



March 15, 2013

# ENGROSSED HOUSE BILL No. 1079

DIGEST OF HB 1079 (Updated March 14, 2013 10:02 am - DI 110)

**Citations Affected:** IC 32-28.

**Synopsis:** Mortgages and vendor's liens on real property. Provides that if the record of a mortgage or vendor's lien that was created before July 1, 2012, does not show the due date of the last installment, the mortgage or vendor's lien expires 20 years (instead of 10 years under current law) after the date of execution of the mortgage or vendor's lien. Provides that if: (1) the record of a mortgage or vendor's lien does not show the due date of the last installment; (2) the execution date is omitted from the mortgage or vendor's lien; and (3) the mortgage or vendor's lien was created before July 1, 2012; the mortgage or vendor's lien expires 20 years (instead of 10 years under current law) after the mortgage or vendor's lien is recorded. Makes exceptions to the expiration period if a foreclosure action is brought not later than the expiration period. Makes corresponding changes in the provision that allows the mortgagee or lienholder to file an affidavit stating when the debt becomes due. Removes language that prohibits a person from maintaining an action to foreclose a mortgage or enforce a vendor's lien if the last installment of the debt secured by the mortgage or vendor's lien has been due more than 10 years.

**Effective:** July 1, 2012 (retroactive).

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**Burton, Moed, Washburne, Riecken**

(SENATE SPONSOR — HOLDMAN)

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January 7, 2013, read first time and referred to Committee on Financial Institutions.  
January 17, 2013, amended, reported — Do Pass.  
January 22, 2013, read second time, ordered engrossed. Engrossed.  
January 23, 2013, read third time, passed. Yeas 94, nays 0.

SENATE ACTION

February 25, 2013, read first time and referred to Committee on Financial Institutions.  
March 14, 2013, reported favorably — Do Pass.

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EH 1079—LS 6475/DI 110+



March 15, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1079

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 32-28-4-1, AS AMENDED BY P.L.130-2012,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2012 (RETROACTIVE)]: Sec. 1. (a) A mortgage or vendor's  
4 lien upon real estate expires ten (10) years after the last installment of  
5 the debt secured by the **mortgage or vendor's** lien becomes due, as  
6 shown by the record of the **mortgage or vendor's** lien unless an action  
7 to foreclose is brought ~~or maintained~~ not later than ten (10) years after  
8 the last installment of the debt secured by the **mortgage or vendor's**  
9 lien becomes due, as shown by the record of the **mortgage or vendor's**  
10 lien.  
11 (b) An action may not be brought ~~or maintained~~ in the courts of  
12 Indiana to foreclose a mortgage or enforce a vendor's lien reserved by  
13 a person to secure the payment of an obligation secured by the  
14 mortgage or **vendor's** lien if the last installment of the debt secured by  
15 the mortgage or **vendor's** lien, as shown by the record of the mortgage  
16 or **vendor's** lien, has been due more than ten (10) years.  
17 SECTION 2. IC 32-28-4-2, AS AMENDED BY P.L.130-2012,

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1 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 2 JULY 1, 2012 (RETROACTIVE)]: Sec. 2. (a) Except as provided in  
 3 section 3 of this chapter, if the record of a mortgage or **vendor's** lien  
 4 described in section 1 of this chapter does not show when the debt or  
 5 the last installment of the debt secured by the mortgage or **vendor's**  
 6 lien becomes due, the **following apply:**

7 **(1) If the mortgage or vendor's lien was created before July 1,**  
 8 **2012, the mortgage or vendor's lien expires twenty (20) years**  
 9 **after the date on which the mortgage or vendor's lien was**  
 10 **executed unless an action to foreclose is brought not later than**  
 11 **twenty (20) years after the date on which the mortgage or**  
 12 **vendor's lien was executed.**

13 **(2) If the mortgage or vendor's lien was created after June 30,**  
 14 **2012, the mortgage or vendor's lien expires ten (10) years after**  
 15 **the date on which the mortgage or vendor's lien is was executed**  
 16 **unless an action to foreclose is brought or maintained not later**  
 17 **than ten (10) years after the date on which the mortgage or**  
 18 **vendor's lien was executed.**

19 **(b) If:**

20 **(1) the record of a mortgage or vendor's lien described in**  
 21 **section 1 of this chapter does not show when the debt or the**  
 22 **last installment of the debt secured by the mortgage or**  
 23 **vendor's lien becomes due;**

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

26 **(3) the mortgage or vendor's lien was created before July 1,**  
 27 **2012;**

28 **the mortgage or vendor's lien expires twenty (20) years after the**  
 29 **date on which the mortgage or vendor's lien was recorded unless**  
 30 **an action to foreclose is brought not later than twenty (20) years**  
 31 **after the date on which the mortgage or vendor's lien was**  
 32 **recorded.**

33 ~~(b)~~ **(c) If:**

34 **(1) the record of a mortgage or vendor's lien described in section**  
 35 **1 of this chapter does not show when the debt or the last**  
 36 **installment of the debt secured by the mortgage or vendor's lien**  
 37 **becomes due; and**

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

40 **(3) the mortgage or vendor's lien was created after June 30,**  
 41 **2012;**

42 the mortgage or vendor's lien expires ten (10) years after the date on

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

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

10 SECTION 3. IC 32-28-4-3, AS AMENDED BY P.L.130-2012,  
 11 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 JULY 1, 2012 (RETROACTIVE)]: Sec. 3. (a) If the record of a  
 13 mortgage or vendor's lien to which this chapter applies does not show  
 14 the time when the debt or the last installment of the debt secured by the  
 15 mortgage or vendor's lien becomes due:

- 16 (1) the original mortgagee;  
 17 (2) the owner of the mortgage; or  
 18 (3) the owner of a vendor's lien;

19 may file an affidavit with the recorder of the county where the  
 20 mortgage or **vendor's** lien is recorded, stating when the debt becomes  
 21 due.

