

IC 32-29-7

Chapter 7. Foreclosure – Redemption, Sale, Right to Retain Possession

IC 32-29-7-1

"Auctioneer"

Sec. 1. As used in this chapter, "auctioneer" means an auctioneer licensed under IC 25-6.1.

As added by P.L.2-2002, SEC.14.

IC 32-29-7-2

"Economically feasible"

Sec. 2. For the purposes of section 4(b) of this chapter, the sale of property by the sheriff through the services of an auctioneer is "economically feasible" if the court determines that:

- (1) a reasonable probability exists that, with the use of the services of an auctioneer, a valid and enforceable bid will be made at a foreclosure for a sale price equal to or greater than the amount of the judgment and the costs and expenses necessary to its satisfaction, including the costs of the auctioneer; and
- (2) the reasonable probability would not exist without the use of an auctioneer.

As added by P.L.2-2002, SEC.14.

IC 32-29-7-3

Mortgage foreclosure; time for execution of judgment; sale by sheriff; advertising; sheriff's fee

Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the execution of a judgment or decree of sale for a period of three (3) months after the filing of a complaint in the proceeding. However:

- (1) the period is:
 - (A) twelve (12) months in a proceeding for the foreclosure of a mortgage executed before January 1, 1958; and
 - (B) six (6) months in a proceeding for the foreclosure of a mortgage executed after December 31, 1957, but before July 1, 1975; and
- (2) if the court finds that the mortgaged real estate is residential real estate and has been abandoned, a judgment or decree of sale may be executed on the date the judgment of foreclosure or decree of sale is entered, regardless of the date the mortgage is executed.

(b) A judgment and decree in a proceeding to foreclose a mortgage that is entered by a court having jurisdiction may be filed with the clerk in any county as provided in IC 33-32-3-2. After the period set forth in subsection (a) expires, a person who may enforce the judgment and decree may file a praecipe with the clerk in any county where the judgment and decree is filed, and the clerk shall promptly issue and certify to the sheriff of that county a copy of the

judgment and decree under the seal of the court.

(c) Upon receiving a certified judgment under subsection (b), the sheriff shall, subject to section 4 of this chapter, sell the mortgaged premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation. The sheriff shall publish the advertisement in at least one (1) newspaper published and circulated in each county where the real estate is situated. The first publication shall be made at least thirty (30) days before the date of sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars (\$10) to one (1) owner and three dollars (\$3) to each additional owner for service of written notice under this subsection. The fee is:

- (1) a cost of the proceeding;
- (2) to be collected as other costs of the proceeding are collected; and
- (3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. The sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement, for informational purposes only, of the location of each property by street address, if any, or other common description of the property other than legal description. A misstatement in the informational statement under this subsection does not invalidate an otherwise valid sale.

(h) The sheriff may charge an administrative fee of not more than two hundred dollars (\$200) with respect to a proceeding referred to in subsection (b) for actual costs directly attributable to the administration of the sale under subsection (c). The fee is:

- (1) payable by the person seeking to enforce the judgment and decree; and
- (2) due at the time of filing of the praecipe;

under subsection (b).

As added by P.L.2-2002, SEC.14. Amended by P.L.98-2004,

SEC.118; P.L.238-2005, SEC.55 and P.L.240-2005, SEC.1; P.L.100-2008, SEC.1.

IC 32-29-7-4

Sheriff's sale; manner of sale; engagement of auctioneer

Sec. 4. (a) A sheriff shall offer to sell and sell property on foreclosure in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer and sale.

(b) Upon prior petition of the debtor or any creditor involved in the foreclosure proceedings, the court in its order of foreclosure shall order the property sold by the sheriff through the services of an auctioneer requested by the petitioner and approved by the court if:

- (1) the court determines that a sale is economically feasible; or
- (2) all the creditors in the proceedings agree to both that method of sale and the compensation to be paid the auctioneer.

