

Adopted	Rejected
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## COMMITTEE REPORT

YES:	9
NO:	0

### MR. SPEAKER:

*Your Committee on Financial Institutions, to which was referred House Bill 1238, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, line 14, delete "IC 32-30-10.6-6" and insert "**IC**
- 2 **32-30-10.6**".
- 3 Page 1, line 15, strike "is residential real estate and".
- 4 Page 3, delete lines 41 through 42.
- 5 Page 4, delete lines 1 through 28.
- 6 Page 5, line 6, delete "IC 32-30-10.6-6." and insert "**IC**
- 7 **32-30-10.6**".
- 8 Page 7, delete lines 18 through 21, begin a new line block indented
- 9 and insert:
- 10 "(1) the mortgage is secured by a dwelling that is not **occupied by**
- 11 **the debtor as** the debtor's primary residence;"
- 12 Page 9, line 7, delete "Residential Mortgage" and insert "**Mortgage**
- 13 **Foreclosure Action**".
- 14 Page 9, delete lines 8 through 42, begin a new paragraph and insert:
- 15 "**Sec. 1. This chapter applies to a mortgage foreclosure action**

1 filed under IC 32-30-10-3.

2 Sec. 2. As used in this chapter, "enforcement authority" refers  
3 to the enforcement authority (as defined in IC 36-7-9-2) that has  
4 jurisdiction in the location of the property that is the subject of a  
5 mortgage foreclosure action.

6 Sec. 3. (a) At any time during a mortgage foreclosure action, the  
7 creditor may petition the court for a determination that the  
8 mortgaged property is abandoned. A petition filed with the court  
9 under this section must:

- 10 (1) allege that the mortgaged property is abandoned; and  
11 (2) include evidence that one (1) or more of the conditions set  
12 forth in section 5(a) or 5(b) of this chapter apply.

13 A petition under this section shall be served on the debtor in the  
14 manner prescribed by the Indiana Rules of Trial Procedure.

15 (b) At any time during a mortgage foreclosure action, the  
16 enforcement authority that has jurisdiction in the location of the  
17 mortgaged property may petition the court for a determination  
18 that the mortgaged property is abandoned by filing a motion to  
19 intervene in the foreclosure action in the manner prescribed by the  
20 Indiana Rules of Trial Procedure. The motion to intervene must:

- 21 (1) include a statement of the enforcement authority's  
22 jurisdiction in the location of the mortgaged property;  
23 (2) allege that the mortgaged property is abandoned; and  
24 (3) include evidence that one (1) or more of the conditions set  
25 forth in section 5(a) or 5(b) of this chapter apply.

26 Sec. 4. (a) Upon receiving a request for a determination of  
27 abandonment from a creditor or an enforcement authority through  
28 a petition or motion filed with the court and served on the required  
29 parties in accordance with section 3 of this chapter, the court shall  
30 issue an order to show cause as to why the property should not be  
31 found to be abandoned and directing the petitioner, the debtor, and  
32 any other person or party the court considers appropriate to  
33 appear before the court on a date and time specified in the order  
34 under subdivision (1). The court's order under this subsection must  
35 do the following:

- 36 (1) Direct the parties subject to the order to appear before the  
37 court on a date and time specified by the court. The date  
38 specified under this subdivision must not be:

1           (A) earlier than fifteen (15) days; or  
2           (B) later than twenty-five (25) days;  
3       after the date of the court's order under this section.  
4       (2) Notify the parties subject to the order that any party  
5       ordered to appear:  
6           (A) may present evidence or objections on the issue of  
7           abandonment to the court:  
8               (i) in writing before the appearance date specified by the  
9               court under subdivision (1); or  
10              (ii) in writing or by oral testimony on the date and at the  
11              time specified by the court under subdivision (1);  
12           in the manner specified by the court; and  
13           (B) has the right to be represented by an attorney when  
14           appearing before the court.  
15       (3) Notify the parties subject to the order that if the debtor  
16       fails to:  
17           (A) submit written evidence or objections to the court  
18           before the appearance date specified by the court under  
19           subdivision (1); or  
20           (B) appear before the court on the date and at the time  
21           specified by the court under subdivision (1);  
22       the debtor's failure to submit evidence or objections or to  
23       appear before the court will result in a finding of  
24       abandonment by the court.  
25       (b) A party subject to an order issued by the court under this  
26       section has the following rights, as described in the court's order  
27       under subsection (a):  
28           (1) The right to present evidence or objections on the issue of  
29           abandonment to the court:  
30               (A) in writing before the appearance date specified in the  
31               court's order under subsection (a)(1); or  
32               (B) in writing or by oral testimony on the date and at the  
33               time specified in the court's order under subsection (a)(1);  
34           in the manner specified by the court.  
35           (2) The right to be represented by an attorney when appearing  
36           before the court.  
37       Sec. 5. (a) Subject to subsection (b), for purposes of an  
38       abandonment determination under this chapter, mortgaged

1 property shall be considered abandoned if one (1) or more of the  
2 following apply:

3 (1) The enforcement authority that has jurisdiction in the  
4 location of the mortgaged property has issued an order under  
5 IC 36-7-36-9 with respect to the property.

6 (2) Windows or entrances to the mortgaged property are  
7 boarded up or closed off.

8 (3) Multiple window panes on the mortgaged property are  
9 broken and unrepaired.

10 (4) One (1) or more doors to the mortgaged property are  
11 smashed through, broken off, unhinged, or continuously  
12 unlocked.

13 (5) Gas service, electric service, water service, or other utility  
14 service to the mortgaged property has been terminated.

15 (6) Rubbish, trash, or debris has accumulated on the  
16 mortgaged property.

17 (7) The mortgaged property is deteriorating and is either  
18 below or in imminent danger of falling below minimum  
19 community standards for public safety and sanitation.

20 (8) The creditor has changed the locks on the mortgaged  
21 property and for at least fifteen (15) days after the changing  
22 of the locks the owner has not requested entrance to the  
23 mortgaged property.

24 (9) There exist one (1) or more written statements, including  
25 documents of conveyance, that have been executed by the  
26 debtor, or by the debtor's personal representatives or assigns,  
27 and that indicate a clear intent to abandon the mortgaged  
28 property.

29 (10) There exists other evidence indicating a clear intent to  
30 abandon the mortgaged property.

31 (b) Regardless of whether any of the conditions described in  
32 subsection (a) are found to apply, the debtor's failure to either:

33 (1) present evidence or objections on the issue of  
34 abandonment to the court in writing before the appearance  
35 date specified in the court's order under section 4(a)(1) of this  
36 chapter; or

37 (2) appear before the court on the date specified in the court's  
38 order under section 4(a)(1) of this chapter;

- 1       **constitutes conclusive evidence that the mortgaged property is**
- 2       **abandoned.**
- 3       **(c) If the court finds that:**
- 4           **(1) one (1) or more of the conditions described in subsection**
- 5           **(a) apply; or**
- 6           **(2) the circumstances described in subsection (b) apply;**
- 7       **the court shall issue an order finding that the mortgaged property**
- 8       **is abandoned."**
- 9       Delete pages 10 through 18.
- 10       Page 19, delete lines 1 through 23.
- 11       Page 20, line 15, delete "Residential real estate upon which there is
- 12       located a" and insert "**Real estate that a court has determined to be**
- 13       **abandoned under IC 32-30-10.6."**
- 14       Page 20, delete lines 16 through 17.
- 15       Renumber all SECTIONS consecutively.  
(Reference is to HB 1238 as introduced.)

**and when so amended that said bill do pass.**

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Representative Burton