGE]: Sec. 5. As used in this chapter, "mortgage" means:

32 (1) a loan; **or**
33 (2) **a consumer credit sale;**

34 **in which a first mortgage, or a land contract that constitutes a first lien,**
35 **is created or retained against land upon which there is a dwelling that**
36 **is or will be used by the debtor primarily for personal, family, or**
37 **household purposes and that is secured by a mortgage (or another**
38 **equivalent consensual security interest) that constitutes a first lien**
39 **on a dwelling or on residential real estate upon which a dwelling is**
40 **constructed or intended to be constructed.**

41 SECTION 4. IC 32-30-10.5-8, AS AMENDED BY P.L.68-2010,
42 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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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)~~ **10(h)** 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:

(1) Inform the debtor ~~that:~~ **of the following:**

(A) **That** the debtor is in default.

(B) **That** the debtor is encouraged to obtain assistance from a mortgage foreclosure counselor. ~~and~~

(C) That, subject to section 9(b) of this chapter, if the creditor proceeds to file a foreclosure action:

(i) a settlement conference between the debtor and creditor will be scheduled by the court under section 10 of this chapter; and

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

The information required to be provided under this clause applies to a foreclosure action filed after June 30, 2011. The Indiana housing and community development authority shall, not later than June 1, 2011, update the presuit notice form the authority is required to prescribe under this subsection to include the information described in this clause.

~~(D)~~ **(D) That** 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:

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1 "NOTICE REQUIRED BY STATE LAW

2 Mortgage foreclosure is a complex process. People may
 3 approach you about "saving" your home. You should be
 4 careful about any such promises. There are government
 5 agencies and nonprofit organizations you may contact for
 6 helpful information about the foreclosure process. For the
 7 name and telephone number of an organization near you,
 8 please call the Indiana Foreclosure Prevention Network."

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

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

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

19 (c) Except as provided in subsection (e) and section ~~10(g)~~ **10(h)** of
 20 this chapter, if a creditor files an action to foreclose a mortgage, the
 21 creditor shall include with the complaint served on the debtor a notice
 22 that informs the debtor ~~of the debtor's~~ **of the following:**

23 **(1) For a foreclosure action filed after June 30, 2009, but**
 24 **before July 1, 2011, that the debtor has the right to participate**
 25 **in a settlement conference, subject to section 9(b) of this**
 26 **chapter.** The notice must be in a form prescribed by the Indiana
 27 housing and community development authority created by
 28 IC 5-20-1-3. The notice must inform the debtor that the debtor
 29 may schedule a settlement conference by notifying the court, not
 30 later than thirty (30) days after the notice **required by this**
 31 **subsection** is served, of the debtor's intent to participate in a
 32 settlement conference.

33 **(2) For a foreclosure action filed after June 30, 2011, that,**
 34 **subject to section 9(b) of this chapter:**

35 **(A) a settlement conference between the debtor and**
 36 **creditor will be scheduled by the court under section 10 of**
 37 **this chapter; and**

38 **(B) the foreclosure action may not proceed until the**
 39 **settlement conference has taken place, subject to the**
 40 **debtor's right to opt out of the settlement conference under**
 41 **section 10(b)(2) of this chapter subject to section 9(b) of**
 42 **this chapter.**

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1 **The Indiana housing and community development authority**
2 **shall, not later than June 1, 2011, update the notice form the**
3 **authority is required to prescribe under subdivision (1) to**
4 **replace the information described in subdivision (1) with the**
5 **information required to be provided under this subdivision,**
6 **for use in foreclosure actions filed after June 30, 2011.**

7 (d) ~~In a foreclosure action filed under IC 32-30-10-3 after June 30,~~
8 ~~2009,~~ **If a creditor files an action to foreclose a mortgage, the**
9 **creditor shall ~~attach to~~ include with the complaint filed with the court:**

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

14 **(2) the following, if the foreclosure action is filed after June**
15 **30, 2011:**

16 **(A) Except as provided in subsection (e) and section 10(h)**
17 **of this chapter, a copy of the notices sent to the debtor**
18 **under subsections (a) and (c).**

19 **(B) The most recent contact information for the debtor**
20 **that the creditor has available or on file, including:**

21 **(i) all telephone numbers and electronic mail addresses**
22 **used by the debtor; and**

23 **(ii) any mailing address described in subsection (b)(2).**

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

26 (1) the mortgage is secured by a dwelling that is not the debtor's
27 primary residence;

