
HOUSE BILL No. 1238

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-29-7-3; IC 32-30; IC 36-7-36-1.

Synopsis: Finding of abandonment for residential property. Specifies that for purposes of the statute governing foreclosure prevention agreements for residential mortgages, the statute: (1) applies to a mortgage made with respect to a dwelling that is occupied by the debtor as the principal residence of the debtor; and (2) does not apply to a mortgage made with respect to a dwelling that is purchased by the debtor as a second home or a vacation home and is not occupied by the debtor as the debtor's principal residence. Provides a procedure that allows: (1) a creditor in a residential mortgage; or (2) an enforcement authority with jurisdiction in the location of the mortgaged property; to petition the court having jurisdiction over an existing or a potential mortgage foreclosure action to find that the mortgaged property is abandoned. Provides that the creditor or enforcement authority may petition the court for a determination of abandonment: (1) in connection with an existing foreclosure action; or (2) before any foreclosure action is filed; by filing a complaint or a motion with the court, as appropriate. Specifies that if: (1) a petition is filed outside an existing foreclosure action; or (2) a petition is filed at the same time a foreclosure action is filed; the petitioner must include a notice containing certain information about the requested abandonment determination on the first page of the summons that is served on the debtor in conjunction with the complaint. Requires the housing and community development authority (authority), in consultation with the division of state court administration, to prescribe, not later than June 1, 2012, language for the notice required to be included on the first page of the summons that is served on the debtor. Provides that upon

(Continued next page)

Effective: Upon passage.

Burton

January 9, 2012, read first time and referred to Committee on Financial Institutions.



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receiving a petition for a determination of abandonment, the court shall issue an order to show cause as to why the property should or should not be found to be abandoned and to direct the appropriate parties to appear before the court on a date and time specified in the order. Provides that a party subject to the order has the right to: (1) present oral or written evidence or objections on the issue of abandonment to the court; and (2) be represented by an attorney when appearing before the court. Provides that the court shall hold a hearing on the issue of abandonment on the specified appearance date, subject to the court's right to cancel the hearing if the court: (1) receives a request for a settlement conference by the debtor before the specified appearance date; or (2) finds that a hearing would be of limited value based on written evidence or objections received by the court before the appearance date. Provides that after considering all evidence and objections presented on the issue of abandonment, the court shall issue an order finding that the mortgaged property is abandoned if the court determines that certain conditions apply with respect to the mortgaged property. Provides that either or both of the following constitute conclusive evidence that the mortgaged property is abandoned: (1) Failure by the debtor to present evidence or objections on the issue of abandonment or to appear before the court on the specified appearance date. (2) The existence of one or more written statements, including documents of conveyance, that are executed by the debtor and indicate a clear intent to abandon the property. Changes cross references. Makes technical changes.

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Introduced

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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HOUSE BILL No. 1238

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 32-29-7-3, AS AMENDED BY P.L.68-2010,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 3. (a) In a proceeding for the foreclosure of a
4 mortgage executed on real estate, process may not issue for the
5 execution of a judgment or decree of sale for a period of three (3)
6 months after the filing of a complaint in the proceeding. However:
7 (1) the period is:
8 (A) twelve (12) months in a proceeding for the foreclosure of
9 a mortgage executed before January 1, 1958; and
10 (B) six (6) months in a proceeding for the foreclosure of a
11 mortgage executed after December 31, 1957, but before July
12 1, 1975; and
13 (2) if the court or an enforcement authority (as defined in
14 ~~IC 36-7-9-2~~) finds **under IC 32-30-10.6-6** that the mortgaged real
15 estate is residential real estate and has been abandoned, a



