



January 20, 2022

HOUSE BILL No. 1048

DIGEST OF HB 1048 (Updated January 19, 2022 12:44 pm - DI 140)

Citations Affected: IC 32-29.

Synopsis: Sheriff's sale in mortgage foreclosure action. Allows the sheriff to conduct a public auction electronically. Raises the amount that a sheriff can charge for administrative fees from \$200 to \$500. Makes a conforming amendment. Makes a technical correction.

Effective: July 1, 2022.

Eberhart

January 4, 2022, read first time and referred to Committee on Local Government.
January 20, 2022, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

HB 1048—LS 6487/DI 148



January 20, 2022

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

HOUSE BILL No. 1048

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 32-29-7-3, AS AMENDED BY THE TECHNICAL
2 CORRECTIONS BILL OF THE 2022 GENERAL ASSEMBLY, IS
3 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]:
4 Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed
5 on real estate, process may not issue for the execution of a judgment or
6 decree of sale for a period of three (3) months after the filing of a
7 complaint in the proceeding. However:
8 (1) the period is:
9 (A) twelve (12) months in a proceeding for the foreclosure of
10 a mortgage executed before January 1, 1958; and
11 (B) six (6) months in a proceeding for the foreclosure of a
12 mortgage executed after December 31, 1957, but before July
13 1, 1975; and
14 (2) if the court finds under IC 32-30-10.6 that the mortgaged real
15 estate has been abandoned, a judgment or decree of sale may be
16 executed on the date the judgment of foreclosure or decree of sale
17 is entered, regardless of the date the mortgage is executed.

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

9 (1) a praecipe is not filed with the clerk within one hundred eighty
 10 (180) days after the later of the dates on which:

11 (A) the period specified in subsection (a) expires; or

12 (B) the judgment and decree is filed; and

13 (2) the sale is not:

14 (A) otherwise prohibited by law;

15 (B) subject to a voluntary statewide foreclosure moratorium;
 16 or

17 (C) subject to a written agreement that:

18 (i) provides for a delay in the sale of the mortgaged real
 19 estate; and

20 (ii) is executed by and between the owner of the mortgaged
 21 real estate and a party entitled to enforce the judgment and
 22 decree;

23 an enforcement authority that has issued an abatement order under
 24 IC 36-7-36-9 with respect to the mortgaged real estate may file a
 25 praecipe with the clerk in any county where the judgment and decree
 26 is filed. If an enforcement authority files a praecipe under this
 27 subsection, the clerk of the county in which the praecipe is filed shall
 28 promptly issue and certify to the sheriff of that county a copy of the
 29 judgment and decree under the seal of the court.

30 (c) Upon receiving a certified judgment under subsection (b), the
 31 sheriff shall, subject to section 4 of this chapter, sell the mortgaged
 32 premises or as much of the mortgaged premises as necessary to satisfy
 33 the judgment, interest, and costs. **The sale may be conducted**
 34 **electronically under subsection (d)**, at public auction at the office of
 35 the sheriff, or at another location that is reasonably likely to attract
 36 higher competitive bids. The sheriff shall schedule the date and time of
 37 the sheriff's sale for:

38 (1) a date not later than:

39 (A) sixty (60) days after the date on which a judgment and
 40 decree under IC 32-30-10.6-5; and

41 (B) one hundred twenty (120) days after the date on which a
 42 judgment and decree in all other cases;



1 under seal of the court is certified to the sheriff by the clerk; and
 2 (2) a time certain between the hours of 10 a.m. and 4 p.m. on any
 3 day of the week except Sunday.

4 **(d) The county sheriff may conduct the public auction required**
 5 **under subsection (c) electronically. The electronic sale must**
 6 **comply with the other requirements in this section. If the public**
 7 **auction is conducted electronically, the county sheriff may receive**
 8 **electronic payments and establish procedures necessary to secure**
 9 **the payments in a timely fashion. The auction provider may not**
 10 **add an additional cost for conducting the sale electronically.**

11 ~~(d)~~ **(e)** Before selling mortgaged property, the sheriff must advertise
 12 the sale by publication once each week for three (3) successive weeks:

- 13 (1) with each publication of notice in a daily or weekly newspaper
 14 of general circulation in at least one (1) newspaper published and
 15 circulated in each county where the real estate is situated; or
 16 (2) with the first publication of notice in a newspaper described
 17 in subdivision (1) and the two (2) subsequent publications of
 18 notice:

19 (A) in accordance with IC 5-3-5; and

20 (B) on the official web site of each county where the real
 21 estate is located.

