
SENATE BILL No. 236

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-28-4.

Synopsis: Mortgages and liens on real property. Provides that if the record of a mortgage or lien that was created before July 1, 2012, does not show the due date of the last installment, the mortgage or lien expires 20 years (instead of 10 years under current law) after the date of execution of the mortgage or lien. Provides that if: (1) the record of a mortgage or lien does not show the due date of the last installment; (2) the execution date is omitted from the mortgage or lien; and (3) the mortgage or lien was created before July 1, 2012; the mortgage or lien expires 20 years (instead of 10 years under current law) after the mortgage or 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 lien if the last installment of the debt secured by the mortgage has been due more than 10 years.

Effective: July 1, 2012 (retroactive).

Holdman

January 7, 2013, read first time and referred to Committee on Financial Institutions.

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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.

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SENATE BILL No. 236



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 lien becomes due, as shown by the record of the
6 lien unless an action to foreclose is brought ~~or maintained~~ not later than
7 ten (10) years after the last installment of the debt secured by the lien
8 becomes due, as shown by the record of the lien.

9 (b) An action may not be brought ~~or maintained~~ in the courts of
10 Indiana to foreclose a mortgage or enforce a vendor's lien reserved by
11 a person to secure the payment of an obligation secured by the
12 mortgage or lien if the last installment of the debt secured by the
13 mortgage or lien, as shown by the record of the mortgage or lien, has
14 been due more than ten (10) years.

15 SECTION 2. IC 32-28-4-2, AS AMENDED BY P.L.130-2012,
16 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2012 (RETROACTIVE)]: Sec. 2. (a) Except as provided in



1 section 3 of this chapter, if the record of a mortgage or **vendor's** lien
 2 described in section 1 of this chapter does not show when the debt or
 3 the last installment of the debt secured by the mortgage or lien becomes
 4 due, the **following apply:**

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

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

15 **(b) If:**

16 **(1) the record of a mortgage or vendor's lien described in**
 17 **section 1 of this chapter does not show when the debt or the**
 18 **last installment of the debt secured by the mortgage or lien**
 19 **becomes due;**

20 **(2) the date of execution has been omitted in the mortgage or**
 21 **lien; and**

22 **(3) the mortgage or lien was created before July 1, 2012;**
 23 **the mortgage or lien expires twenty (20) years after the date on**
 24 **which the mortgage or lien was recorded unless an action to**
 25 **foreclose is brought not later than twenty (20) years after the date**
 26 **on which the mortgage or lien was recorded.**

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

28 **(1) the record of a mortgage or vendor's lien described in section**
 29 **1 of this chapter does not show when the debt or the last**
 30 **installment of the debt secured by the mortgage or lien becomes**
 31 **due; and**

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

34 **(3) the mortgage or vendor's lien was created after June 30,**
 35 **2012;**

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

40 ~~(c)~~ **(d) Upon the request of the owner of record of real estate**
 41 **encumbered by a mortgage or lien that has expired under this section,**
 42 **the recorder of the county in which the real estate is situated shall**

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1 certify on the record that the mortgage or vendor's lien is fully paid and
 2 satisfied by lapse of time, and the real estate is released from the lien.

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

- 9 (1) the original mortgagee;
 10 (2) the owner of the mortgage; or
 11 (3) the owner of a vendor's lien;

12 may file an affidavit with the recorder of the county where the
 13 mortgage or lien is recorded, stating when the debt becomes due.

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

16 **(1) If the mortgage or vendor's lien was created before July 1,**
 17 **2012, not later than twenty (20) years after:**

18 **(A) the date on which the mortgage or lien was executed;**
 19 **or**

20 **(B) if the mortgage or lien does not contain the date on**
 21 **which the mortgage or lien was executed, the date on**
 22 **which the mortgage or lien was recorded.**

23 **(2) If the mortgage or vendor's lien was created after June 30,**
 24 **2012,** ten (10) years after the date of execution of the mortgage or
 25 lien, or, if the mortgage or lien contains no date of execution, not
 26 later than ten (10) years from the date the mortgage or vendor's
 27 lien was recorded.

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

31 ~~(b)~~ **(c)** The filing of an affidavit under subsection (a) has the same
 32 effect with respect to the duration of the lien of the mortgage or
 33 vendor's lien described in the affidavit and with respect to the time
 34 within which an action may be brought ~~or maintained~~ to foreclose the
 35 mortgage or vendor's lien as though the time of maturity of the debt or
 36 the last installment of the debt secured by the mortgage or vendor's lien
 37 had been stated in the mortgage or vendor's lien when recorded. The
 38 affidavit is prima facie evidence of the truth of the averments contained
 39 in the affidavit.

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

42 **(1) If the mortgage or lien was created before July 1, 2012,**

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1 **twenty (20) years after the date on which the debt or the last**
 2 **installment of the debt secured by the mortgage or lien**
 3 **becomes due, as shown by the affidavit.**
 4 **(2) If the mortgage or lien was created after June 30, 2012,** ten
 5 (10) years after the time when the debt or the last installment of
 6 the debt secured by the mortgage or vendor's lien becomes due, as
 7 shown by the affidavit.
 8 Upon the expiration of a mortgage or lien as described in this section
 9 and at the request of the real estate owner, the recorder of the county
 10 in which the affidavit is recorded shall certify on the record of the
 11 mortgage or vendor's lien that the mortgage or vendor's lien is fully
 12 paid and satisfied by lapse of time and that the real estate is released
 13 from the lien.
 14 ~~(c)~~ (e) The recorder shall charge a fee for filing the affidavit in
 15 accordance with the fee schedule established in IC 36-2-7-10.
 16 **SECTION 4. An emergency is declared for this act.**

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