22 **(b)** An affidavit must be filed under this section not later than **the**  
 23 **following:**

24 **(1) If the mortgage or vendor's lien was created before July 1,**  
 25 **2012, not later than twenty (20) years after:**

26 **(A) the date on which the mortgage or vendor's lien was**  
 27 **executed; or**

28 **(B) if the mortgage or vendor's lien does not contain the**  
 29 **date on which the mortgage or vendor's lien was executed,**  
 30 **the date on which the mortgage or vendor's lien was**  
 31 **recorded.**

32 **(2) If the mortgage or vendor's lien was created after June 30,**  
 33 **2012,** ten (10) years after the date of execution of the mortgage or  
 34 **vendor's** lien, or, if the mortgage or **vendor's** lien contains no  
 35 date of execution, not later than ten (10) years from the date the  
 36 mortgage or vendor's lien was recorded.

37 Upon the filing of the affidavit, the recorder shall note in the record of  
 38 the mortgage or vendor's lien that an affidavit has been filed, showing  
 39 the location where the affidavit is recorded.

40 ~~(b)~~ **(c)** The filing of an affidavit under subsection (a) has the same  
 41 effect with respect to the duration of ~~the lien~~ of the mortgage or  
 42 vendor's lien described in the affidavit and with respect to the time

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1 within which an action may be brought ~~or maintained~~ to foreclose the  
2 mortgage or vendor's lien as though the time of maturity of the debt or  
3 the last installment of the debt secured by the mortgage or vendor's lien  
4 had been stated in the mortgage or vendor's lien when recorded. The  
5 affidavit is prima facie evidence of the truth of the averments contained  
6 in the affidavit.

7 **(d) The ~~lien of a~~ A mortgage or vendor's lien on the real estate**  
8 **described in the affidavit expires as follows:**

9 **(1) If the mortgage or vendor's lien was created before July 1,**  
10 **2012, twenty (20) years after the date on which the debt or the**  
11 **last installment of the debt secured by the mortgage or**  
12 **vendor's lien becomes due, as shown by the affidavit.**

13 **(2) If the mortgage or vendor's lien was created after June 30,**  
14 **2012, ten (10) years after the time when the debt or the last**  
15 **installment of the debt secured by the mortgage or vendor's lien**  
16 **becomes due, as shown by the affidavit.**

17 Upon the expiration of a mortgage or **vendor's** lien as described in this  
18 section and at the request of the real estate owner, the recorder of the  
19 county in which the affidavit is recorded shall certify on the record of  
20 the mortgage or vendor's lien that the mortgage or vendor's lien is fully  
21 paid and satisfied by lapse of time and that the real estate is released  
22 from the **mortgage or vendor's** lien.

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

25 **SECTION 4. An emergency is declared for this act.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1079, 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 5, after "secured by the" insert "**mortgage or vendor's**".

Page 1, line 5, after "of the" insert "**mortgage or vendor's**".

Page 1, line 7, after "by the" insert "**mortgage or vendor's**".

Page 1, line 8, after "of the" insert "**mortgage or vendor's**".

Page 1, line 12, after "or" insert "**vendor's**".

Page 1, line 13, before "lien, as" insert "**vendor's**".

Page 1, line 13, after "the mortgage or" insert "**vendor's**".

Page 2, line 3, after "or" insert "**vendor's**".

Page 2, line 5, after "or" insert "**vendor's**".

Page 2, line 6, after "or" insert "**vendor's**".

Page 2, line 7, after "or" insert "**vendor's**".

Page 2, line 9, after "or" insert "**vendor's**".

Page 2, line 10, after "or" insert "**vendor's**".

Page 2, line 11, reset in roman "vendor's".

Page 2, line 12, after "or" insert "**vendor's**".

Page 2, line 14, after "or" insert "**vendor's**".

Page 2, line 18, after "or" insert "**vendor's**".

Page 2, line 20, after "or" insert "**vendor's**".

Page 2, line 22, after "or" insert "**vendor's**".

Page 2, line 23, after "or" insert "**vendor's**".

Page 2, line 24, after "or" insert "**vendor's**".

Page 2, line 26, after "or" insert "**vendor's**".

Page 2, line 30, after "or" insert "**vendor's**".

Page 2, line 41, after "or" insert "**vendor's**".

Page 3, line 2, after "from the" insert "**mortgage or vendor's**".

Page 3, line 13, after "or" insert "**vendor's**".

Page 3, line 18, after "or" insert "**vendor's**".

Page 3, line 20, after "or" insert "**vendor's**".

Page 3, line 21, after "or" insert "**vendor's**".

Page 3, line 22, after "or" insert "**vendor's**".

Page 3, line 24, after "or" insert "**vendor's**".

Page 3, line 25, after "mortgage or" insert "**vendor's**".

Page 3, line 32, strike "the lien of".

Page 3, line 40, strike "The lien of a" and insert "A".

Page 3, line 42, after "or" insert "**vendor's**".

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Page 4, line 2, after "or" insert "**vendor's**".

Page 4, line 4, after "or" insert "**vendor's**".

Page 4, line 8, after "or" insert "**vendor's**".

Page 4, line 13, after "the" insert "**mortgage or vendor's**".

and when so amended that said bill do pass.

(Reference is to HB 1079 as introduced.)

BURTON, Chair

Committee Vote: yeas 13, nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Financial Institutions, to which was referred House Bill No. 1079, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1079 as printed January 18, 2013.)

HOLDMAN, Chairperson

Committee Vote: Yeas 7, Nays 0.

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