22 The first publication shall be made at least thirty (30) days before the
 23 date of sale. At the time of placing the first advertisement by
 24 publication, the sheriff shall also serve a copy of the written or printed
 25 notice of sale upon each owner of the real estate. Service of the written
 26 notice shall be made as provided in the Indiana Rules of Trial
 27 Procedure governing service of process upon a person.

28 ~~(e)~~ **(f)** The sheriff shall charge a fee of ten dollars (\$10) to one (1)
 29 owner and three dollars (\$3) to each additional owner for service of
 30 written notice under ~~this~~ subsection ~~(d)~~: **(e)**. The fee is:

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

36 ~~(f)~~ **(g)** The sheriff also shall post written or printed notices of the
 37 sale at the door of the courthouse of each county in which the real
 38 estate is located.

39 ~~(g)~~ **(h)** If the sheriff is unable to procure the publication of a notice
 40 within the county, the sheriff may dispense with publication. The
 41 sheriff shall state that the sheriff was not able to procure the
 42 publication and explain the reason why publication was not possible.



1 ~~(h)~~ **(i)** Notices under subsections ~~(d)~~, (e), (f), **(g)**, and ~~(j)~~ **(k)** must
 2 contain a statement, for informational purposes only, of the location of
 3 each property by street address, if any, or other common description of
 4 the property other than legal description. A misstatement in the
 5 informational statement under this subsection does not invalidate an
 6 otherwise valid sale.

7 ~~(i)~~ **(j)** The sheriff may charge an administrative fee of not more than
 8 ~~two five~~ hundred dollars ~~(\$200)~~ **(\$500)** with respect to a proceeding
 9 referred to in subsection (b) for actual costs directly attributable to the
 10 administration of the sale under subsection (c). The fee is:

11 (1) payable by the person seeking to enforce the judgment and
 12 decree; and

13 (2) due at the time of filing of the praecipe;
 14 under subsection (b).

15 ~~(j)~~ **(k)** If a sale of mortgaged property scheduled under this section
 16 is canceled, the sheriff shall provide written notice of the cancellation
 17 to each owner of the real estate. Service of the written notice shall be
 18 made as provided in the Indiana Rules of Trial Procedure governing
 19 service of process upon a person. The sheriff shall charge a fee of ten
 20 dollars (\$10) for notice to one (1) owner and three dollars (\$3) for
 21 notice to each additional owner for service of written notice under this
 22 subsection. The fee:

23 (1) is a cost of the proceeding;

24 (2) shall be collected as other costs of the proceeding are
 25 collected; and

26 (3) shall be deposited in the county general fund for appropriation
 27 for operating expenses of the sheriff's department.

28 The fee for service under this subsection shall be paid by the person
 29 who caused the sale to be canceled.

30 SECTION 2. IC 32-29-8-4, AS AMENDED BY P.L.13-2013,
 31 SECTION 80, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2022]: Sec. 4. (a) As used in this section, "interested person",
 33 with respect to an action to foreclose a mortgage on an interest in real
 34 property in Indiana, means:

35 (1) the holder of the evidence of debt secured by the mortgage
 36 being foreclosed;

37 (2) a person:

38 (A) who purchases the property at a judicial sale after a
 39 judgment and decree of sale is entered in the action; and

40 (B) to whom a deed is executed and delivered by the sheriff
 41 under IC 32-29-7-10; or

