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.

HOUSE ENROLLED ACT No. 1238

AN ACT to amend the Indiana Code concerning property.

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

SECTION 1. IC 32-29-7-3, AS AMENDED BY P.L.68-2010, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the execution of a judgment or decree of sale for a period of three (3) months after the filing of a complaint in the proceeding. However:

(1) the period is:

(A) twelve (12) months in a proceeding for the foreclosure of a mortgage executed before January 1, 1958; and

(B) six (6) months in a proceeding for the foreclosure of a mortgage executed after December 31, 1957, but before July 1, 1975; and

(2) if the court ~~or an enforcement authority (as defined in IC 36-7-9-2)~~ finds **under IC 32-30-10.6** that the mortgaged real estate ~~is residential real estate and~~ has been abandoned, a judgment or decree of sale may be executed on the date the judgment of foreclosure or decree of sale is entered, regardless of the date the mortgage is executed.

(b) A judgment and decree in a proceeding to foreclose a mortgage that is entered by a court having jurisdiction may be filed with the clerk in any county as provided in IC 33-32-3-2. After the period set forth in subsection (a) expires, a person who may enforce the judgment and decree may file a praecipe with the clerk in any county where the

C o p y

judgment and decree is filed, and the clerk shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court. However, if:

(1) a praecipe is not filed with the clerk within one hundred eighty (180) days after the later of the dates on which:

(A) the period specified in subsection (a) expires; or

(B) the judgment and decree is filed; and

(2) the sale is not:

(A) otherwise prohibited by law;

(B) subject to a voluntary statewide foreclosure moratorium; or

(C) subject to a written agreement that:

(i) provides for a delay in the sale of the mortgaged real estate; and

(ii) is executed by and between the owner of the mortgaged real estate and a party entitled to enforce the judgment and decree;

an enforcement authority that has issued an abatement order under IC 36-7-36-9 with respect to the mortgaged real estate may file a praecipe with the clerk in any county where the judgment and decree is filed. If an enforcement authority files a praecipe under this subsection, the clerk of the county in which the praecipe is filed shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court.

(c) Upon receiving a certified judgment under subsection (b), the sheriff shall, subject to section 4 of this chapter, sell the mortgaged premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for:

(1) a date not later than one hundred twenty (120) days after the date on which the judgment and decree under seal of the court are certified to the sheriff by the clerk; and

(2) a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation. The sheriff shall publish the advertisement in at least one (1) newspaper published and circulated in each county where the real estate is situated. The first publication shall be made at least thirty (30) days before the date of

C o p y

sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars ($10) to one (1) owner and three dollars ($3) to each additional owner for service of written notice under this subsection. The fee is:

(1) a cost of the proceeding;

(2) to be collected as other costs of the proceeding are collected; and

(3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. The sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement, for informational purposes only, of the location of each property by street address, if any, or other common description of the property other than legal description. A misstatement in the informational statement under this subsection does not invalidate an otherwise valid sale.

(h) The sheriff may charge an administrative fee of not more than two hundred dollars ($200) with respect to a proceeding referred to in subsection (b) for actual costs directly attributable to the administration of the sale under subsection (c). The fee is:

(1) payable by the person seeking to enforce the judgment and decree; and

(2) due at the time of filing of the praecipe;

under subsection (b).

SECTION 2. IC 32-30-10.5-8, AS AMENDED BY P.L.170-2011, SECTION 8, AND AS AMENDED BY P.L.116-2011, SECTION 4, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) This section applies to a foreclosure action that is filed after June 30, 2009. Except as provided in subsection (e) and section 10(g) of this chapter, not later than thirty (30) days before a creditor files an action for foreclosure, the creditor shall send to the debtor by certified mail a presuit notice on a form prescribed by the ~~*Indiana housing and community development*~~ authority. ~~*created by IC 5-20-1-3.*~~ The notice required by this

C o p y

subsection must do the following:

(1) Inform the debtor that:

(A) the debtor is in default;

(B) the debtor is encouraged to obtain assistance from a mortgage foreclosure counselor; and

(C) if the creditor proceeds to file a foreclosure action and obtains a foreclosure judgment, the debtor has a right to do the following before a sheriff's sale is conducted:

(i) Appeal a finding of abandonment by a court under ~~IC 32-29-7-3(a)(2).~~ **IC 32-30-10.6.**

(ii) Redeem the real estate from the judgment under IC 32-29-7-7.

