



January 24, 2022

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## HOUSE BILL No. 1048

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DIGEST OF HB 1048 (Updated January 24, 2022 12:46 pm - DI 134)

**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 \$350. Makes a conforming amendment. Makes a technical correction.

**Effective:** July 1, 2022.

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### Eberhart

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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.  
January 24, 2022, amended, reported — Do Pass.

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HB 1048—LS 6487/DI 148





January 24, 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

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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.

**HB 1048—LS 6487/DI 148**



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~~ **three** hundred **fifty** dollars ~~(\$200)~~ **(\$350)** with respect to a  
 9 proceeding referred to in subsection (b) for actual costs directly  
 10 attributable to the administration of the sale under subsection (c). The  
 11 fee is:

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

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

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

24            (1) is a cost of the proceeding;

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

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

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

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

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

38            (2) a person:

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

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



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



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





- 1 person:
- 2 (1) had actual or constructive notice of the omitted party's interest
- 3 in the property;
- 4 (2) was negligent in examining county records;
- 5 (3) was engaged in the business of lending; or
- 6 (4) obtained a title search or commitment or a title insurance
- 7 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

## COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, 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 be amended as follows:

Page 4, line 8, delete "five" and insert "**three**".

Page 4, line 8, after "hundred" insert "**fifty**".

Page 4, line 8, delete "(\$500)" and insert "**(\$350)**".

and when so amended that said bill do pass.

(Reference is to HB 1048 as printed January 20, 2022.)

BROWN T

Committee Vote: yeas 14, nays 0.