28 (2) the mortgage has been the subject of a prior foreclosure
29 prevention agreement under this chapter and the debtor has
30 defaulted with respect to the terms of that foreclosure prevention
31 agreement; or

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

35 SECTION 5. IC 32-30-10.5-8.5 IS ADDED TO THE INDIANA
36 CODE AS A NEW SECTION TO READ AS FOLLOWS
37 [EFFECTIVE UPON PASSAGE]: **Sec. 8.5. (a) This section applies to**
38 **the following:**

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

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

42 **(B) the debtor has contacted the court under section 8(c)(1)**

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of this chapter or under section 11(b) of this chapter to schedule a settlement conference under this chapter; and (C) the court having jurisdiction over the action has not: (i) issued a stay in the foreclosure proceedings pending the conclusion of the settlement conference under this chapter; (ii) issued a default judgment against the debtor in the action; or (iii) rendered a judgment of foreclosure in the action.

(2) A mortgage foreclosure action that is filed after June 30, 2011.

(b) In a mortgage foreclosure action to which this section applies, the court shall issue a stay in the proceedings until one (1) of the following occurs, subject to the court's right under section 10(c) 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 of the debtor's election to opt out of a settlement conference under section 10(b)(2) of this chapter, in the case of a mortgage foreclosure action filed after June 30, 2011.

(2) The court receives notice under section 10(f) 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(f) of this chapter to dismiss the foreclosure action for as long as the debtor complies with the terms of the foreclosure prevention agreement.

(3) The court receives notice under section 10(g) 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) In a mortgage foreclosure action to which this section applies, the court shall treat the debtor's participation in a settlement conference under this chapter as an appearance by the debtor in the foreclosure action, notwithstanding the court's stay of the proceedings under subsection (b). The court shall deny any motion that:

(1) seeks a default judgment against a debtor on the basis of

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1 the debtor's failure to appear in an action to which this
2 section applies;

3 (2) is filed by the creditor:

4 (A) before a settlement conference under this chapter is
5 held unless the debtor:

6 (i) has failed to participate in a settlement conference
7 that is scheduled under this chapter; or

8 (ii) in the case of a mortgage foreclosure action filed
9 after June 30, 2011, has exercised the debtor's right to
10 opt out of a settlement conference under section 10(b)(2)
11 of this chapter; or

12 (B) after the debtor has participated in a settlement
13 conference under this chapter; and

14 (3) is filed or pending after June 30, 2011.

15 SECTION 6. IC 32-30-10.5-8.6 IS ADDED TO THE INDIANA
16 CODE AS A NEW SECTION TO READ AS FOLLOWS
17 [EFFECTIVE UPON PASSAGE]: **Sec. 8.6. (a) This section applies to
18 a mortgage foreclosure action that is filed after June 30, 2011.**

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

27 (1) shall be determined by the court, which may base its
28 determination on the debtor's ability to pay; and

29 (2) may not exceed the debtor's monthly obligation under the
30 mortgage at the time the action is filed.

31 (c) Payments made by a debtor under an order issued by the
32 court under subsection (b) shall be made to:

33 (1) the clerk of the court, who shall hold the payments in trust
34 for the parties; or

35 (2) an attorney trust account;

36 as directed by the court. The funds held by the clerk or in an
37 attorney trust account under this subsection may not be disbursed
38 unless the court issues an order for their disbursement.

39 (d) If the debtor and the creditor agree to enter into a
40 foreclosure prevention agreement under section 10(f) of this
41 chapter at any time after the debtor has made payments under an
42 order issued by the court under subsection (b), the debtor is

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entitled to a credit of any amounts paid under the order.

(e) In an action to which this section applies, if:

- (1) a judgment of foreclosure is issued by the court after the conditions set forth in section 9 of this chapter are met;
- (2) the debtor and the creditor agree to a deed in lieu of foreclosure; or
- (3) the debtor otherwise forfeits the dwelling that is the subject of the mortgage upon which the action is based;

the debtor is not entitled to a refund of any payments made under an order issued by the court under subsection (b), and any amounts held in trust by the clerk of the court or in an attorney trust fund shall be disbursed to the creditor and credited against the amount of the judgment entered against the debtor or the amount otherwise owed by the debtor.