(iii) Retain possession of the property under IC 32-29-7-11(b), subject to the conditions set forth in IC 32-29-7-11(b).

(2) Provide the contact information for the Indiana Foreclosure Prevention Network.

(3) Include the following statement printed in at least 14 point boldface type:

"NOTICE REQUIRED BY STATE LAW

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

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

(1) the address of the mortgaged property; or

(2) the last known mailing address of the debtor if the creditor's records indicate that the mailing address of the debtor is other than the address of the mortgaged property.

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

(c) Except as provided in subsection (e) and section 10(g) of this chapter, if a creditor files an action to foreclose a mortgage, the creditor shall:

(1) in the case of a foreclosure action filed after June 30, 2009, but before July 1, 2011, include with the complaint served on the

C o p y

debtor, *on a form prescribed by the authority; and*

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

a notice that informs the debtor of the debtor's right to participate in a settlement conference, *subject to section 9(b) of this chapter.* ~~*The notice must be in a form prescribed by the Indiana housing and community development authority created by IC 5-20-1-3.*~~ The notice *under subdivision (1) or (2)* must inform the debtor that the debtor may schedule a settlement conference by notifying the court, not later than thirty (30) days after the ~~*notice*~~ *complaint* is served *on the debtor,* of the debtor's intent to participate in a settlement conference.

(d) ~~*In a foreclosure action filed under IC 32-30-10-3 after June 30, 2009,*~~ *If a creditor files an action to foreclose a mortgage,* the creditor shall *do the following:*

(1) ~~*attach to*~~ *Include with* the complaint filed with the court:

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

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

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

~~*(B)*~~ **(ii)** *The following most recent contact information for the debtor that the creditor has on file:* ~~*(i)*~~ *all telephone numbers and electronic mail addresses for the debtor* **and** ~~*(ii)*~~ *any mailing address described in subsection (b)(2). The contact information provided under this* ~~*clause*~~ **item** *is confidential under IC 5-14-3-4(a)(13).*

(2) **For a foreclosure action filed after June 30, 2011,** *at the time the complaint is filed with the court, send:*

(A) by certified mail, return receipt requested; and

(B) to the last known mailing address of the insurance company;

a copy of the complaint filed with the court to the insurance company of record for the property that is the subject of the foreclosure action.

It is not necessary that the insurance company accept receipt of the copy of the complaint for the creditor to satisfy the requirement of

C o p y

subdivision (2). A creditor's failure to provide a copy of the complaint as required by subdivision (2) does not affect the foreclosure action or subject the creditor to any liability. Subject to section 9(b) of this chapter, in the case of a foreclosure action filed after June 30, 2011, upon the filing of the complaint by the creditor, the court shall send to the debtor, by United States mail and to the address of the mortgaged property, or to an address for the debtor provided by the creditor under ~~*subdivision (2)(B)(ii),*~~ **subdivision (1)(B)(ii),** *if applicable, a notice that informs the debtor of the debtor's right to participate in a settlement conference. The court's notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court of the debtor's intent to participate in a settlement conference. The court's notice must specify a date by which the debtor must request a settlement conference, which date must be the date that is thirty (30) days after the date of the creditor's service of the complaint on the debtor under subsection (c), as determined by the court from the service list included with the complaint filed with the court. The court may not delegate the duty to send the notice the court is required to provide under this subsection to the creditor or to any other person.*

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

(1) the mortgage is secured by a dwelling that is not **occupied by the debtor as** the debtor's primary residence;

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

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

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

C o p y

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

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

SECTION 3. IC 32-30-10.5-9, AS AMENDED BY P.L.170-2011, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) Except as provided in **sections 8(e) and 10(g) of this chapter and** subsection (b), and subject to section 8.5 of this chapter, after June 30, 2009, a court may not issue a judgment of foreclosure under IC 32-30-10 on a mortgage subject to this chapter unless all of the following apply:

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

(2) One (1) of the following applies:

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

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

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

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

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

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

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

C o p y

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 4. IC 32-30-10.6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 10.6. Determination of Abandonment for Property Subject to a Mortgage Foreclosure Action

Sec. 1. This chapter applies to a mortgage foreclosure action filed under IC 32-30-10-3.

