



February 21, 2012

**ENGROSSED
SENATE BILL No. 156**

DIGEST OF SB 156 (Updated February 21, 2012 4:47 pm - DI 107)

Citations Affected: IC 29-1; IC 32-17.

Synopsis: Partition. Establishes a new procedure for partitioning real and personal property that: (1) requires a court to refer the matter to mediation; and (2) requires the court to order that the property be sold using a method the parties agree upon, or if the parties are not able to reach an agreement, at auction. Repeals superseded provisions.

Effective: July 1, 2012.

**Steele, Charbonneau, Randolph,
Lanane, Bray**
(HOUSE SPONSORS — KOCH, FOLEY)

January 4, 2012, read first time and referred to Committee on Judiciary.
January 19, 2012, amended, reported favorably — Do Pass.
January 23, 2012, read second time, amended, ordered engrossed.
January 24, 2012, engrossed. Read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

January 31, 2012, read first time and referred to Committee on Judiciary.
February 21, 2012, amended, reported — Do Pass.

C
O
P
Y

ES 156—LS 6603/DI 106+



February 21, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 156

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 29-1-17-11 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. (a) When two (2)
3 or more distributees are entitled to distribution of **an** undivided
4 ~~interests interest~~ in any real or personal property of the estate,
5 distribution shall be made of undivided interests ~~therein in the~~
6 **property** unless the personal representative or one (1) or more of the
7 distributees petition the court **for partition** not later than the hearing
8 on the petition for final distribution. ~~to make partition thereof.~~ If a
9 petition is filed, the court, after notice is given to all interested persons
10 as the court directs, shall proceed **in accordance with IC 32-17-4-2.5.**
11 ~~to make partition;~~ allot and divide the property in the same manner as
12 ~~provided by the statutes with respect to civil actions for partition;~~ so
13 ~~that each party receives property of a value proportionate to the party's~~
14 ~~interest in the whole. The court may direct the personal representative~~
15 ~~to sell any property which cannot be partitioned without prejudice to~~
16 ~~the owners and which cannot conveniently be allotted to any one (1)~~
17 ~~party. If partition is made in kind; the court may appoint a~~

ES 156—LS 6603/DI 106+



C
O
P
Y

1 commissioner to partition the property; who shall have the powers and
 2 perform the duties of a commissioner in civil actions for partition; and
 3 the court shall have the same powers with respect to the commissioner's
 4 report as in civil actions. If equal partition cannot be had between the
 5 parties without prejudice to the rights or interests of some, partition
 6 may be made in unequal shares and by awarding judgment for
 7 compensation to be paid by one (1) or more parties to one (1) or more
 8 of the others. Any two (2) or more parties may agree to accept
 9 undivided interests. Any sale under this section shall be conducted and
 10 confirmed in the same manner as other probate sales. The expenses of
 11 the partition, including reasonable compensation to the commissioner,
 12 shall be equitably apportioned by the court among the parties. Each
 13 party must pay the party's own attorney's fees. The amount charged to
 14 each party constitutes a lien on the property allotted to the party. **With
 15 respect to personal property, the person who files for partition
 16 shall conduct a title search with the bureau of motor vehicles (if the
 17 personal property is titled) or a search for liens under the Uniform
 18 Commercial Code (if the personal property is not titled). The
 19 person shall file a copy of the results of the search with the court.**

20 (b) If a distribution of particular assets of a decedent is to be made
 21 to two (2) or more distributees that are entitled to receive fractional
 22 shares in the assets, the decedent's personal representative may, under
 23 an agreement among the distributees, distribute the particular assets
 24 without distributing to each distributee a pro rata share of each asset.
 25 However, the personal representative shall:

- 26 (1) distribute to each distributee a pro rata share of the total fair
 27 market value of all the particular assets as of the date of
 28 distribution; and
- 29 (2) divide the assets in a manner that results in a fair and
 30 equitable division among the distributees of any capital gain or
 31 loss on the assets.

32 SECTION 2. IC 32-17-4-2 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) A person
 34 described in section 1(a) of this chapter may file a petition to compel
 35 partition in the circuit court or court having probate jurisdiction of the
 36 county in which the land or any part of the land is located.

37 (b) A petition filed under subsection (a) must contain the following:

- 38 (1) A description of the premises.
- 39 (2) The rights and titles in the land of the parties interested.

