

# HOUSE BILL No. 1212

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-29; IC 32-30-10-8.

**Synopsis:** Notice of sheriff's sale of foreclosed property. Amends the statute concerning the procedures for a sheriff's sale of real property subject to a mortgage foreclosure judgment to provide that before selling the property, the sheriff must advertise the sale by arranging for the posting of a notice of the sale on the Internet web site maintained by: (1) each county in which the real estate is located; or (2) the office of the sheriff; at the discretion of the sheriff. (Current law requires the sheriff to advertise the sale by publication in a newspaper of general circulation in each county in which the property is located.) Provides that if: (1) a county in which the real estate is located does not maintain an Internet web site; and (2) the office of the sheriff does not maintain an Internet web site; the sheriff shall advertise the sale by publication in the county. Makes conforming amendments.

**Effective:** July 1, 2019.

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## McNamara, Mahan

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January 10, 2019, read first time and referred to Committee on Financial Institutions.

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First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## HOUSE BILL No. 1212

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 P.L.247-2015,  
2 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2019]: Sec. 3. (a) In a proceeding for the foreclosure of a  
4 mortgage executed on real estate, process may not issue for the  
5 execution of a judgment or decree of sale for a period of three (3)  
6 months after the filing of a complaint in the proceeding. However:  
7 (1) the period is:  
8 (A) twelve (12) months in a proceeding for the foreclosure of  
9 a mortgage executed before January 1, 1958; and  
10 (B) six (6) months in a proceeding for the foreclosure of a  
11 mortgage executed after December 31, 1957, but before July  
12 1, 1975; and  
13 (2) if the court finds under IC 32-30-10.6 that the mortgaged real  
14 estate has been abandoned, a judgment or decree of sale may be  
15 executed on the date the judgment of foreclosure or decree of sale  
16 is entered, regardless of the date the mortgage is executed.  
17 (b) A judgment and decree in a proceeding to foreclose a mortgage



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

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

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

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

12 (2) the sale is not:

13 (A) otherwise prohibited by law;

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

16 (C) subject to a written agreement that:

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

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

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

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

36 (1) a date not later than:

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

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

41 under seal of the court is certified to the sheriff by the clerk; and

42 (2) a time certain between the hours of 10 a.m. and 4 p.m. on any



1 day of the week except Sunday.

2 (d) **Subject to subsections (e) and (j)**, before selling mortgaged  
3 property, the sheriff must advertise the sale by **arranging for the**  
4 **posting of a notice of the sale:**

5 (1) **on the Internet web site maintained by each county in**  
6 **which the real estate is located; or**

7 (2) **on the Internet web site maintained by the office of the**  
8 **sheriff;**

9 **at the discretion of the sheriff.**

10 (e) **If:**

11 (1) **a county in which the real estate is located does not**  
12 **maintain an Internet web site; and**

13 (2) **the office of the sheriff does not maintain an Internet web**  
14 **site;**

15 **the sheriff shall advertise the sale by** publication once each week for  
16 three (3) successive weeks in a **at least one (1)** daily or weekly  
17 newspaper of general circulation **in the county**. ~~The sheriff shall~~  
18 ~~publish the advertisement in at least one (1) newspaper published and~~  
19 ~~circulated in each county where the real estate is situated.~~ The first  
20 publication shall be made at least thirty (30) days before the date of  
21 sale. **If the sheriff is unable to procure the publication of a notice**  
22 **within the county, the sheriff may dispense with publication. The**  
23 **sheriff shall state that the sheriff was not able to procure the**  
24 **publication and explain the reason why publication was not**  
25 **possible.**

26 (f) **At the time of posting the advertisement under subsection (d),**  
27 **or of placing the first advertisement by publication under subsection**  
28 **(e), as applicable, the sheriff shall also do the following:**

29 (1) **Serve a copy of the written or printed notice of sale upon each**  
30 **owner of the real estate. Service of the written notice shall be**  
31 **made as provided in the Indiana Rules of Trial Procedure**  
32 **governing service of process upon a person. The sheriff shall**  
33 **charge a fee of ten dollars (\$10) to one (1) owner and three dollars**  
34 **(\$3) to each additional owner for service of written notice under**  
35 **this subsection. The fee is:**

36 ~~(1)~~ (A) **a cost of the proceeding;**

37 ~~(2)~~ (B) **to be collected as other costs of the proceeding are**  
38 **collected; and**

39 ~~(3)~~ (C) **to be deposited in the county general fund for**  
40 **appropriation for operating expenses of the sheriff's**  
41 **department.**