- 1 judgment or decree of sale may be executed on the date the
 2 judgment of foreclosure or decree of sale is entered, regardless of
 3 the date the mortgage is executed.
- 4 (b) A judgment and decree in a proceeding to foreclose a mortgage
 5 that is entered by a court having jurisdiction may be filed with the clerk
 6 in any county as provided in IC 33-32-3-2. After the period set forth in
 7 subsection (a) expires, a person who may enforce the judgment and
 8 decree may file a praecipe with the clerk in any county where the
 9 judgment and decree is filed, and the clerk shall promptly issue and
 10 certify to the sheriff of that county a copy of the judgment and decree
 11 under the seal of the court. However, if:
- 12 (1) a praecipe is not filed with the clerk within one hundred eighty
 13 (180) days after the later of the dates on which:
- 14 (A) the period specified in subsection (a) expires; or
 15 (B) the judgment and decree is filed; and
- 16 (2) the sale is not:
- 17 (A) otherwise prohibited by law;
 18 (B) subject to a voluntary statewide foreclosure moratorium;
 19 or
- 20 (C) subject to a written agreement that:
- 21 (i) provides for a delay in the sale of the mortgaged real
 22 estate; and
 23 (ii) is executed by and between the owner of the mortgaged
 24 real estate and a party entitled to enforce the judgment and
 25 decree;
- 26 an enforcement authority that has issued an abatement order under
 27 IC 36-7-36-9 with respect to the mortgaged real estate may file a
 28 praecipe with the clerk in any county where the judgment and decree
 29 is filed. If an enforcement authority files a praecipe under this
 30 subsection, the clerk of the county in which the praecipe is filed shall
 31 promptly issue and certify to the sheriff of that county a copy of the
 32 judgment and decree under the seal of the court.
- 33 (c) Upon receiving a certified judgment under subsection (b), the
 34 sheriff shall, subject to section 4 of this chapter, sell the mortgaged
 35 premises or as much of the mortgaged premises as necessary to satisfy
 36 the judgment, interest, and costs at public auction at the office of the
 37 sheriff or at another location that is reasonably likely to attract higher
 38 competitive bids. The sheriff shall schedule the date and time of the
 39 sheriff's sale for:
- 40 (1) a date not later than one hundred twenty (120) days after the
 41 date on which the judgment and decree under seal of the court are
 42 certified to the sheriff by the clerk; and

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- 1 (2) a time certain between the hours of 10 a.m. and 4 p.m. on any
 2 day of the week except Sunday.
- 3 (d) Before selling mortgaged property, the sheriff must advertise the
 4 sale by publication once each week for three (3) successive weeks in
 5 a daily or weekly newspaper of general circulation. The sheriff shall
 6 publish the advertisement in at least one (1) newspaper published and
 7 circulated in each county where the real estate is situated. The first
 8 publication shall be made at least thirty (30) days before the date of
 9 sale. At the time of placing the first advertisement by publication, the
 10 sheriff shall also serve a copy of the written or printed notice of sale
 11 upon each owner of the real estate. Service of the written notice shall
 12 be made as provided in the Indiana Rules of Trial Procedure governing
 13 service of process upon a person. The sheriff shall charge a fee of ten
 14 dollars (\$10) to one (1) owner and three dollars (\$3) to each additional
 15 owner for service of written notice under this subsection. The fee is:
- 16 (1) a cost of the proceeding;
 17 (2) to be collected as other costs of the proceeding are collected;
 18 and
 19 (3) to be deposited in the county general fund for appropriation
 20 for operating expenses of the sheriff's department.
- 21 (e) The sheriff also shall post written or printed notices of the sale
 22 at the door of the courthouse of each county in which the real estate is
 23 located.
- 24 (f) If the sheriff is unable to procure the publication of a notice
 25 within the county, the sheriff may dispense with publication. The
 26 sheriff shall state that the sheriff was not able to procure the
 27 publication and explain the reason why publication was not possible.
- 28 (g) Notices under subsections (d) and (e) must contain a statement,
 29 for informational purposes only, of the location of each property by
 30 street address, if any, or other common description of the property other
 31 than legal description. A misstatement in the informational statement
 32 under this subsection does not invalidate an otherwise valid sale.
- 33 (h) The sheriff may charge an administrative fee of not more than
 34 two hundred dollars (\$200) with respect to a proceeding referred to in
 35 subsection (b) for actual costs directly attributable to the administration
 36 of the sale under subsection (c). The fee is:
- 37 (1) payable by the person seeking to enforce the judgment and
 38 decree; and
 39 (2) due at the time of filing of the praecipe;
 40 under subsection (b).
- 41 SECTION 2. IC 32-30-10.5-4.5 IS ADDED TO THE INDIANA
 42 CODE AS A NEW SECTION TO READ AS FOLLOWS