40 (c) **At the time a person files a petition under subsection (a), the
 41 person shall cause a title search to be made regarding the land that
 42 is the subject of the partition. The person shall file a copy of the**

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

results of the title search with the court.

SECTION 3. IC 32-17-4-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 2.5. (a) Not later than forty-five (45) days after the court has acquired jurisdiction over all the parties who have an interest in the property that is the subject of the action, the court shall refer the matter to mediation in accordance with the Indiana rules of alternative dispute resolution.**

(b) Except as provided in subsection (c), mediation of the case may not begin until an appraiser files an appraisal report with the court.

(c) If each party waives the appraisal of the property, the case may move to mediation without the filing of an appraisal report.

(d) In its order referring the matter for mediation, the court shall advise the parties:

(1) that the real or personal property will be sold if the parties are unable to reach an agreement not later than sixty (60) days after the order is issued; and

(2) that the parties may agree upon a method of the sale of the property, and if the parties do not agree upon a method of the sale of the property, the property may be sold at public auction or by the sheriff under subsection (g).

(e) Except if the parties agree to waive the appraisal of the property, not later than thirty (30) days after the court acquires jurisdiction under subsection (a), the court shall appoint a licensed real estate appraiser to appraise the property. The appraiser shall file the appraisal with the court.

(f) After receiving the appraisal, the court shall notify the parties of the appraised value of the property.

(g) If an agreed settlement is not reached in mediation or if the parties agree upon a method of sale, the court shall not later than thirty (30) days after the date after the mediator files a report with the court that the mediation was not successful, or the parties file their agreement establishing the method of sale:

(1) order the property to be sold using the method that all the parties agree upon; or

(2) order the parties to select an auctioneer to sell the property. If the parties fail to select an auctioneer not later than thirty (30) days after the court's order to select an auctioneer, the court shall order the sheriff to sell the property in the same manner that property is sold at execution under IC 34-55-6.

C
O
P
Y



1 **(h) At the time the court orders the property to be sold, the**
 2 **court shall notify all lienholders and other persons with an interest**
 3 **in the lien or property, as identified in the title search or lien**
 4 **search required under IC 29-1-17-11 or section 2 of this chapter,**
 5 **of the sale. The property must be sold free and clear of all liens and**
 6 **special assessments except prescriptive easements, easements of**
 7 **record, and irrevocable licenses, with any sum secured by a lien or**
 8 **special assessment to be satisfied from the proceeds of the sale.**

9 **(i) The person who causes a title search to be conducted under**
 10 **section 2 of this chapter or a title or lien search under**
 11 **IC 29-1-17-11 is entitled to indemnification from the proceeds of**
 12 **the sale.**

13 **(j) Any person who has paid a tax or special assessment on the**
 14 **property is entitled to pro rata indemnification from the proceeds**
 15 **of the sale.**

16 **(k) Any person may advertise a sale under this section at the**
 17 **person's own expense, but is not entitled to indemnification for**
 18 **these expenses.**

19 **(l) After deduction of the amounts described in subsections (h),**
 20 **(i), and (j) and the reasonable expenses of the sale, the court shall**
 21 **divide the proceeds of the sale among the remaining property**
 22 **owners in proportion to their ownership interest.**

23 **(m) If a party having an ownership interest in the property**
 24 **becomes the successful purchaser of the property either through**
 25 **agreed settlement or through auction, that person shall be given a**
 26 **full credit based on the percentage of the person's interest in the**
 27 **property before the purchase.**

28 **(n) As used in this subsection, "real estate professional" has the**
 29 **meaning set forth in IC 23-1.5-1-13.5. If the court has ordered that**
 30 **some or all of the property be sold at auction and, at any time**
 31 **before the property is sold at auction, all parties inform the court**
 32 **in writing that they:**

33 **(1) wish to sell some or all of the property through a real**
 34 **estate professional;**

35 **(2) have jointly selected a real estate professional; and**

36 **(3) have agreed upon a listing price for the property;**

37 **the court shall rescind its order that the property, or a part of the**
 38 **property, be sold at auction and permit the property to be sold**
 39 **through a real estate professional. If some or all of the property**
 40 **has not been sold at the expiration of the listing agreement with the**
 41 **real estate professional, upon petition by any party, the court shall**
 42 **order the property to be sold at auction in accordance with**



C
O
P
Y

1 **subsection (h).**

2 SECTION 4. IC 32-17-4-3 IS REPEALED [EFFECTIVE JULY 1,
3 2012]. Sec. 3: The proceedings, practice, and pleadings for an action
4 under this chapter are the same as in civil suits, except as otherwise
5 provided in this chapter.

