HOUSE BILL No. 1079

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).

Burton, Moed

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

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Introduced

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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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:

SECTION 1. IC 32-28-4-1, AS AMENDED BY P.L.130-2012, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012 (RETROACTIVE)]: Sec. 1. (a) A mortgage or vendor's lien upon real estate expires ten (10) years after the last installment of the debt secured by the lien becomes due, as shown by the record of the lien unless an action to foreclose is brought ~~or maintained~~ not later than ten (10) years after the last installment of the debt secured by the lien becomes due, as shown by the record of the lien.

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

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

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

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

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

(b) If:

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

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

(3) the mortgage or lien was created before July 1, 2012;

the mortgage or lien expires twenty (20) years after the date on which the mortgage or lien was recorded unless an action to foreclose is brought not later than twenty (20) years after the date on which the mortgage or lien was recorded.

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

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

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

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

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

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

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

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

(1) the original mortgagee;

(2) the owner of the mortgage; or

(3) the owner of a vendor's lien;

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

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

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

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

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

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

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

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

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

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

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twenty (20) years after the date on which the debt or the last installment of the debt secured by the mortgage or lien becomes due, as shown by the affidavit.

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

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

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

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

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