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1 [EFFECTIVE UPON PASSAGE]: **Sec. 4.5. As used in this chapter,**
 2 **"land contract" means a contract for the sale of real estate in**
 3 **which the seller of the real estate retains legal title to the real estate**
 4 **until the total contract price is paid by the buyer.**

5 SECTION 3. IC 32-30-10.5-5, AS AMENDED BY P.L.89-2011,
 6 SECTION 76, AND AS AMENDED BY P.L.170-2011, SECTION 7,
 7 IS CORRECTED AND AMENDED TO READ AS FOLLOWS
 8 [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) As used in this chapter,
 9 "mortgage" means:

- 10 (1) a loan; or
 11 (2) a consumer credit sale;

12 that is or will be used by the debtor primarily for personal, family, or
 13 household purposes and that is secured by a mortgage (*or another*
 14 *equivalent consensual security interest*) that constitutes a first lien on
 15 a dwelling (or on residential real estate upon which a dwelling is
 16 constructed) ~~or intended to be constructed~~ **that is occupied by the**
 17 **debtor as the principal residence of the debtor.**

18 (b) The term does not include **either of the following:**

19 (1) A land contract (~~as defined in IC 24-4.4-1-301(36)~~) or similar
 20 agreement in which the debtor does not possess a deed.

21 (2) **A loan or consumer credit sale that is secured by a**
 22 **mortgage (or another equivalent consensual security interest)**
 23 **that constitutes a lien on a dwelling (or on residential real**
 24 **estate upon which a dwelling is constructed) that:**

25 (A) is purchased by the debtor as a second home or a
 26 vacation home; and

27 (B) is not occupied by the debtor as the debtor's principal
 28 residence.

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

40 (1) Inform the debtor that:

41 (A) the debtor is in default;

42 (B) the debtor is encouraged to obtain assistance from a

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1 mortgage foreclosure counselor; and

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

5 (i) Appeal a finding of abandonment by a court under
 6 ~~IC 32-29-7-3(a)(2)~~. **IC 32-30-10.6-6.**

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

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

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

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

16 "NOTICE REQUIRED BY STATE LAW

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

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

25 (1) the address of the mortgaged property; or

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

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

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

37 (1) *in the case of a foreclosure action filed after June 30, 2009,*
 38 *but before July 1, 2011,* include with the complaint served on the
 39 debtor, *on a form prescribed by the authority; and*

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

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

10 (d) *In a foreclosure action filed under IC 32-30-10-3 after June 30,*
 11 *2009, If a creditor files an action to foreclose a mortgage, the creditor*
 12 *shall do the following:*

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

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

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

20 ~~(A)~~ *(i) Except as provided in subsection (e) and section*
 21 *10(g) of this chapter, a copy of the notice sent to the debtor*
 22 *under subsection (a).*

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

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

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

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

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

37 *It is not necessary that the insurance company accept receipt of the*
 38 *copy of the complaint for the creditor to satisfy the requirement of*
 39 *subdivision (2). A creditor's failure to provide a copy of the complaint*
 40 *as required by subdivision (2) does not affect the foreclosure action or*
 41 *subject the creditor to any liability. Subject to section 9(b) of this*
 42 *chapter, in the case of a foreclosure action filed after June 30, 2011,*



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1 upon the filing of the complaint by the creditor, the court shall send to
 2 the debtor, by United States mail and to the address of the mortgaged
 3 property, or to an address for the debtor provided by the creditor
 4 under ~~subdivision (2)(B)(ii)~~, **subdivision (1)(B)(ii)**, if applicable, a
 5 notice that informs the debtor of the debtor's right to participate in a
 6 settlement conference. The court's notice must inform the debtor that
 7 the debtor may schedule a settlement conference by notifying the court
 8 of the debtor's intent to participate in a settlement conference. The
 9 court's notice must specify a date by which the debtor must request a
 10 settlement conference, which date must be the date that is thirty (30)
 11 days after the date of the creditor's service of the complaint on the
 12 debtor under subsection (c), as determined by the court from the
 13 service list included with the complaint filed with the court. The court
 14 may not delegate the duty to send the notice the court is required to
 15 provide under this subsection to the creditor or to any other person.