6 SECTION 5. IC 32-17-4-4 IS REPEALED [EFFECTIVE JULY 1,
7 2012]. Sec. 4: (a) If:

- 8 (1) upon trial of any issue;
9 (2) upon default; or
10 (3) by consent of parties;

11 the court determines that partition should be made; the court shall
12 award an interlocutory judgment that partition be made to parties who
13 desire partition:

14 (b) In issuing a judgment under subsection (a); the court shall:

- 15 (1) specify the share assigned to each party; and
16 (2) take into consideration advancements to heirs of a person
17 dying intestate.

18 (c) If the court issues a judgment under subsection (a); any part of
19 the premises remaining after the partition belongs to the persons
20 entitled to the premises; subject to a future partition:

21 (d) If:

- 22 (1) upon trial of any issue;
23 (2) upon default; or
24 (3) by confession or consent of parties;

25 the court determines that the land for which partition is demanded
26 cannot be divided without damage to the owners; the court may order
27 the whole or any part of the premises to be sold as provided under
28 section 12 of this chapter.

29 SECTION 6. IC 32-17-4-5 IS REPEALED [EFFECTIVE JULY 1,
30 2012]. Sec. 5: Notwithstanding section 4 of this chapter; a court may
31 not order or affirm partition of any real estate contrary to the intention
32 of a testator expressed in the testator's will.

33 SECTION 7. IC 32-17-4-6 IS REPEALED [EFFECTIVE JULY 1,
34 2012]. Sec. 6: Upon judgment of partition; the court shall appoint three
35 (3) individuals as commissioners who:

- 36 (1) are disinterested resident freeholders;
37 (2) reside and own land in the county in which court is held; and
38 (3) are not related to any of the parties;

39 who shall make partition of the land in accordance with the judgment
40 of the court.

41 SECTION 8. IC 32-17-4-7 IS REPEALED [EFFECTIVE JULY 1,
42 2012]. Sec. 7: (a) Before discharging their duties; the commissioners

C
O
P
Y



1 appointed under section 6 of this chapter shall take an oath to faithfully
2 perform the duties of their trust.

3 (b) The oath described in subsection (a) must:

- 4 (1) if taken in open court, be entered in the court's order book; and
5 (2) if not taken in open court, be endorsed on the warrant issued
6 to the commissioners to make the partition.

7 SECTION 9. IC 32-17-4-8 IS REPEALED [EFFECTIVE JULY 1,
8 2012]. Sec. 8: Two (2) or more persons may, if they choose, have their
9 shares set off together.

10 SECTION 10. IC 32-17-4-9 IS REPEALED [EFFECTIVE JULY 1,
11 2012]. Sec. 9: (a) The commissioners shall report to the court regarding
12 their activities under this chapter.

13 (b) The commissioners shall make the report required under this
14 section:

- 15 (1) in open court; or
16 (2) by signing and swearing to the report before a person
17 authorized to administer oaths.

18 (c) A report filed under this section must specify the shares assigned
19 to each party by:

- 20 (1) divisions;
21 (2) lots;
22 (3) metes and bounds; or
23 (4) plats.

24 SECTION 11. IC 32-17-4-10 IS REPEALED [EFFECTIVE JULY
25 1, 2012]. Sec. 10: If the court confirms a report filed under section 9 of
26 this chapter, the court shall:

- 27 (1) spread the report on the order book;
28 (2) enter a judgment of partition in accordance with the report;
29 and
30 (3) record the report and judgment in a separate book kept for that
31 purpose.

32 SECTION 12. IC 32-17-4-11 IS REPEALED [EFFECTIVE JULY
33 1, 2012]. Sec. 11: (a) Before confirming a report filed under section 9
34 of this chapter, the court may, if the court determines that good cause
35 exists, set aside the report.

36 (b) If the court sets aside a report under subsection (a):

- 37 (1) the court may:
38 (A) recommit the duty of partition to the same commissioners;
39 or
40 (B) appoint other commissioners in the same manner as the
41 original commissioners; and
42 (2) the commissioners shall perform the duties described in this

C
o
p
y



1 chapter:

2 SECTION 13. IC 32-17-4-12 IS REPEALED [EFFECTIVE JULY
3 1, 2012]. Sec. 12: (a) If the commissioners report to the court that the
4 whole or part of the land of which partition is demanded can not be
5 divided without damage to the owners; the court may order the whole
6 or any part of the land to be sold at public or private sale on terms and
7 conditions prescribed by the court.