(c) The sheriff shall engage the auctioneer not later than fourteen (14) calendar days after the date of the order entered by the court under subsection (b). The auctioneer shall schedule the auction and conduct the auctioneer's activities as appropriate to bring the highest bid for the property on foreclosure. The advertising conducted by the auctioneer is in addition to any other notice required by law.

(d) The auctioneer's fee must be a reasonable amount stated in the court's order. However, if the sale by use of an auctioneer has not been agreed to by the creditors in the proceedings and the sale price is less than the amount of the judgment and the costs and expenses necessary to the satisfaction of the judgment, the auctioneer is entitled only to the auctioneer's advertising expenses plus one hundred dollars (\$100). The amount due the auctioneer on account of the auctioneer's expenses and fee, if any, shall be paid as a cost of the sale from its proceeds before the payment of any other payment from the sale.

As added by P.L.2-2002, SEC.14. Amended by P.L.167-2005, SEC.1.

IC 32-29-7-5

Waiver of time limitations

Sec. 5. The owner of the real estate subject to the issuance of process under a judgment or decree of foreclosure may, with the consent of the judgment holder endorsed on the judgment or decree of foreclosure, file with the clerk of the court a waiver of the time limitations on issuance of process set out in section 3 of this chapter. If the owner files a waiver under this section, process shall issue immediately. The consideration for waiver, whether or not expressed by its terms, shall be the waiver and release by the judgment holder of any deficiency judgment against the owner.

As added by P.L.2-2002, SEC.14.

IC 32-29-7-6

Location of mortgaged real estate; jurisdiction; recordation

Sec. 6. (a) If the mortgaged real estate is located in more than one

(1) county:

(1) the court of any county the mortgaged real estate is located in has jurisdiction of an action for the foreclosure of the mortgage; and

(2) all the real estate shall be sold in the county where the action is brought, unless the court orders otherwise.

(b) A judgment and decree granted by a court or a judge in an action for the foreclosure of the mortgaged real estate shall be recorded in the lis pendens record kept in the office of the clerk of each county where the real estate is located, unless the judgment and decree is filed with the clerk in the county as provided in IC 33-32-3-2.

As added by P.L.2-2002, SEC.14. Amended by P.L.98-2004, SEC.119.

IC 32-29-7-7

Redemption by owner before sheriff's sale

Sec. 7. Before the sale under this chapter, any owner or part owner of the real estate may redeem the real estate from the judgment by payment to the:

(1) clerk before the issuance to the sheriff of the judgment and decree; or

(2) sheriff after the issuance to the sheriff of the judgment and decree;

of the amount of the judgment, interest, and costs for the payment or satisfaction of which the sale was ordered. If the owner or part owner redeems the real estate under this section, process for the sale of the real estate under judgment may not be issued or executed, and the officer receiving the redemption payment shall satisfy the judgment and vacate order of sale. However, if the real estate is redeemed by a part owner, the part owner shall have a lien on the shares of the other owners for their respective shares of the redemption money, with interest at the rate of eight percent (8%) per annum, plus the costs of redemption. The lien shall be of the same force and effect as the judgment lien redeemed by the part owner and shall be enforceable by appropriate legal proceedings.

As added by P.L.2-2002, SEC.14.

IC 32-29-7-8

Sheriff's sale; manner of sale

Sec. 8. In selling real estate under this chapter, the sheriff is not required to first offer the rents and profits of the real estate or separate portions or parcels of the real estate. The sheriff may offer for sale the whole body of the mortgaged real estate together with rents, issues, income, and profits of the real estate unless the court in its judgment and order of sale has otherwise ordered. If any part of the judgment, interest, or costs remains unsatisfied, the sheriff shall immediately levy the residue on the other property of the defendant.

As added by P.L.2-2002, SEC.14.

