

HOUSE BILL No. 1056

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-21-2; IC 32-21-4.

Synopsis: Recording requirements. Amends the requirements for instruments and conveyances to be recorded. Adds instances in which an instrument is considered validly recorded for purposes of providing constructive notice. Defines certain terms.

Effective: Upon passage.

Torr, Young J

January 4, 2021, read first time and referred to Committee on Judiciary.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1056

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 32-21-2-1.4 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 1.4. As used in this chapter, "instrument"**
4 **means:**

- 5 (1) **an electronic document (as defined in IC 32-21-2.5-3); or**
- 6 (2) **a paper document (as defined in IC 32-21-2.5-8(a));**
- 7 **submitted to a county recorder for recording.**

8 SECTION 2. IC 32-21-2-1.6 IS ADDED TO THE INDIANA CODE
9 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
10 UPON PASSAGE]: **Sec. 1.6. As used in this chapter, "proof", with**
11 **respect to a notarial act, means the following:**

- 12 (1) **A proof under common law.**
- 13 (2) **A witness appears before a notarial officer and meets the**
14 **following requirements:**
 - 15 (A) **The witness is personally known by the notarial officer**
16 **or identified by the notarial officer through satisfactory**
17 **evidence.**



- 1 **(B) The witness is not a party to or a beneficiary of the**
- 2 **instrument signed by the witness. As used in this clause,**
- 3 **"beneficiary" includes the following:**
- 4 **(i) Designated beneficiaries.**
- 5 **(ii) Estate heirs and devisees.**
- 6 **(iii) Trust income and remainder beneficiaries.**
- 7 **(iv) Other named beneficiaries.**
- 8 **(C) The witness takes an oath or gives an affirmation that**
- 9 **confirms the following:**
- 10 **(i) The witness signed the instrument.**
- 11 **(ii) The witness identified the person who signed the**
- 12 **instrument.**
- 13 **(iii) The witness personally observed the person signing**
- 14 **the instrument.**

15 SECTION 3. IC 32-21-2-3, AS AMENDED BY P.L.80-2020,
 16 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 UPON PASSAGE]: Sec. 3. (a) Except as provided in subsection (c); a
 18 conveyance; a mortgage; or an instrument of writing to be recorded
 19 must be:

- 20 (1) acknowledged by the grantor; and
- 21 (2) proved before a:
 - 22 (A) judge;
 - 23 (B) clerk of a court of record;
 - 24 (C) county auditor;
 - 25 (D) county recorder;
 - 26 (E) notary public;
 - 27 (F) mayor of a city in Indiana or any other state;
 - 28 (G) commissioner appointed in a state other than Indiana by
 - 29 the governor of Indiana;
 - 30 (H) minister, charge d'affaires, or consul of the United States
 - 31 in any foreign country;
 - 32 (I) clerk of the city county council for a consolidated city; city
 - 33 clerk for a second class city; or clerk-treasurer for a third class
 - 34 city;
 - 35 (J) clerk-treasurer for a town; or
 - 36 (K) person authorized under IC 2-3-4-1.

- 37 **(a) An instrument to be recorded must have a notarial act that**
- 38 **is either:**
 - 39 **(1) an acknowledgment (as defined in IC 33-42-0.5-2); or**
 - 40 **(2) a proof.**
- 41 **(b) An acknowledgment under subsection (a)(1) must be**
- 42 **performed:**