8 (b) If the court orders a sale under this section; the order shall
9 provide for reasonable public notice of the sale:

10 (c) If the court orders a sale under this section but does not order the
11 sale to be made for cash; the court shall require that the purchaser make
12 a cash payment of at least one-third (1/3) of the purchase price to the
13 commissioner appointed under section 14 of this chapter at the time of
14 the sale:

15 (d) Land sold under this section may not be sold for less than:

- 16 (1) if sold at public sale; two-thirds (2/3) of its appraised value;
17 and
18 (2) if sold at private sale; its appraised value.

19 The court shall determine the appraised value of the land in the same
20 manner as in cases of sales of land on execution:

21 (e) If only a part of land is sold under this section; the remainder
22 may be partitioned as provided under this chapter:

23 (f) If the value of land ordered by the court to be sold at private sale
24 does not exceed one thousand dollars (\$1,000); the land may; in the
25 discretion of the court; be sold without any notice of sale being had or
26 given:

27 (g) In all cases; the purchaser of land sold under this section has
28 rights in all crops planted on the land after the sale:

29 (h) The court may:

- 30 (1) approve reports of sale by commissioners in partition
31 proceedings; and
32 (2) order the deed delivered to the purchaser:

33 SECTION 14. IC 32-17-4-13 IS REPEALED [EFFECTIVE JULY
34 1, 2012]. Sec. 13: If the court confirms partial partition:

- 35 (1) the shares assigned are full shares; and
36 (2) the residue reserved for sale is discharged from all title or
37 claim of the parties receiving assignment of their shares under the
38 partition:

39 SECTION 15. IC 32-17-4-14 IS REPEALED [EFFECTIVE JULY
40 1, 2012]. Sec. 14: (a) If the court orders a sale under section 12 of this
41 chapter; the court shall appoint a commissioner; other than a
42 commissioner appointed to make partition; to conduct the sale:

ES 156—LS 6603/DI 106+



C
o
p
y

1 (b) A commissioner appointed under this section shall file a bond
 2 payable to the state of Indiana in an amount determined by the court;
 3 conditioned for the faithful discharge of the duties of the
 4 commissioner's trust.

5 SECTION 16. IC 32-17-4-15 IS REPEALED [EFFECTIVE JULY
 6 1, 2012]. Sec. 15: (a) If the court determines that:

7 (1) land is sold under section 12 of this chapter for cash; or

8 (2) land is sold under section 12 of this chapter for partial credit
 9 and that the first or cash payment of the purchase price is paid;

10 the court shall order the commissioner appointed under section 14 of
 11 this chapter; or some other person; to execute a conveyance to the
 12 purchaser:

13 (b) A conveyance made under this section bars all claims of the
 14 prior owners of the land as if the prior owners had executed the
 15 conveyance.

16 (c) If partial credit is given for land sold under section 12 of this
 17 chapter; the court shall, at the time the court orders the conveyance to
 18 be made under this section; also order and direct that; concurrently with
 19 the execution of the conveyance; the purchaser shall execute to the
 20 commissioner a mortgage upon the land to secure the deferred
 21 payments of the purchase price of the land.

22 (d) The commissioner shall place a mortgage executed under this
 23 section upon record as required by law.

24 SECTION 17. IC 32-17-4-16 IS REPEALED [EFFECTIVE JULY
 25 1, 2012]. Sec. 16: Commissioners appointed to make partition; or to
 26 sell; may not purchase the land partitioned or sold by the
 27 commissioners.

28 SECTION 18. IC 32-17-4-17 IS REPEALED [EFFECTIVE JULY
 29 1, 2012]. Sec. 17: The commissioner shall pay the proceeds of a sale
 30 under this chapter after payment of just costs and expenses to the
 31 persons entitled to the proceeds according to their respective shares;
 32 under the direction of the court.

33 SECTION 19. IC 32-17-4-18 IS REPEALED [EFFECTIVE JULY
 34 1, 2012]. Sec. 18: (a) Any two (2) of the persons named as
 35 commissioners to make partition may perform the duties required by
 36 this chapter.

37 (b) The court may fill a vacancy of a commissioner.