SECTION 7. 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 with respect to a mortgage subject to this chapter unless all of the following apply:

- (1) Except as provided in sections 8(e) and 10(h) of this chapter, the creditor has given the notice required under section 8(c) of this chapter.
- (2) For a foreclosure action filed after June 30, 2009, but before July 1, 2011, the debtor either:
 - (A) does not contact the court within the thirty (30) day period described in section ~~8(c)~~ 8(c)(1) of this chapter to schedule a settlement conference under ~~section 8(c)~~ of this chapter; or
 - (B) contacts the court within the thirty (30) day period described in section ~~8(c)~~ 8(c)(1) 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.
- (3) For a foreclosure action filed after June 30, 2011, either of the following applies:
 - (A) The court receives notice of the debtor's election to opt out of a settlement conference under section 10(b)(2) of this chapter.
 - (B) The court receives notice under section 10(g) of this chapter that after the conclusion of a settlement conference

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held under this chapter, the creditor and the debtor are unable to agree on the terms of a foreclosure prevention agreement.

~~(3)~~ (4) Except as provided in sections 8(e) and 10(h) 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 8. 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 as follows:

(1) In a foreclosure action filed after June 30, 2009, but before July 1, 2011, if the debtor contacts the court to schedule a settlement conference as described in section ~~8(c)~~ 8(c)(1) of this chapter.

(2) In a foreclosure action filed after June 30, 2011, upon the filing of the creditor's complaint under section 8(d) of this chapter.

(b) The court's notice of a settlement conference under this section must do the following:

(1) Subject to subdivision (2), order the creditor and the debtor to conduct a settlement conference on or before a date and time specified in the notice, which date must not be earlier than twenty-five (25) days after the date of the notice under this section or later than sixty (60) days after the date of the notice under this section, for the purpose of attempting to negotiate a foreclosure prevention agreement.

(2) For a foreclosure action filed after June 30, 2011, inform the debtor that the debtor has a right to opt out of the settlement conference by notifying the court and the creditor in writing, not later than ten (10) days after the date of the notice under this section, that the debtor elects to opt out of the debtor's right to participate in a settlement conference under this chapter. The court may include with the notice required by this section a form by which the debtor may

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notify the court and the creditor of the debtor's election to opt out of the debtor's right to participate in a settlement conference under this chapter.

~~(2)~~ **(3)** 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)~~ **(4)** 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:

- (i) income, **including documentation of the debtor's employment history;**
- (ii) expenses;
- (iii) assets; and
- (iv) liabilities.

~~including documentation of the debtor's employment history.~~

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

~~(4)~~ **(5)** Require the creditor to bring to the settlement conference the following transaction history for the mortgage:

- (A) A copy of the original note and mortgage.
- (B) A payment record substantiating the default.
- (C) An itemization of all amounts claimed by the creditor as being owed on the mortgage.
- (D) Any other documentation that the court determines is needed.

~~(5)~~ **(6)** 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 (c)**, an attorney or a mortgage foreclosure counselor may participate in the settlement conference in person or by telephone.

~~(6)~~ **(7)** 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

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1 notice under subdivision (1) unless the parties submit to the court
2 a stipulation to:

3 (A) modify the date, time, and place of the settlement
4 conference; or

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

7 If the parties stipulate under clause (B) to conduct the settlement
8 conference by telephone, the parties shall ensure the availability
9 of any technology needed to allow simultaneous participation in
10 the settlement conference by all participants.

11 ~~(b)~~ (c) An attorney for the creditor shall attend the settlement
12 conference, and an authorized representative of the creditor shall be
13 available by telephone during the settlement conference. In addition,
14 the court may require any person that is a party to the foreclosure
15 action to appear at or participate in a settlement conference held under
16 this ~~section~~, **chapter**, and, for cause shown, the court may order the
17 creditor and the debtor to reconvene a settlement conference at any
18 time before judgment is entered. **Any:**

19 (1) **court costs associated with a settlement conference under**
20 **this chapter;**

21 (2) **attorney's fees incurred by a creditor in connection with**
22 **a settlement conference under this chapter; or**

23 (3) **civil penalty imposed on a creditor under subsection (j);**
24 **may not be charged to or collected from the debtor, either directly**
25 **or indirectly.**

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

28 ~~(d)~~ (e) The creditor shall ensure that any person representing the
29 creditor:

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

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

33 has authority to represent the creditor in negotiating a foreclosure
34 prevention agreement with the debtor.

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

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1 debtor complies with the terms of the foreclosure prevention
2 agreement.

