February 24, 2012

ENGROSSED
SENATE BILL No. 298

DIGEST OF SB 298 (Updated February 22, 2012 3:13 pm - DI 101)

Citations Affected: IC 32-28; IC 32-29.

Synopsis: Mortgages and liens on real property. Removes a provision specifying that a mortgage or vendor's lien that was created before September 1, 1982, on real estate in Indiana expires 20 years after the last installment of the secured debt is due. Provides that if a mortgage or vendor's lien does not show the due date of the last installment, the mortgage or lien expires 10 years (instead of 20 years under current law) after the date of execution of the mortgage or lien. Provides that if: (1) the record of the mortgage or lien does not show the due date of the last installment; and (2) the execution date is omitted from the mortgage or lien; the mortgage or lien expires 10 years (instead of 20 years under current law) after the mortgage or lien is recorded. Makes exceptions to the expiration period if a foreclosure action is brought or maintained not later than the expiration period. Makes corresponding changes in the provision that allows the mortgagee or lienholder to file

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Effective: Upon passage; July 1, 2012.

Zakas, Steele, Lanane, Holdman, Broden

(HOUSE SPONSORS — SPEEDY, RIECKEN)

January 5, 2012, read first time and referred to Committee on Insurance and Financial Institutions.
January 20, 2012, amended, reported favorably — Do Pass.
January 24, 2012, read second time, amended, ordered engrossed.
January 25, 2012, engrossed.
January 30, 2012, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 9, 2012, read first time and referred to Committee on Financial Institutions.
February 23, 2012, amended, reported — Do Pass.

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Digest Continued

an affidavit stating when the debt becomes due. Provides that at any time after a judgment and decree of sale is entered in an action to foreclose a mortgage on an interest in real property in Indiana, an interested person or an omitted party may bring a civil action concerning an omitted party's interest in the property. Provides that upon the filing of such an action, the court shall determine the extent of the omitted party's interest and issue a decree terminating that interest, subject to the right of the omitted party to redeem the property if the omitted party would have had redemption rights under existing law. Sets forth factors that the court must consider in determining the terms of redemption. Provides for the amount to be paid for redemption and the time allowed for payment. Provides that: (1) the senior lien on which the foreclosure action was based is not extinguished by merger with the title to the property conveyed to a purchaser at the judicial sale until the interest of any omitted party has been terminated; and (2) until an omitted party's interest is terminated, the purchaser at the judicial sale is the equitable owner of the senior lien. Provides that an interested person's rights under the new provisions may not be denied because of certain acts or omissions by the interested person. Makes technical changes.

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February 24, 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.

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ENGROSSED
SENATE BILL No. 298

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

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

SECTION 1. IC 32-28-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) A mortgage or vendor's lien upon real estate expires ten (10) years after the last installment of the debt secured by the lien becomes due, as shown by the record of the lien **unless an action to foreclose is brought or maintained not later than ten (10) years after the last installment of the debt secured by the lien becomes due, as shown by the record of the lien.**

(b) An action may not be brought or maintained in the courts of Indiana to foreclose a mortgage or enforce a vendor's lien reserved by a ~~grantor~~ **person** to secure the payment of an obligation secured by the mortgage or lien if the last installment of the debt secured by the mortgage or lien, as shown by the record of the mortgage or lien, has been due more than ten (10) years. ~~However, a lien or mortgage described in this section that was created before September 1, 1982,~~

~~expires twenty (20) years after the time the last installment becomes due, and an action may not be brought to foreclose the mortgage or enforce the vendor's lien when the last installment has been due more than twenty (20) years.~~

SECTION 2. IC 32-28-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) Except as provided in section 3 of this chapter, if the record of a mortgage or lien described in section 1 of this chapter does not show when the debt or the last installment of the debt secured by the mortgage or lien becomes due, the mortgage or vendor's lien expires ~~twenty (20)~~ **ten (10)** years after the date on which the mortgage or lien is executed **unless an action to foreclose is brought or maintained not later than ten (10) years after the date on which the mortgage or lien was executed.**

(b) If:

(1) the record of a mortgage or lien described in section 1 of this chapter does not show when the debt or the last installment of the debt secured by the mortgage or lien becomes due; and

(2) the date **of execution** has been omitted in a mortgage or vendor's lien;

the mortgage or vendor's lien expires ~~twenty (20)~~ **ten (10)** years after the date on which the mortgage or vendor's lien is recorded **unless an action to foreclose is brought or maintained not later than ten (10) years after the date on which the mortgage or vendor's lien was recorded.**

(c) Upon the request of the owner of record of real estate encumbered by a mortgage or lien that has expired under this section, the recorder of the county in which the real estate is situated shall certify on the record that the mortgage or vendor's lien is fully paid and satisfied by lapse of time, and the real estate is released from the lien.