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

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

(1) allege that the mortgaged property is abandoned; and

(2) include evidence that one (1) or more of the conditions set forth in section 5(a) or 5(b) of this chapter apply.

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

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

(1) include a statement of the enforcement authority's jurisdiction in the location of the mortgaged property;

(2) allege that the mortgaged property is abandoned; and

(3) include evidence that one (1) or more of the conditions set forth in section 5(a) or 5(b) of this chapter apply.

Sec. 4. (a) Upon receiving a request for a determination of abandonment from a creditor or an enforcement authority through a petition or motion filed with the court and served on the required parties in accordance with section 3 of this chapter, the court shall issue an order to show cause as to why the property should not be found to be abandoned and directing the petitioner, the debtor, and any other person or party the court considers appropriate to

C o p y

appear before the court on a date and time specified in the order under subdivision (1). The court's order under this subsection must do the following:

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

(A) earlier than fifteen (15) days; or

(B) later than twenty-five (25) days;

after the date of the court's order under this section.

(2) Notify the parties subject to the order that any party ordered to appear:

(A) may present evidence or objections on the issue of abandonment to the court:

(i) in writing before the appearance date specified by the court under subdivision (1); or

(ii) in writing or by oral testimony on the date and at the time specified by the court under subdivision (1);

in the manner specified by the court; and

(B) has the right to be represented by an attorney when appearing before the court.

(3) Notify the parties subject to the order that if the debtor fails to:

(A) submit written evidence or objections to the court before the appearance date specified by the court under subdivision (1); or

(B) appear before the court on the date and at the time specified by the court under subdivision (1);

the debtor's failure to submit evidence or objections or to appear before the court will result in a finding of abandonment by the court.

(b) A party subject to an order issued by the court under this section has the following rights, as described in the court's order under subsection (a):

(1) The right to present evidence or objections on the issue of abandonment to the court:

(A) in writing before the appearance date specified in the court's order under subsection (a)(1); or

(B) in writing or by oral testimony on the date and at the time specified in the court's order under subsection (a)(1);

in the manner specified by the court.

(2) The right to be represented by an attorney when appearing before the court.

C o p y

Sec. 5. (a) Subject to subsection (b), for purposes of an abandonment determination under this chapter, one (1) or more of the following constitute prima facie evidence that mortgaged property is abandoned:

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

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

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

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

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

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

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

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

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

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

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

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

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

constitutes prima facie evidence that the mortgaged property is abandoned.

C o p y

(c) If the court finds that:

(1) one (1) or more of the conditions described in subsection (a) apply; or

(2) the circumstances described in subsection (b) apply;

the court shall issue an order finding that the mortgaged property is abandoned.

SECTION 5. IC 36-7-36-1, AS ADDED BY P.L.88-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter, "abandoned structure" means any of the following:

(1) Commercial real property or a vacant structure on commercial real property that is used or was previously used for industrial or commercial purposes, and:

(A) that the owner of the property or structure has declared in writing to be abandoned; or

(B) for which the owner of the property or structure has been given a written order by an enforcement authority to rehabilitate or demolish, and the owner:

(i) has not applied for a permit to rehabilitate or demolish the property or structure; or

(ii) applied for and was granted a permit, but rehabilitation or demolition work has not commenced on the property or structure within thirty (30) days after the date the permit was granted.

(2) Real property that has not been used for a legal purpose for at least six (6) consecutive months and:

(A) in the judgment of an enforcement authority, is in need of completion, rehabilitation, or repair, and completion, rehabilitation, or repair work has not taken place on the property for at least six (6) consecutive months;

(B) on which at least one (1) installment of property taxes is delinquent; or

(C) that has been declared a public nuisance by a hearing authority.

(3) Real property that has been declared in writing to be abandoned by the owner, including an estate or a trust that possesses the property.

(4) Vacant real property on which a municipal lien has remained unpaid for at least one (1) year.

(5) Real estate that a court has determined to be abandoned under IC 32-30-10.6.

SECTION 6. **An emergency is declared for this act.**

C o p y

Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

C o p y