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

18 (1) the mortgage is secured by a dwelling that is:

19 (A) not the debtor's primary residence; or

20 (B) **found to be abandoned by the court under**
 21 **IC 32-30-10.6-6;**

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

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

29 (f) *Not later than June 1, 2011, the authority, in consultation with*
 30 *the division of state court administration, shall prescribe language for*
 31 *the notice required under subsection (c)(2) to be included on the first*
 32 *page of the summons that is served on the debtor in a foreclosure*
 33 *action filed after June 30, 2011. The language must convey the same*
 34 *information as the form prescribed by the authority under subsection*
 35 *(c)(1) for foreclosure actions filed after June 30, 2009, but before July*
 36 *1, 2011. The authority shall make the language prescribed under this*
 37 *subsection available on the authority's Internet web site. A creditor*
 38 *complies with subsection (c)(2) in a foreclosure action filed after June*
 39 *30, 2011, if the creditor includes on the first page of the summons*
 40 *served on the debtor:*

41 (1) *the language that is prescribed by the authority under this*
 42 *subsection and made available on the authority's Internet web*

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1 *site; or*

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

5 SECTION 5. IC 32-30-10.5-9, AS AMENDED BY P.L.170-2011,
 6 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 UPON PASSAGE]: Sec. 9. (a) Except as provided in **sections 8(e) and**
 8 **10(g) of this chapter and** subsection (b), and subject to section 8.5 of
 9 this chapter, after June 30, 2009, a court may not issue a judgment of
 10 foreclosure under IC 32-30-10 on a mortgage subject to this chapter
 11 unless all of the following apply:

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

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

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

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

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

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

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

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

39 (b) If the court finds that a settlement conference would be of
 40 limited value based on the result of a prior loss mitigation effort
 41 between the creditor and the debtor:

42 (1) a settlement conference is not required under this chapter; and

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(2) the conditions set forth in subsection (a) do not apply, and the foreclosure action may proceed as otherwise allowed by law.

SECTION 6. 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 Residential Mortgage

Sec. 1. This chapter applies to:

- (1) a mortgage described in IC 32-30-10.5-5; and
- (2) with respect to any provision that applies to a mortgage foreclosure action, a mortgage foreclosure action that:
 - (A) involves a mortgage described in IC 32-30-10.5-5; and
 - (B) is filed after June 30, 2012.

Sec. 2. The definitions in IC 32-30-10.5 apply throughout this chapter.

Sec. 3. 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 to which this chapter applies.

Sec. 4. (a) The creditor in a mortgage subject to this chapter may petition the court having jurisdiction of a mortgage foreclosure action that is or may be filed with respect to the mortgaged property to find that the mortgaged property is abandoned. The creditor may petition the court for a determination of abandonment at any of the following times:

- (1) At any time before filing a complaint in a foreclosure action by filing in the court in which a foreclosure action will or may be filed a complaint that:
 - (A) identifies the location of the mortgaged property by street address, if any, or other common description of the property other than the legal description;
 - (B) identifies the mortgage by:
 - (i) the names of the debtor and creditor; and
 - (ii) the date the mortgage was made;
 - (C) names the debtor as the defendant;
 - (D) alleges that the property is abandoned and supports the allegation by providing evidence that:
 - (i) one (1) or more of the conditions set forth in section 6(e)(1) of this chapter exist with respect to the property and that one (1) or more of the circumstances described in section 6(e)(2) of this chapter apply; or
 - (ii) the debtor has executed one (1) or more written

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statements indicating a clear intent to abandon the mortgaged property, as described in section 6(f)(2) of this chapter; and

(E) requests the court to make a finding under section 6 of this chapter.

A complaint filed with the court under this subdivision shall be served on the debtor in the manner prescribed by the Indiana Rules of Trial Procedure. Using the form or language prescribed by the authority under subsection (c), the creditor shall 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 under section 5(b) of this chapter to appear before the court and present evidence or objections on the issue of abandonment. The notice must further inform the debtor that the debtor's failure to appear or to present evidence or objections within the time specified by the court under section 5(a)(1) of this chapter will result in a finding of abandonment by the court. A complaint served on a debtor under this subsection must be served separately from any presuit notice sent to the debtor under IC 32-30-10.5-8(a).

