

IC 32-21-4

Chapter 4. Priority of Recorded Transactions

IC 32-21-4-1

Recording in county where land situated; priority based on time of filing

Sec. 1. (a) The following must be recorded in the recorder's office of the county where the land is situated:

- (1) A conveyance or mortgage of land or of any interest in land.
- (2) A lease for more than three (3) years.

(b) A conveyance, mortgage, or lease takes priority according to the time of its filing. The conveyance, mortgage, or lease is fraudulent and void as against any subsequent purchaser, lessee, or mortgagee in good faith and for a valuable consideration if the purchaser's, lessee's, or mortgagee's deed, mortgage, or lease is first recorded.

(c) This subsection applies only to a mortgage. This subsection applies regardless of when a mortgage was recorded. If:

- (1) an instrument referred to in subsection (a) is recorded; and
- (2) the instrument does not comply with the:

- (A) requirements of:
 - (i) IC 32-21-2-3; or
 - (ii) IC 32-21-2-7; or

- (B) technical requirements of IC 36-2-11-16(c);

the instrument is validly recorded and provides constructive notice of the contents of the instrument as of the date of filing.

As added by P.L.2-2002, SEC.6. Amended by P.L.1-2003, SEC.81; P.L.135-2007, SEC.2; P.L.129-2008, SEC.1.

IC 32-21-4-2

Assignment, mortgage, or pledge of rents and profits as security; recording; immediate perfection

Sec. 2. (a) This section applies to an instrument regardless of when the instrument was recorded, except that this section does not divest rights that vested before May 1, 1993.

(b) An assignment, a mortgage, or a pledge of rents and profits arising from real estate that is intended as security, whether contained in a separate instrument or otherwise, must be recorded under section 1 of this chapter.

(c) When an assignment, a mortgage, or a pledge of rents and profits is recorded under subsection (b), the security interest of the assignee, mortgagee, or pledgee is immediately perfected as to the assignor, mortgagor, pledgor, and any third parties:

- (1) regardless of whether the assignment, mortgage, or pledge is operative:

- (A) immediately;
- (B) upon the occurrence of a default; or
- (C) under any other circumstances; and

- (2) without the holder of the security interest taking any further action.

(d) This section does not apply to security interests in:

- (1) farm products;
- (2) accounts or general intangibles arising from or relating to the sale of farm products by a farmer;
- (3) timber to be cut; or
- (4) minerals or the like (including oil and gas);

that may be perfected under IC 26-1-9.1.

As added by P.L.2-2002, SEC.6.

IC 32-21-4-3

Instrument of defeasance

Sec. 3. (a) This section applies when a deed:

- (1) purports to contain an absolute conveyance of any estate in land; and
- (2) is made or intended to be made defeasible by:
 - (A) a deed of defeasance;
 - (B) a bond; or
 - (C) another instrument.

(b) The original conveyance is not defeated or affected against any person other than the maker of the defeasance, the heirs or devisees of the maker of the defeasance, or persons having actual notice of the defeasance unless the instrument of defeasance is:

- (1) a deed of defeasance or bond that is recorded in the manner provided by law within ninety (90) days after the date of the deed; or
- (2) another instrument that:
 - (A) is in a form required by the deed;
 - (B) contains an accurate legal description of the estate in land;
 - (C) is dated;
 - (D) has been acknowledged before a notary public;
 - (E) has been made for consideration; and
 - (F) is recorded in the manner provided by law within ninety (90) days after the date of the deed.

As added by P.L.2-2002, SEC.6. Amended by P.L.1-2003, SEC.82; P.L.156-2005, SEC.1.