38 SECTION 20. IC 32-17-4-19 IS REPEALED [EFFECTIVE JULY
 39 1, 2012]. Sec. 19: (a) The occurrence of a vacancy does not invalidate
 40 the previous acts of the commissioners:

41 (b) A successor commissioner shall take up and continue the
 42 proceedings; which are as valid as if the proceedings had been done by

C
O
P
Y



1 the commissioners first appointed:

2 SECTION 21. IC 32-17-4-20 IS REPEALED [EFFECTIVE JULY
3 1, 2012]. Sec. 20: The court shall provide an allowance, in an amount
4 that the court determines to be reasonable:

5 (1) to the commissioners for their services; and

6 (2) for surveying, marking, chaining, platting, and executing the
7 necessary conveyances:

8 SECTION 22. IC 32-17-4-21 IS REPEALED [EFFECTIVE JULY
9 1, 2012]. Sec. 21: (a) All costs and necessary expenses, including
10 reasonable attorney's fees for plaintiff's attorney, in an amount
11 determined by the court, shall be awarded and enforced in favor of the
12 parties entitled to the costs and expenses against the partitioners:

13 (b) The court shall assign costs and expenses awarded under
14 subsection (a) against each partitioner as the court may determine in
15 equity, taking into consideration each partitioner's relative interest in
16 the land or proceeds apportioned:

17 SECTION 23. IC 32-17-4-22 IS REPEALED [EFFECTIVE JULY
18 1, 2012]. Sec. 22: Upon showing sufficient cause, a party to
19 proceedings under this chapter who was not served with summons may,
20 not more than one (1) year after a partition is confirmed, appear and
21 open the proceedings, and obtain a review of the partition:

22 SECTION 24. IC 32-17-4-24 IS REPEALED [EFFECTIVE JULY
23 1, 2012]. Sec. 24: (a) In a proceeding for the partition of real estate:

24 (1) in a state court; and

25 (2) in which a person less than eighteen (18) years of age is a
26 party in interest;

27 the commissioners appointed to make the partition may lay off into lots
28 or out-lots, streets, and alleys; any land included in the partition and
29 may make a plat of the lots or out-lots, streets, and alleys and submit
30 the plat to the court for approval or rejection:

31 (b) If a plat submitted under subsection (a) is approved by the court:

32 (1) the commissioners appointed to make the partition shall
33 acknowledge the plat in open court;

34 (2) the plat must be recorded as other similar plats of like nature
35 are recorded; and

36 (3) the plat is legally valid as if the plat were made by a legal
37 proprietor of the lands who is at least eighteen (18) years of age:

38 (c) The court shall determine, upon the return by the commissioners
39 of a plat described in subsection (b), whether it is in the interest of the
40 parties for the land that is the subject of the partition proceeding to be
41 laid off into lots or out-lots, streets, and alleys. If the court determines
42 that it is in the interest of the parties, the appointed commissioners may



C
o
p
y

1 partition the land as in other cases without detriment to the interested
2 parties. If partition of the land is not practicable without detriment to
3 the interested parties, the lots or out-lots may be sold by order of the
4 court.

C
o
p
y



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 156, 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 4, line 1, delete "and" and insert ",".

Page 4, line 2, after "record," insert "**and irrevocable licenses,**".

and when so amended that said bill do pass.

(Reference is to SB 156 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

 SENATE MOTION

Madam President: I move that Senate Bill 156 be amended to read as follows:

Page 4, line 5, after "a" insert "**title or**".

Page 4, between lines 16 and 17, begin a new paragraph and insert:

"(j) As used in this subsection, "real estate professional" has the meaning set forth in IC 23-1.5-1-13.5. If the court has ordered that some or all of the property be sold at auction and, at any time before the property is sold at auction, all parties inform the court in writing that they:

- (1) wish to sell some or all of the property through a real estate professional;**
- (2) have jointly selected a real estate professional; and**
- (3) have agreed upon a listing price for the property;**

the court shall rescind its order that the property, or a part of the property, be sold at auction and permit the property to be sold through a real estate professional. If some or all of the property has not been sold at the expiration of the listing agreement with the real estate professional, upon petition by any party, the court shall order the property to be sold at auction in accordance with subsection (c)."