(2) At the time of filing a complaint in a foreclosure action by:

(A) alleging in the complaint that the property is abandoned and supporting the allegation by providing evidence that:

(i) one (1) or more of the conditions set forth in section 6(e)(1) of this chapter exist with respect to the property and that one (1) or more of the circumstances described in section 6(e)(2) of this chapter apply; or

(ii) the debtor has executed one (1) or more written statements indicating a clear intent to abandon the mortgaged property, as described in section 6(f)(2) of this chapter; and

(B) requesting the court to make a finding under section 6 of this chapter.

In addition to the notice required to be included on the first page of the summons under IC 32-30-10.5-8(c) (setting forth the debtor's right to participate in a settlement conference), and using the form or language prescribed by the authority under subsection (c), the creditor shall 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 under section 5(b) of this chapter

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to appear before the court and present evidence or objections on the issue of abandonment. The notice must further inform the debtor that the debtor's failure to appear or to present evidence or objections within the time specified by the court under section 5(a)(1) of this chapter will result in a finding of abandonment by the court.

(3) At any time after the complaint is filed in a mortgage foreclosure action, but before the court has entered a judgment of foreclosure or decree of sale in the foreclosure action. A creditor who seeks a determination of abandonment under this subdivision shall file with the court, in the manner prescribed by the Indiana Rules of Trial Procedure, a motion that:

- (A) alleges that the property is abandoned and supports the allegation by providing evidence that:
 - (i) one (1) or more of the conditions set forth in section 6(e)(1) of this chapter exist with respect to the property and that one (1) or more of the circumstances described in section 6(e)(2) of this chapter apply; or
 - (ii) the debtor has executed one (1) or more written statements indicating a clear intent to abandon the mortgaged property, as described in section 6(f)(2) of this chapter; and
- (B) requests the court to make a finding under section 6 of this chapter.

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

- (4) At any time:
 - (A) after the court enters a judgment of foreclosure or decree of sale in a mortgage foreclosure action; but
 - (B) before the period set forth in IC 32-29-7-3(a) expires.

A creditor who seeks a determination of abandonment under this subdivision shall file with the court, in the manner prescribed by the Indiana Rules of Trial Procedure, a motion that alleges that the property is abandoned, along with the supporting evidence described in subdivision (3)(A), and that requests the court to make a finding under section 6 of this chapter. A motion under this subdivision shall be served on the debtor in the manner prescribed by the Indiana Rules of Trial Procedure.

- (b) The enforcement authority that has jurisdiction in the

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location of the property that is the subject of a mortgage subject to this chapter may petition the court having jurisdiction of a mortgage foreclosure action that is or may be filed with respect to the mortgaged property to find that the mortgaged property is abandoned. The enforcement authority may petition the court for a determination of abandonment at any of the following times:

(1) At any time before a complaint is filed in a mortgage foreclosure action concerning the mortgaged property by filing in the court in which a mortgage foreclosure action may be filed a complaint that:

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

(B) identifies the location of the mortgaged property by street address, if any, or other common description of the property other than the legal description;

(C) to the extent known, identifies the mortgage by:

(i) the names of the debtor and creditor;

(ii) the date the mortgage was made; and

(iii) any relevant information available from the recording of the mortgage;

(D) names the debtor as the defendant, if the identity of the debtor is known;

(E) alleges that the property is abandoned and supports the allegation by providing evidence that:

(i) one (1) or more of the conditions set forth in section 6(e)(1) of this chapter exist with respect to the property and that one (1) or more of the circumstances described in section 6(e)(2) of this chapter apply; or

(ii) the debtor has executed one (1) or more written statements indicating a clear intent to abandon the mortgaged property, as described in section 6(f)(2) of this chapter; and

(F) requests the court to make a finding under section 6 of this chapter.

A complaint filed with the court under this subdivision shall be served on the debtor and on the creditor's attorney or agent for service of process in the manner prescribed by the Indiana Rules of Trial Procedure. Using the form or language prescribed by the authority under subsection (c), the enforcement authority shall 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

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1 right under section 5(b) of this chapter to appear before the
 2 court and present evidence or objections on the issue of
 3 abandonment. The notice must further inform the debtor that
 4 the debtor's failure to appear or to present evidence or
 5 objections within the time specified by the court under section
 6 5(a)(1) of this chapter will result in a finding of abandonment
 7 by the court.