SECTION 3. IC 32-28-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) If the record of a mortgage or vendor's lien to which this chapter applies does not show the time when the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due:

(1) the original mortgagee;

(2) the owner of the mortgage; or

(3) the owner of a vendor's lien;

may file an affidavit with the recorder of the county where the mortgage or lien is recorded, stating when the debt becomes due. An affidavit must be filed under this section not later than ~~twenty (20)~~ **ten (10)** years after the date of **execution of** the mortgage or lien, or, if the

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mortgage or lien contains no date of execution, not later than ~~twenty (20)~~ **ten (10)** years from the date the mortgage or vendor's lien was recorded. Upon the filing of the affidavit, the recorder shall note in the record of the mortgage or vendor's lien that an affidavit has been filed, showing the location where the affidavit is recorded.

(b) The filing of an affidavit under subsection (a) has the same effect with respect to the duration of the lien of the mortgage or vendor's lien described in the affidavit and with respect to the time within which an action may be brought or maintained to foreclose the mortgage or vendor's lien as though the time of maturity of the debt or the last installment of the debt secured by the mortgage or vendor's lien had been stated in the mortgage or vendor's lien when recorded. The affidavit is prima facie evidence of the truth of the averments contained in the affidavit. The lien of a mortgage or vendor's lien on the real estate described in the affidavit expires ~~twenty (20)~~ **ten (10)** years after the time when the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due, as shown by the affidavit. Upon the expiration of a mortgage or lien as described in this section and at the request of the real estate owner, the recorder of the county in which the affidavit is recorded shall certify on the record of the mortgage or vendor's lien that the mortgage or vendor's lien is fully paid and satisfied by lapse of time and that the real estate is released from the lien.

(c) The recorder shall charge a fee for filing the affidavit in accordance with the fee schedule established in IC 36-2-7-10.

SECTION 4. IC 32-29-7-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. There may not be a redemption from the foreclosure of a mortgage executed after June 30, 1931, on real estate except as provided in this chapter **and in IC 32-29-8.**

SECTION 5. IC 32-29-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. A person who:

(1) is assigned a mortgage and fails to ~~(1)~~ have ~~an~~ **the** assignment ~~of the mortgage made to the person~~ properly placed on the mortgage record; or

(2) ~~be~~ **has an interest described in section 1 of this chapter and is not** made a party to the foreclosure action **as required by section 1 of this chapter;**

is bound by the court's judgment or decree as if the person were a party to the suit.

SECTION 6. IC 32-29-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. A person who:

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(1) purchases a mortgaged premises or any part of a mortgaged premises under the court's judgment or decree at a judicial sale or who claims title to the mortgaged premises under the judgment or decree; ~~buying~~ **and**

(2) buys the mortgaged premises or any part of the mortgaged premises without actual notice of:

(A) an assignment that is not of record; or ~~of~~

(B) the transfer of a note, the holder of which is not a party to the action;

holds the premises free and discharged of the lien. However, any assignee or transferee may redeem the premises, like any other creditor, during the period of one (1) year after the sale **or during another period ordered by the court in an action brought under section 4 of this chapter, but not exceeding ninety (90) days after the date of the court's decree in the action.**

SECTION 7. IC 32-29-8-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4. (a) As used in this section, "interested person", with respect to an action to foreclose a mortgage on an interest in real property in Indiana, means:**

(1) the holder of the evidence of debt secured by the mortgage being foreclosed;

(2) a person who:

(A) purchases the property at a judicial sale after a judgment and decree of sale is entered in the action; and

(B) to whom a deed is executed and delivered by the sheriff under IC 32-29-7-10; or

(3) any person claiming by, through, or under a person described in subdivision (1) or (2).

(b) As used in this section, "omitted party", with respect to an action to foreclose a mortgage on an interest in real property in Indiana, means a person who:

(1) before the commencement of the action has acquired in the property an interest that:

(A) is junior or subordinate to the mortgage being foreclosed; and

(B) would otherwise be extinguished by the foreclosure; and

(2) is either:

(A) not named as a party defendant in the action or, if named as a party defendant, is not served with process; or

(B) not served with a notice of sale under IC 32-29-7-3(d)

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after a judgment and decree of sale is entered in the action. The term includes any person claiming by, through, or under a person described in this subsection.

(c) At any time after a judgment and decree of sale is entered in an action to foreclose a mortgage on an interest in real property in Indiana, an interested person or an omitted party may bring a civil action to:

(1) determine the extent of; and

(2) terminate;

the interest of an omitted party in the property subject to the sale.