Page 5, delete lines 25 through 28, begin a new paragraph, and insert:

"SECTION 10. IC 32-17-4-9 IS REPEALED [EFFECTIVE JULY 1, 2012]. Sec. 9: (a) The commissioners shall report to the court

ES 156—LS 6603/DI 106+



C
O
P
Y

regarding their activities under this chapter:

(b) The commissioners shall make the report required under this section:

- (1) in open court; or
- (2) by signing and swearing to the report before a person authorized to administer oaths.

(c) A report filed under this section must specify the shares assigned to each party by:

- (1) divisions;
- (2) lots;
- (3) metes and bounds; or
- (4) plats."

(Reference is to SB 156 as printed January 20, 2012.)

STEELE

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 156, 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 3, delete lines 2 through 42, begin a new paragraph and insert:

"SECTION 3. IC 32-17-4-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 2.5. (a) Not later than forty-five (45) days after the court has acquired jurisdiction over all the parties who have an interest in the property that is the subject of the action, the court shall refer the matter to mediation in accordance with the Indiana rules of alternative dispute resolution.**

(b) Except as provided in subsection (c), mediation of the case may not begin until an appraiser files an appraisal report with the court.

(c) If each party waives the appraisal of the property, the case may move to mediation without the filing of an appraisal report.

(d) In its order referring the matter for mediation, the court shall advise the parties:

- (1) that the real or personal property will be sold if the parties are unable to reach an agreement not later than sixty (60) days after the order is issued; and**
- (2) that the parties may agree upon a method of the sale of the**



COPY

property, and if the parties do not agree upon a method of the sale of the property, the property may be sold at public auction or by the sheriff under subsection (g).

(e) Except if the parties agree to waive the appraisal of the property, not later than thirty (30) days after the court acquires jurisdiction under subsection (a), the court shall appoint a licensed real estate appraiser to appraise the property. The appraiser shall file the appraisal with the court.

(f) After receiving the appraisal, the court shall notify the parties of the appraised value of the property.

(g) If an agreed settlement is not reached in mediation or if the parties agree upon a method of sale, the court shall not later than thirty (30) days after the date after the mediator files a report with the court that the mediation was not successful, or the parties file their agreement establishing the method of sale:

(1) order the property to be sold using the method that all the parties agree upon; or

(2) order the parties to select an auctioneer to sell the property. If the parties fail to select an auctioneer not later than thirty (30) days after the court's order to select an auctioneer, the court shall order the sheriff to sell the property in the same manner that property is sold at execution under IC 34-55-6.

(h) At the time the court orders the property to be sold, the court shall notify all lienholders and other persons with an interest in the lien or property, as identified in the title search or lien search required under IC 29-1-17-11 or section 2 of this chapter, of the sale. The property must be sold free and clear of all liens and special assessments except prescriptive easements, easements of record, and irrevocable licenses, with any sum secured by a lien or special assessment to be satisfied from the proceeds of the sale.

(i) The person who causes a title search to be conducted under section 2 of this chapter or a title or lien search under IC 29-1-17-11 is entitled to indemnification from the proceeds of the sale.

(j) Any person who has paid a tax or special assessment on the property is entitled to pro rata indemnification from the proceeds of the sale.

(k) Any person may advertise a sale under this section at the person's own expense, but is not entitled to indemnification for these expenses.

(l) After deduction of the amounts described in subsections (h),

C
O
P
Y



(i), and (j) and the reasonable expenses of the sale, the court shall divide the proceeds of the sale among the remaining property owners in proportion to their ownership interest.

(m) If a party having an ownership interest in the property becomes the successful purchaser of the property either through agreed settlement or through auction, that person shall be given a full credit based on the percentage of the person's interest in the property before the purchase.

(n) As used in this subsection, "real estate professional" has the meaning set forth in IC 23-1.5-1-13.5. If the court has ordered that some or all of the property be sold at auction and, at any time before the property is sold at auction, all parties inform the court in writing that they:

- (1) wish to sell some or all of the property through a real estate professional;
- (2) have jointly selected a real estate professional; and
- (3) have agreed upon a listing price for the property;

the court shall rescind its order that the property, or a part of the property, be sold at auction and permit the property to be sold through a real estate professional. If some or all of the property has not been sold at the expiration of the listing agreement with the real estate professional, upon petition by any party, the court shall order the property to be sold at auction in accordance with subsection (h)."

Page 4, delete lines 1 through 33.

and when so amended that said bill do pass.

(Reference is to SB 156 as reprinted January 24, 2012.)

FOLEY, Chair

Committee Vote: yeas 11, nays 0.

C
O
P
Y