8 (2) At either of the times described in subsection (a)(3) or
 9 (a)(4) by filing a motion to intervene in the foreclosure action
 10 in the manner prescribed by the Indiana Rules of Trial
 11 Procedure. The motion to intervene must:

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

14 (B) allege that the property is abandoned and support the
 15 allegation by providing evidence that:

16 (i) one (1) or more of the conditions set forth in section
 17 6(e)(1) of this chapter exist with respect to the property
 18 and that one (1) or more of the circumstances described
 19 in section 6(e)(2) of this chapter apply; or

20 (ii) the debtor has executed one (1) or more written
 21 statements indicating a clear intent to abandon the
 22 mortgaged property, as described in section 6(f)(2) of
 23 this chapter; and

24 (C) request the court to make a finding under section 6 of
 25 this chapter.

26 A motion under this subdivision shall be served on all parties
 27 to the mortgage foreclosure action in the manner prescribed
 28 by the Indiana Rules of Trial Procedure. Service on the
 29 creditor shall be made on the creditor's attorney of record in
 30 the mortgage foreclosure action.

31 (c) Not later than June 1, 2012, the authority, in consultation
 32 with the division of state court administration, shall prescribe
 33 language for the notice required under subsections (a)(1), (a)(2),
 34 and (b)(1) to be included on the first page of the summons that is
 35 served on the debtor in conjunction with a complaint filed after
 36 June 30, 2012, under any of those subsections. The language
 37 prescribed by the authority must inform the debtor of the
 38 following:

39 (1) That the creditor or enforcement authority, as
 40 appropriate, alleges that the mortgaged property is
 41 abandoned and seeks a determination of abandonment by the
 42 court under section 6 of this chapter.

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(2) That the debtor has a right under section 5(b) of this chapter to appear before the court and present evidence or objections on the issue of abandonment at the times and in the manner specified by the court in an order to be sent by the court under section 5 of this chapter.

(3) That the debtor's failure to appear or to present evidence or objections at the times and in the manner specified by the court in the order to be sent by the court under section 5 of this chapter will result in a finding of abandonment by the court.

(4) In the case of a complaint filed under subsection (a)(2), that if the debtor contacts the court within the thirty (30) day period described in IC 32-30-10.5-8(c) to schedule a settlement conference under IC 32-30-10.5:

(A) the court will treat the request as the entry of an appearance by the debtor under the Indiana Rules of Trial Procedure; and

(B) the debtor's request for a settlement conference will serve as conclusive evidence that the mortgaged property is not abandoned.

In prescribing the language for a summons to be served in conjunction with a complaint filed under subsection (a)(2), the authority shall prescribe a form that includes both the information required to be included on the summons under this subsection and under IC 32-30-10.5-8(c)(2).

(d) Not later than June 15, 2012:

(1) the authority shall make available on the authority's Internet web site; and

(2) the division of state court administration shall make available on the Internet web site maintained by the state's judicial branch;

the language prescribed under subsection (c).

(e) A creditor or an enforcement authority complies with the notice requirements set forth in subsections (a)(1), (a)(2), and (b)(1) with respect to a complaint filed under any of those subsections after June 30, 2012, if the creditor or the enforcement authority includes on the first page of the summons served on the debtor:

(1) the language that is prescribed by the authority under subsection (c) and made available on:

(A) the authority's Internet web site; and

(B) the Internet web site maintained by the state's judicial branch;

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1 under subsection (d); or

2 (2) language that conveys the same information as the
3 language that is prescribed by the authority under subsection
4 (c) and made available on:

5 (A) the authority's Internet web site; and

6 (B) the Internet web site maintained by the state's judicial
7 branch;

8 under subsection (d).