IC 32-29-7-9

Sheriff prohibited from purchasing real estate at sheriff's sale; default of purchaser

Sec. 9. (a) A sheriff or an agent of the sheriff making a foreclosure sale under this chapter may not directly or indirectly purchase property sold by the sheriff or the sheriff's agent. If the purchaser of property sold on foreclosure fails to immediately pay the purchase money, the sheriff shall resell the property either on the same day without advertisement or on a subsequent day after again advertising in accordance with this chapter, as the judgment creditor directs. If the amount bid at the second sale does not equal the amount bid at the first sale, including the costs of the second sale, the first purchaser shall be liable for:

- (1) the deficiency;
- (2) damages not exceeding ten percent (10%); and
- (3) interest and costs;

all of which may be recovered in a court of proper jurisdiction by the sheriff.

(b) If the property is sold, the sheriff shall pay the proceeds as provided in IC 32-30-10-14. Every sale made under this chapter must be without relief from valuation or appraisal laws and without any right of redemption.

As added by P.L.2-2002, SEC.14.

IC 32-29-7-10

Deed of conveyance; sheriff to deliver to purchaser and record with county; exception to recording requirement for HUD mortgages

Sec. 10. (a) Immediately after a foreclosure sale under this chapter, the sheriff shall:

- (1) execute and deliver to the purchaser; and
- (2) except as provided in subsection (b), record with the recorder of the county in which the premises are located;

a deed of conveyance for the premises, which must be valid to convey all the right, title, and interest held or claimed by all of the parties to the action and all persons claiming under them. The sheriff shall file a return with the clerk of the court.

(b) The sheriff is not required to record the deed of conveyance for the premises under subsection (a)(2) if the mortgage involved in the foreclosure action resulting in the foreclosure sale under this chapter was insured by the United States Department of Housing and Urban Development.

As added by P.L.2-2002, SEC.14. Amended by P.L.105-2009, SEC.17.

IC 32-29-7-11

Receiver; duties; owner permitted to retain possession of property used as dwelling; limitations

Sec. 11. (a) If the court appoints a receiver of mortgaged property, the receiver shall take possession of the mortgaged property, collect

the rents, issues, income, and profits and apply the rents, issues, income, and profits to the payment of taxes, assessments, insurance premiums, and repairs required in the judgment of the receiver to preserve the security of the mortgage debt. The receiver shall promptly file a final report with the clerk of the court and, subject to the approval of the court, account for and pay over to the clerk, subject to the further order of the court, the balance of income or other proceeds that remain in the receiver's possession.

(b) If the mortgaged property is occupied as a dwelling by the record owner of the fee simple title, the owner shall be permitted to retain possession of the mortgaged property, rent free, until the foreclosure sale if the owner continues to pay the taxes and special assessments levied against the mortgaged property and if the owner, in the judgment of the court, does not suffer waste or other damage to the property. However, if the record owner of the fee simple title does not pay the taxes and special assessments levied against the mortgaged property, the owner may retain possession of that part of the mortgaged property, not exceeding fifteen (15) acres, that is actually occupied as a dwelling by the record owner of the fee simple title, rent free, until the sale, if the owner does not, in the judgment of the court, suffer waste or other damage to the property. The owner of any crops growing on the mortgaged property at the time of the commencement of an action for foreclosure, other than the owner of fee simple title or the owner's assigns, may enter the property to care for and harvest the crops at any time within one (1) year after the filing of the foreclosure action.

As added by P.L.2-2002, SEC.14.

IC 32-29-7-12

Owner's right to crops

Sec. 12. If the record owner of the fee simple title has the right under section 11 of this chapter to retain possession of the mortgaged premises or any part of the mortgaged premises until the foreclosure sale, the owner may, at any time within one (1) year after the commencement of the foreclosure action, enter the premises to care for and harvest any crops growing at the time of the commencement of the foreclosure action on all or part of the mortgaged premises.

As added by P.L.2-2002, SEC.14.

IC 32-29-7-13

Other means of redemption excluded

Sec. 13. There may not be a redemption from the foreclosure of a mortgage executed after June 30, 1931, on real estate except as provided in this chapter.

As added by P.L.2-2002, SEC.14.

IC 32-29-7-14

Applicability

Sec. 14. The laws of Indiana in force on June 29, 1931, shall apply to the foreclosure of any mortgage executed before June 30,

1931.

As added by P.L.2-2002, SEC.14.