



February 13, 2013

SENATE BILL No. 279

DIGEST OF SB 279 (Updated February 11, 2013 1:21 pm - DI 106)

Citations Affected: IC 32-29.

Synopsis: Nonnamed parties in foreclosure actions. Eliminates a provision under which certain omitted parties (parties who have an interest in the property subject to a mortgage foreclosure action but who are not named in the foreclosure action) are bound by the court's judgment in the foreclosure action as if they had been parties to the foreclosure action. Limits the post-sale redemption rights of certain omitted parties.

Effective: July 1, 2013.

Zakas

January 8, 2013, read first time and referred to Committee on Civil Law.
February 12, 2013, reported favorably — Do Pass.

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SB 279—LS 6612/DI 106+



February 13, 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.

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SENATE BILL No. 279

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 32-29-8-2, AS AMENDED BY P.L.130-2012,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 2. A person who
4 (†) is assigned a mortgage and fails to have the assignment
5 properly placed on the mortgage record or
6 (2) has an interest described in section † of this chapter and is not
7 made a party to the foreclosure action as required by section † of
8 this chapter;
9 is bound by the court's judgment or decree as if the person were a party
10 to the suit.
11 SECTION 2. IC 32-29-8-3, AS AMENDED BY P.L.130-2012,
12 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2013]: Sec. 3. A person who:
14 (1) purchases a mortgaged premises or any part of a mortgaged
15 premises under the court's judgment or decree at a judicial sale or
16 who claims title to the mortgaged premises under the judgment or
17 decree; and

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1 (2) buys the mortgaged premises or any part of the mortgaged
 2 premises without actual notice of
 3 (A) an assignment that is not of record; or
 4 (B) the transfer of a note, the holder of which is not a party to
 5 the action;
 6 holds the premises free and discharged of the lien. However, any
 7 assignee or transferee may redeem the premises, like any other creditor,
 8 during the period of one (1) year after the sale or during another period
 9 ordered by the court in an action brought under section 4 of this
 10 chapter, but not exceeding ninety (90) days after the date of the court's
 11 decree in the action.

12 SECTION 3. IC 32-29-8-4, AS ADDED BY P.L.130-2012,
 13 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2013]: Sec. 4. (a) As used in this section, "interested person",
 15 with respect to an action to foreclose a mortgage on an interest in real
 16 property in Indiana, means:

- 17 (1) the holder of the evidence of debt secured by the mortgage
 18 being foreclosed;
- 19 (2) a person:
 - 20 (A) who purchases the property at a judicial sale after a
 21 judgment and decree of sale is entered in the action; and
 - 22 (B) to whom a deed is executed and delivered by the sheriff
 23 under IC 32-29-7-10; or
 - 24 (3) any person claiming by, through, or under a person described
 25 in subdivision (1) or (2).

26 (b) As used in this section, "omitted party", with respect to an action
 27 to foreclose a mortgage on an interest in real property in Indiana,
 28 means a person who:

- 29 (1) before the commencement of the action has acquired in the
 30 property an interest that:
 - 31 (A) is junior or subordinate to the mortgage being foreclosed;
 32 and
 - 33 (B) would otherwise be extinguished by the foreclosure; and
- 34 (2) is either:
 - 35 (A) not named as a party defendant in the action or, if named
 36 as a party defendant, is not served with process; or
 - 37 (B) not served with a notice of sale under IC 32-29-7-3(d) after
 38 a judgment and decree of sale is entered in the action.

39 The term includes any person claiming by, through, or under a person
 40 described in this subsection.

41 (c) At any time after a judgment and decree of sale is entered in an
 42 action to foreclose a mortgage on an interest in real property in Indiana,

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1 an interested person or an omitted party may bring a civil action to:
 2 (1) determine the extent of; and
 3 (2) terminate;
 4 the interest of an omitted party in the property subject to the sale.
 5 (d) Except as provided in subsection (e) and subject to subsections
 6 (f) and (g), upon the filing of an action described in subsection (c), the
 7 court shall determine the extent of the omitted party's interest in the
 8 property and issue a decree terminating that interest, subject to the right
 9 of the omitted party to redeem the property on terms as the court
 10 considers equitable under the circumstances after considering the
 11 factors set forth in subsection (f), if the omitted party would have had
 12 redemption rights
 13 ~~(1) before the sale under IC 32-29-7-7. or~~
 14 ~~(2) after the sale, as described in IC 34-55-4-8(a)(2).~~
 15 (e) If the omitted party proves that the omitted party has a right to
 16 receive proceeds actually paid at the judicial sale, the omitted party's
 17 interest in the property is not subject to termination by an action
 18 brought under this section unless the proceeds that the omitted party
 19 would have received at the judicial sale are paid to the omitted party.
 20 (f) In an action brought under this section, if the court determines
 21 that the omitted party is entitled to redemption under subsection (d),
 22 the court shall consider the following in deciding the terms of the
 23 redemption:
 24 (1) Whether the omitted party:
 25 (A) was given or had actual notice or knowledge of the
 26 foreclosure; and
 27 (B) had opportunity to intervene in the foreclosure action or
 28 otherwise exercise any right to redeem the property.
 29 (2) Whether any interested person in good faith has made
 30 valuable improvements to the property and, if so, the value of all
 31 lasting improvements made to the property before the
 32 commencement of the action under this section.
 33 (3) The amount of any taxes and assessments, along with any
 34 related interest payments, related to the property and paid by the
 35 interested person or by any person under whose title to the
 36 property the interested person claims.
 37 (g) If the court determines that the omitted party is entitled to
 38 redemption under subsection (d), and after considering the factors set
 39 forth in subsection (f), the court shall grant redemption rights to the
 40 omitted party that the court considers equitable under the
 41 circumstances, subject to the following:
 42 (1) The amount to be paid for redemption may not be less than the

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sale price resulting from the foreclosure of the interested person's senior lien, plus interest at the statutory judgment rate.

(2) The time allowed for payment of the redemption amount may not exceed ninety (90) days after the date of the court's decree under subsection (d).

(h) The senior lien upon which the foreclosure action was based is not extinguished by merger with the title to the property conveyed to a purchaser through a sheriff's deed executed and delivered under IC 32-29-7-10 until the interest of any omitted party has been terminated:

- (1) through an action brought under this section; or
- (2) by operation of law.

Until an omitted party's interest is terminated as described in this subsection, any owner of the property as a holder of a sheriff's deed executed and delivered under IC 32-29-7-10, or any person claiming by, through, or under such an owner, is the equitable owner of the senior lien upon which the foreclosure action was based and has all rights against an omitted party as existed before the judicial sale.

(i) An interested person may not terminate an omitted party's interest in real property that is the subject of a foreclosure action except through an action brought under this section. An interested person's rights under this section may not be denied because the interested person:

- (1) had actual or constructive notice of the omitted party's interest in the property;
- (2) was negligent in examining county records;
- (3) was engaged in the business of lending; or
- (4) obtained a title search or commitment or a title insurance policy.

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COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 279, 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 Senate Bill 279 as introduced.)

ZAKAS, Chairperson

Committee Vote: Yeas 9, Nays 0.

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