9 Sec. 5. (a) Upon receiving a petition for a determination of
10 abandonment from a creditor or an enforcement authority through
11 a complaint or motion filed with the court and served on the
12 required parties in accordance with section 4 of this chapter, the
13 court shall issue an order to show cause as to why the property
14 should or should not be found to be abandoned and directing the
15 petitioner, the debtor, and any other person or party the court
16 considers appropriate to appear before the court on a date and
17 time specified in the order under subdivision (1). The court's order
18 under this subsection must do the following:

19 (1) Direct the parties subject to the order to appear at the
20 county courthouse, or at another place designated by the
21 court, on a date and time specified by the court. The date
22 specified under this subdivision:

23 (A) must not be earlier than fifteen (15) days after the date
24 of the court's order under this section and must not be
25 later than twenty-five (25) days after the date the
26 complaint or motion was served on the debtor under
27 section 4 of this chapter, as determined by the court from
28 the service list included with the complaint or motion filed
29 with the court, in the case of an order issued in response
30 to:

31 (i) a complaint filed under section 4(a)(1) or 4(b)(1) of
32 this chapter; or

33 (ii) a motion filed under section 4(a)(3), 4(a)(4), or 4(b)(2)
34 of this chapter; and

35 (B) must be the date that is thirty (30) days after the date
36 the complaint was served on the debtor under section 4 of
37 this chapter, as determined by the court from the service
38 list included with the complaint filed with the court, in the
39 case of an order issued in response to a complaint filed
40 under section 4(a)(2) of this chapter.

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

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- 1 (A) may present evidence or objections on the issue of
- 2 abandonment to the court:
- 3 (i) in writing before the appearance date specified by the
- 4 court under subdivision (1); or
- 5 (ii) in writing or by oral testimony on the date and at the
- 6 time specified by the court under subdivision (1);
- 7 in the manner specified by the court; and
- 8 (B) has the right to be represented by an attorney when
- 9 appearing before the court.
- 10 (3) Notify the parties subject to the order that if the debtor
- 11 fails to:
- 12 (A) submit written evidence or objections to the court
- 13 before the appearance date specified by the court under
- 14 subdivision (1); or
- 15 (B) appear before the court on the date and at the time
- 16 specified by the court under subdivision (1);
- 17 the debtor's failure to submit evidence or objections or to
- 18 appear before the court will result in a finding of
- 19 abandonment by the court.
- 20 (4) In the case of an order issued in response to a complaint
- 21 filed under section 4(a)(2) of this chapter, notify the parties
- 22 subject to the order that if the debtor contacts the court
- 23 within the thirty (30) day period described in
- 24 IC 32-30-10.5-8(c) (and specified by the court under
- 25 subdivision (1)(B)) to schedule a settlement conference under
- 26 IC 32-30-10.5:
- 27 (A) the court will treat the request as the entry of an
- 28 appearance by the debtor in the mortgage foreclosure
- 29 action under the Indiana Rules of Trial Procedure;
- 30 (B) the debtor's request for a settlement conference will
- 31 serve as conclusive evidence that the mortgaged property
- 32 is not abandoned; and
- 33 (C) the court will notify the parties of the cancellation of
- 34 the appearance ordered under subdivision (1) and will
- 35 proceed to order a settlement conference under
- 36 IC 32-30-10.5-10.
- 37 (b) A party subject to an order issued by the court under this
- 38 section has the following rights, as described in the court's order
- 39 under subsection (a):
- 40 (1) The right to present evidence or objections on the issue of
- 41 abandonment to the court:
- 42 (A) in writing before the appearance date specified in the

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

5 (2) The right to be represented by an attorney when
 6 appearing before the court at a hearing held under section 6
 7 of this chapter.

8 Sec. 6. (a) For purposes of this section, real property is "vacant"
 9 if it qualifies, or would potentially qualify, as a vacant structure
 10 under IC 36-7-36-6.

11 (b) As used in this section, "owner", with respect to real
 12 property, has the meaning set forth in IC 36-7-36-4.

13 (c) The court shall hold a hearing on the court's order to show
 14 cause under section 5 of this chapter on the date and at the time
 15 specified by the court under section 5(a)(1) of this chapter, subject
 16 to the court's right to cancel the hearing upon adequate notice to
 17 the parties if the court:

18 (1) receives a request for a settlement conference by the
 19 debtor within the thirty (30) day period described in
 20 IC 32-30-10.5-8(c) (and specified by the court in the court's
 21 order under section 5(a)(1)(B) of this chapter) in the case of
 22 an order issued by the court under section 5 of this chapter in
 23 response to a complaint filed under section 4(a)(2) of this
 24 chapter; or

25 (2) finds that a hearing would be of limited value based on
 26 written evidence or objections submitted by one (1) or more
 27 parties under section 5(b)(1)(A) of this chapter and received
 28 by the court before the appearance date specified by the court
 29 under section 5(a)(1) of this chapter.