(d) Except as provided in subsection (e) and subject to subsections (f) and (g), upon the filing of an action described in subsection (c), the court shall determine the extent of the omitted party's interest in the property and issue a decree terminating that interest, subject to the right of the omitted party to redeem the property on terms as the court considers equitable under the circumstances after considering the factors set forth in subsection (f), if the omitted party would have had redemption rights:

(1) before the sale under IC 32-29-7-7; or

(2) after the sale, as described in IC 34-55-4-8(a)(2).

(e) If the omitted party proves that the omitted party has a right to receive proceeds actually paid at the judicial sale, the omitted party's interest in the property is not subject to termination by an action brought under this section unless the proceeds that the omitted party would have received at the judicial sale are paid to the omitted party.

(f) In an action brought under this section, if the court determines that the omitted party is entitled to redemption under subsection (d), the court shall consider the following in deciding the terms of the redemption:

(1) Whether the omitted party:

(A) was given or had actual notice or knowledge of the foreclosure; and

(B) had opportunity to intervene in the foreclosure action or otherwise exercise any right to redeem the property.

(2) Whether any interested person in good faith has made valuable improvements to the property and, if so, the value of all lasting improvements made to the property before the commencement of the action under this section.

(3) The amount of any taxes and assessments, along with any related interest payments, related to the property and paid by the interested person or by any person under whose title to

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the property the interested person claims.

(g) If the court determines that the omitted party is entitled to redemption under subsection (d), and after considering the factors set forth in subsection (f), the court shall grant redemption rights to the omitted party that the court considers equitable under the circumstances, subject to the following:

(1) The amount to be paid for redemption may not be less than the sale price resulting from the foreclosure of the interested person's senior lien, plus interest at the statutory judgment rate.

(2) The time allowed for payment of the redemption amount may not exceed ninety (90) days after the date of the court's decree under subsection (d).

(h) The senior lien upon which the foreclosure action was based is not extinguished by merger with the title to the property conveyed to a purchaser through a sheriff's deed executed and delivered under IC 32-29-7-10 until the interest of any omitted party has been terminated:

(1) through an action brought under this section; or

(2) by operation of law.

Until an omitted party's interest is terminated as described in this subsection, any owner of the property as a holder of a sheriff's deed executed and delivered under IC 32-29-7-10, or any person claiming by, through, or under such an owner, is the equitable owner of the senior lien upon which the foreclosure action was based and has all rights against an omitted party as existed before the judicial sale.

(i) An interested person may not terminate an omitted party's interest in real property that is the subject of a foreclosure action except through an action brought under this section. An interested person's rights under this section may not be denied because the interested person:

(1) had actual or constructive notice of the omitted party's interest in the property;

(2) was negligent in examining county records;

(3) was engaged in the business of lending; or

(4) obtained a title search or commitment or a title insurance policy.

SECTION 8. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 298, 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, line 3, reset in roman "ten (10)".

Page 1, line 3, delete "five (5)".

Page 1, line 5, delete "." and insert "**unless an action to foreclose is brought or maintained on or before ten (10) years after the last installment of the debt secured by the lien becomes due, as shown by the record of the lien.**".

Page 1, line 11, reset in roman "ten (10)".

Page 1, line 11, delete "five (5)".

Page 1, line 11, reset in roman "However, a lien or".

Page 1, reset in roman lines 12 through 15.

Page 2, reset in roman line 1.

Page 2, line 7, delete "six (6)" and insert "**ten (10)**".

Page 2, line 8, delete "." and insert "**unless an action to foreclose is brought or maintained on or before ten (10) years after the date on which the mortgage or lien was executed.**".

Page 2, line 16, delete "six (6)" and insert "**ten (10)**".

Page 2, line 17, delete "." and insert "**unless an action to foreclose is brought or maintained on or before ten (10) years after the date on which the mortgage or vendor's lien was recorded.**".

Page 2, line 33, delete "six".

Page 2, line 34, delete "(6)" and insert "**ten (10)**".

Page 2, line 36, delete "six (6)" and insert "**ten (10)**".

Page 3, line 7, delete "six (6)" and insert "**ten (10)**".

and when so amended that said bill do pass.

(Reference is to SB 298 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 7, Nays 1.

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SENATE MOTION

Madam President: I move that Senate Bill 298 be amended to read as follows:

Page 1, line 14, strike "However, a lien or mortgage".
Page 1, strike line 15.
Page 2, strike lines 1 through 4.
Page 4, line 34, delete "a record" and insert "**an**".

(Reference is to SB 298 as printed January 20, 2012.)

ZAKAS

COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 298, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 6, delete "on or before" and insert "**not later than**".
Page 2, line 12, delete "on or before" and insert "**not later than**".
Page 2, line 23, delete "on or before" and insert "**not later than**".
Page 5, line 20, after "in" insert "**IC**".

and when so amended that said bill do pass.

(Reference is to SB 298 as reprinted January 25, 2012.)

BURTON, Chair

Committee Vote: yeas 8, nays 1.

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