- 1 (1) by a notarial officer (as defined in IC 33-42-0.5-19);
 2 (2) by a remote notary public (as defined in IC 33-42-0.5-27);
 3 or
 4 (3) in compliance with IC 33-42-9-8, IC 33-42-9-9,
 5 IC 33-42-9-10, or IC 33-42-9-11.
- 6 (c) A proof under subsection (a)(2) must be performed:
 7 (1) by a notarial officer (as defined in IC 33-42-0.5-19); or
 8 (2) in compliance with IC 33-42-9-8, IC 33-42-9-9,
 9 IC 33-42-9-10, or IC 33-42-9-11.
- 10 (b) (d) In addition to the requirements under subsection (a), a
 11 conveyance may not be recorded after June 30, 2007, unless it meets
 12 the requirements of this subsection. The conveyance **An instrument**
 13 must include a statement containing substantially the following
 14 information:
 15 "The mailing address to which statements should be mailed under
 16 IC 6-1.1-22-8.1 is [insert proper mailing address]. The mailing
 17 address of the grantee is [insert proper mailing address]."
 18 The mailing address for the grantee must be a street address or a rural
 19 route address. A conveyance complies with this subsection if it
 20 contains the address or addresses required by this subsection at the end
 21 of the conveyance and immediately preceding or following the
 22 statements required by IC 36-2-11-15.
- 23 (c) ~~This section does not apply to the Indiana department of~~
 24 ~~transportation:~~
- 25 (e) **If an instrument is executed in a foreign country and the**
 26 **instrument or the instrument's acknowledgment or proof is in a**
 27 **language other than English, the instrument must include a**
 28 **translation from the other language into English.**
- 29 SECTION 4. IC 32-21-4-0.2 IS ADDED TO THE INDIANA CODE
 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 31 UPON PASSAGE]: **Sec. 0.2. The general assembly makes the**
 32 **following findings of fact regarding sections 0.4 and 1 of this**
 33 **chapter:**
 34 (1) **It is in the public interest for the state to have recorded**
 35 **documents in the public record that cannot be attacked due to**
 36 **technical, rather than substantive, deficiencies.**
 37 (2) **The ability to rely upon documents recorded in the public**
 38 **record provides stability to the state and local real estate**
 39 **economies.**
 40 (3) **The revisions made to this chapter are intended to express**
 41 **the original intent of the law more clearly.**
 42 SECTION 5. IC 32-21-4-0.4 IS ADDED TO THE INDIANA CODE



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
2 UPON PASSAGE]: **Sec. 0.4. As used in this chapter, "conveyance"**
3 **means an electronic document (as defined in IC 32-21-2.5-3) or a**
4 **paper document (as defined in IC 32-21-2.5-8(a)) that is:**

- 5 (1) **an instrument of writing concerning land or an interest in**
6 **land, except a last will and testament;**
7 (2) **a lease or a memorandum of lease for a term exceeding**
8 **three (3) years;**
9 (3) **a transfer on death deed (as defined in IC 32-17-14-3(16));**
10 **or**
11 (4) **a land contract or a memorandum of land contract for the**
12 **sale and purchase of land.**

13 SECTION 6. IC 32-21-4-1, AS AMENDED BY P.L.236-2015,
14 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 UPON PASSAGE]: **Sec. 1. (a) The following A conveyance or**
16 **mortgage of land or of any interest in land** must be recorded in the
17 recorder's office of the county where the land is situated.

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

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

26 (c) This subsection applies regardless of when an instrument is
27 recorded. If:

- 28 (1) an instrument referred to in subsection (a) is recorded; and
29 (2) the instrument: ~~does not comply with the:~~
30 (A) **does not comply with the** requirements of:
31 (i) IC 32-21-2-3, **including whether there was both an**
32 **acknowledgment and proof on the instrument; or**
33 (ii) IC 32-21-2-7; ~~or~~
34 (B) **does not comply with the** technical requirements of
35 IC 36-2-11-16(c);
36 (C) **was executed and included an acknowledgment**
37 **executed pursuant to the terms of an executive order issued**
38 **by the governor or an order of the supreme court; or**
39 (D) **was recorded and indexed by a county recorder as an**
40 **electronic record (as defined in IC 26-2-8-102);**

41 the instrument is validly recorded and provides constructive notice of
42 the contents of the instrument as of the date of ~~filing~~ **recording**.



1 **SECTION 7. An emergency is declared for this act.**