42 (3) any person claiming by, through, or under a person described



- 1 in subdivision (1) or (2).
- 2 (b) As used in this section, "omitted party", with respect to an action
 3 to foreclose a mortgage on an interest in real property in Indiana,
 4 means a person who:
- 5 (1) before the commencement of the action has acquired in the
 6 property an interest that:
- 7 (A) is junior or subordinate to the mortgage being foreclosed;
 8 and
 9 (B) would otherwise be extinguished by the foreclosure; and
 10 (2) is either:
- 11 (A) not named as a party defendant in the action or, if named
 12 as a party defendant, is not served with process; or
 13 (B) not served with a notice of sale under ~~IC 32-29-7-3(d)~~
 14 **IC 32-29-7-3(e)** after a judgment and decree of sale is entered
 15 in the action.
- 16 The term includes any person claiming by, through, or under a person
 17 described in this subsection.
- 18 (c) At any time after a judgment and decree of sale is entered in an
 19 action to foreclose a mortgage on an interest in real property in Indiana,
 20 an interested person or an omitted party may bring a civil action to:
- 21 (1) determine the extent of; and
 22 (2) terminate;
 23 the interest of an omitted party in the property subject to the sale.
- 24 (d) Except as provided in subsection (e) and subject to subsections
 25 (f) and (g), upon the filing of an action described in subsection (c), the
 26 court shall determine the extent of the omitted party's interest in the
 27 property and issue a decree terminating that interest, subject to the right
 28 of the omitted party to redeem the property on terms as the court
 29 considers equitable under the circumstances after considering the
 30 factors set forth in subsection (f), if the omitted party would have had
 31 redemption rights:
- 32 (1) before the sale under IC 32-29-7-7; or
 33 (2) after the sale, as described in IC 34-55-4-8(a)(2).
- 34 (e) If the omitted party proves that the omitted party has a right to
 35 receive proceeds actually paid at the judicial sale, the omitted party's
 36 interest in the property is not subject to termination by an action
 37 brought under this section unless the proceeds that the omitted party
 38 would have received at the judicial sale are paid to the omitted party.
- 39 (f) In an action brought under this section, if the court determines
 40 that the omitted party is entitled to redemption under subsection (d),
 41 the court shall consider the following in deciding the terms of the
 42 redemption:



- 1 (1) Whether the omitted party:
 2 (A) was given or had actual notice or knowledge of the
 3 foreclosure; and
 4 (B) had opportunity to intervene in the foreclosure action or
 5 otherwise exercise any right to redeem the property.
 6 (2) Whether any interested person in good faith has made
 7 valuable improvements to the property and, if so, the value of all
 8 lasting improvements made to the property before the
 9 commencement of the action under this section.
 10 (3) The amount of any taxes and assessments, along with any
 11 related interest payments, related to the property and paid by an
 12 interested person or by any person under whose title to the
 13 property an interested person claims.
 14 (g) If the court determines that the omitted party is entitled to
 15 redemption under subsection (d), and after considering the factors set
 16 forth in subsection (f), the court shall grant redemption rights to the
 17 omitted party that the court considers equitable under the
 18 circumstances, subject to the following:
 19 (1) The amount to be paid for redemption may not be less than the
 20 sale price resulting from the foreclosure of the interested person's
 21 senior lien, plus interest at the statutory judgment rate.
 22 (2) The time allowed for payment of the redemption amount may
 23 not exceed ninety (90) days after the date of the court's decree
 24 under subsection (d).
 25 (h) The senior lien upon which the foreclosure action was based is
 26 not extinguished by merger with the title to the property conveyed to
 27 a purchaser through a sheriff's deed executed and delivered under
 28 IC 32-29-7-10 until the interest of any omitted party has been
 29 terminated:
 30 (1) through an action brought under this section; or
 31 (2) by operation of law.
 32 Until an omitted party's interest is terminated as described in this
 33 subsection, any owner of the property as a holder of a sheriff's deed
 34 executed and delivered under IC 32-29-7-10, or any person claiming
 35 by, through, or under such an owner, is the equitable owner of the
 36 senior lien upon which the foreclosure action was based and has all
 37 rights against an omitted party as existed before the judicial sale.
 38 (i) An interested person may not terminate an omitted party's
 39 interest in real property that is the subject of a foreclosure action except
 40 through an action brought under this section. An interested person's
 41 rights under this section may not be denied because the interested
 42 person:



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



COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1048, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1048 as introduced.)

MAY

Committee Vote: Yeas 10, Nays 1