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

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

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

16 ~~(g)~~ **(h)** If:

17 (1) a foreclosure is dismissed by the creditor under subsection ~~(e)~~
18 **(f)** after a foreclosure prevention agreement is reached; and

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

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

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

28 **(j) Subject to subsection (c), the court may impose sanctions,**
29 **including a civil penalty in an amount determined by the court, on**
30 **any party to a foreclosure action subject to this chapter for any**
31 **violation of:**

32 **(1) this chapter; or**

33 **(2) an order or rule of the court that is issued in connection**
34 **with, or that otherwise applies to, a foreclosure action subject**
35 **to this chapter.**

36 SECTION 9. IC 32-30-10.5-11, AS ADDED BY P.L.105-2009,
37 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 UPON PASSAGE]: Sec. 11. (a) This section applies to a mortgage
39 foreclosure action with respect to which the creditor has filed the
40 complaint in the proceeding before July 1, 2009, and the court having
41 jurisdiction over the proceeding has not rendered a judgment of
42 foreclosure before July 1, 2009.

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1 (b) In a mortgage foreclosure action to which this section applies,
2 the court having jurisdiction of the action shall serve notice of the
3 availability of a settlement conference under ~~section 8(e)~~ of this
4 chapter. **The notice required by this section must inform the debtor**
5 **that the debtor:**

- 6 (1) **has the right to participate in a settlement conference,**
- 7 **subject to section 9(b) of this chapter; and**
- 8 (2) **may schedule a settlement conference by notifying the**
- 9 **court, not later than thirty (30) days after the notice required**
- 10 **by this section is served, of the debtor's intent to participate**
- 11 **in a settlement conference.**

12 SECTION 10. IC 33-37-7-2, AS AMENDED BY P.L.182-2009(ss),
13 SECTION 395, IS AMENDED TO READ AS FOLLOWS
14 [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The clerk of a circuit
15 court shall distribute semiannually to the auditor of state as the state
16 share for deposit in the homeowner protection unit account established
17 by IC 4-6-12-9 one hundred percent (100%) of the automated record
18 keeping fees collected under IC 33-37-5-21 with respect to actions
19 resulting in the accused person entering into a pretrial diversion
20 program agreement under IC 33-39-1-8 or a deferral program
21 agreement under IC 34-28-5-1 and for deposit in the state general fund
22 seventy percent (70%) of the amount of fees collected under the
23 following:

- 24 (1) IC 33-37-4-1(a) (criminal costs fees).
- 25 (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- 26 (3) IC 33-37-4-3(a) (juvenile costs fees).
- 27 (4) IC 33-37-4-4(a) (civil costs fees).
- 28 (5) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
- 29 (6) IC 33-37-4-7(a) (probate costs fees).
- 30 (7) IC 33-37-5-17 (deferred prosecution fees).

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

- 34 (1) Twenty-five percent (25%) of the drug abuse, prosecution,
35 interdiction, and correction fees collected under
36 IC 33-37-4-1(b)(5).
- 37 (2) Twenty-five percent (25%) of the alcohol and drug
38 countermeasures fees collected under IC 33-37-4-1(b)(6),
39 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- 40 (3) Fifty percent (50%) of the child abuse prevention fees
41 collected under IC 33-37-4-1(b)(7).
- 42 (4) One hundred percent (100%) of the domestic violence

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

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

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

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

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

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

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

22 (i) This subsection does not apply to court administration fees
23 collected in small claims actions filed in a court described in IC 33-34.
24 The clerk of a circuit court shall semiannually distribute to the auditor
25 of state for deposit in the state general fund one hundred percent
26 (100%) of the following:

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

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

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

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

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

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

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

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- 1 (2) The clerk shall distribute one hundred percent (100%) of the
- 2 service fees collected in a city or town court to the city or town
- 3 fiscal officer for deposit in the city or town general fund.
- 4 (l) The proceeds of the garnishee service fee collected under
- 5 IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4) shall be distributed as
- 6 follows:
- 7 (1) The clerk shall distribute one hundred percent (100%) of the
- 8 garnishee service fees collected in a circuit, superior, county, or
- 9 probate court to the county auditor for deposit in the county
- 10 general fund.
- 11 (2) The clerk shall distribute one hundred percent (100%) of the
- 12 garnishee service fees collected in a city or town court to the city
- 13 or town fiscal officer for deposit in the city or town general fund.
- 14 (m) The clerk of the circuit court shall distribute semiannually to the
- 15 auditor of state for deposit in the home ownership education account
- 16 established by IC 5-20-1-27 one hundred percent (100%) of the
- 17 following:
- 18 (1) **The** mortgage foreclosure counseling and education fees
- 19 collected under IC 33-37-5-30 (before its expiration on January
- 20 1, 2013).
- 21 (2) **Any civil penalties imposed and collected by the court**
- 22 **under IC 32-30-10.5-10(j).**
- 23 **SECTION 11. An emergency is declared for this act.**

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