30 (d) At a hearing held under this section, the court shall hear all
 31 evidence and objections presented by the parties or their
 32 representatives.

33 (e) After considering all evidence and objections presented by
 34 the parties or their representatives on the issue of abandonment,
 35 whether presented at a hearing held under this section or in
 36 writing under section 5(b)(1)(A) of this chapter, the court shall
 37 issue an order finding that the mortgaged property is abandoned
 38 if the court determines that both of the following apply, subject to
 39 subsections (f) and (g):

40 (1) One (1) or more of the following apply with respect to the
 41 mortgaged property:

42 (A) Windows or entrances to the premises are boarded up

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- or closed off.
- (B) Multiple window panes are broken and unrepaired.
- (C) One (1) or more doors to the premises are smashed through, broken off, unhinged, or continuously unlocked.
- (D) Gas service, electric service, water service, or other utility service to the premises has been terminated.
- (E) Rubbish, trash, or debris has accumulated on the premises.
- (F) The premises are deteriorating and are either below or in imminent danger of falling below minimum community standards for public safety and sanitation.
- (2) One (1) of the following applies:
 - (A) All of the following have occurred:
 - (i) The creditor has entered upon the premises of the mortgaged property to visually inspect the property as allowed under IC 34-30-26-5.
 - (ii) The creditor has determined on the basis of the inspection described in item (i) that the mortgaged property is vacant or appears to be occupied by one (1) or more squatters, vagrants, or other persons not authorized to occupy or otherwise have possession of the property, and has requested under IC 34-30-26-5(b) that the enforcement authority having jurisdiction in the location of the mortgaged property inspect the property to confirm the suspected status of the property.
 - (iii) The enforcement authority having jurisdiction has entered upon the premises of the mortgaged property to visually inspect the property as allowed under IC 34-30-26-5 and has confirmed the suspected status of the property.
 - (B) The enforcement authority having jurisdiction in the location of the mortgaged property:
 - (i) has entered upon the premises of the mortgaged property on the enforcement authority's own accord to visually inspect the property as allowed under IC 34-30-26-5; and
 - (ii) has determined on the basis of the inspection described in item (i) that the mortgaged property is vacant or appears to be occupied by one (1) or more squatters, vagrants, or other persons not authorized to occupy or otherwise have possession of the property.
 - (C) The creditor has changed the locks on the mortgaged

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property and for at least fifteen (15) business days after the changing of the locks the owner has not requested entrance to the mortgaged property.

(f) Regardless of whether any of the conditions described in subsection (e) are found to apply with respect to the mortgaged property, either or both of the following constitute conclusive evidence that the mortgaged property is abandoned:

- (1) Failure by the debtor to:**
 - (A) 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 5(a)(1) of this chapter; or**
 - (B) appear before the court on the date specified in the court's order under section 5(a)(1) of this chapter.**

(2) The existence of one (1) or more written statements, including documents of conveyance, that are executed by the debtor, or by the debtor's personal representatives or assigns, and that indicate a clear intent to abandon the mortgaged property.

(g) If the court finds that either or both of the circumstances described in subsection (f) apply with respect to the mortgaged property the court shall issue an order finding that the mortgaged property is abandoned.

SECTION 7. 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**

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- 1 least six (6) consecutive months and:
- 2 (A) in the judgment of an enforcement authority, is in need of
- 3 completion, rehabilitation, or repair, and completion,
- 4 rehabilitation, or repair work has not taken place on the
- 5 property for at least six (6) consecutive months;
- 6 (B) on which at least one (1) installment of property taxes is
- 7 delinquent; or
- 8 (C) that has been declared a public nuisance by a hearing
- 9 authority.
- 10 (3) Real property that has been declared in writing to be
- 11 abandoned by the owner, including an estate or a trust that
- 12 possesses the property.
- 13 (4) Vacant real property on which a municipal lien has remained
- 14 unpaid for at least one (1) year.
- 15 **(5) Residential real estate upon which there is located a**
- 16 **dwelling that a court has determined to be abandoned under**
- 17 **IC 32-30-10.6-6.**
- 18 **SECTION 8. An emergency is declared for this act.**

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