42 ~~(e)~~ **The sheriff also shall (2) Post written or printed notices of the**



- 1 sale at the door of the courthouse of each county in which the real  
 2 estate is located.
- 3 ~~(f) If the sheriff is unable to procure the publication of a notice~~  
 4 ~~within the county, the sheriff may dispense with publication. The~~  
 5 ~~sheriff shall state that the sheriff was not able to procure the~~  
 6 ~~publication and explain the reason why publication was not possible.~~
- 7 (g) Notices under subsections (d), (e), **(f)**, and (i) must contain a  
 8 statement, for informational purposes only, of the location of each  
 9 property by street address, if any, or other common description of the  
 10 property other than legal description. A misstatement in the  
 11 informational statement under this subsection does not invalidate an  
 12 otherwise valid sale.
- 13 (h) The sheriff may charge an administrative fee of not more than  
 14 two hundred dollars (\$200) with respect to a proceeding referred to in  
 15 subsection (b) for actual costs directly attributable to the administration  
 16 of the sale under subsection (c). The fee is:
- 17 (1) payable by the person seeking to enforce the judgment and  
 18 decree; and  
 19 (2) due at the time of filing of the praecipe;  
 20 under subsection (b).
- 21 (i) If a sale of mortgaged property scheduled under this section is  
 22 canceled, the sheriff shall provide written notice of the cancellation to  
 23 each owner of the real estate. Service of the written notice shall be  
 24 made as provided in the Indiana Rules of Trial Procedure governing  
 25 service of process upon a person. The sheriff shall charge a fee of ten  
 26 dollars (\$10) for notice to one (1) owner and three dollars (\$3) for  
 27 notice to each additional owner for service of written notice under this  
 28 subsection. The fee:
- 29 (1) is a cost of the proceeding;  
 30 (2) shall be collected as other costs of the proceeding are  
 31 collected; and  
 32 (3) shall be deposited in the county general fund for appropriation  
 33 for operating expenses of the sheriff's department.
- 34 The fee for service under this subsection shall be paid by the person  
 35 who caused the sale to be canceled.
- 36 **(j) Notice posted on a county's Internet web site or on a sheriff's**  
 37 **Internet web site under subsection (d):**
- 38 **(1) shall be posted on the Internet web site at least thirty (30)**  
 39 **days before the date of the sale; and**  
 40 **(2) shall be maintained on the Internet web site until any of**  
 41 **the following occurs:**  
 42 **(A) Any owner or part owner of the real estate redeems the**



1           **real estate from the judgment under section 7 of this**  
 2           **chapter.**

3           **(B) The sale is cancelled under subsection (i).**

4           **(C) If the real estate is sold under subsection (c), a deed of**  
 5           **conveyance for the premises is executed and delivered**  
 6           **under section 10(a)(1) of this chapter to the purchaser of**  
 7           **the real estate.**

8           SECTION 2. IC 32-29-8-4, AS AMENDED BY P.L.13-2013,  
 9           SECTION 80, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10          JULY 1, 2019]: Sec. 4. (a) As used in this section, "interested person",  
 11          with respect to an action to foreclose a mortgage on an interest in real  
 12          property in Indiana, means:

13           (1) the holder of the evidence of debt secured by the mortgage  
 14           being foreclosed;

15           (2) a person:

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

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

20           (3) any person claiming by, through, or under a person described  
 21           in subdivision (1) or (2).

22           (b) As used in this section, "omitted party", with respect to an action  
 23           to foreclose a mortgage on an interest in real property in Indiana,  
 24           means a person who:

25           (1) before the commencement of the action has acquired in the  
 26           property an interest that:

27           (A) is junior or subordinate to the mortgage being foreclosed;  
 28           and

29           (B) would otherwise be extinguished by the foreclosure; and

30           (2) is either:

31           (A) not named as a party defendant in the action or, if named  
 32           as a party defendant, is not served with process; or

33           (B) not served with a notice of sale under ~~IC 32-29-7-3(d)~~  
 34           **IC 32-29-7-3(f)** after a judgment and decree of sale is entered  
 35           in the action.

36           The term includes any person claiming by, through, or under a person  
 37           described in this subsection.

38           (c) At any time after a judgment and decree of sale is entered in an  
 39           action to foreclose a mortgage on an interest in real property in Indiana,  
 40           an interested person or an omitted party may bring a civil action to:

41           (1) determine the extent of; and

42           (2) terminate;



1 the interest of an omitted party in the property subject to the sale.

2 (d) Except as provided in subsection (e) and subject to subsections  
3 (f) and (g), upon the filing of an action described in subsection (c), the  
4 court shall determine the extent of the omitted party's interest in the  
5 property and issue a decree terminating that interest, subject to the right  
6 of the omitted party to redeem the property on terms as the court  
7 considers equitable under the circumstances after considering the  
8 factors set forth in subsection (f), if the omitted party would have had  
9 redemption rights:

10 (1) before the sale under IC 32-29-7-7; or

11 (2) after the sale, as described in IC 34-55-4-8(a)(2).

12 (e) If the omitted party proves that the omitted party has a right to  
13 receive proceeds actually paid at the judicial sale, the omitted party's  
14 interest in the property is not subject to termination by an action  
15 brought under this section unless the proceeds that the omitted party  
16 would have received at the judicial sale are paid to the omitted party.

17 (f) In an action brought under this section, if the court determines  
18 that the omitted party is entitled to redemption under subsection (d),  
19 the court shall consider the following in deciding the terms of the  
20 redemption:

21 (1) Whether the omitted party:

22 (A) was given or had actual notice or knowledge of the  
23 foreclosure; and

24 (B) had opportunity to intervene in the foreclosure action or  
25 otherwise exercise any right to redeem the property.

26 (2) Whether any interested person in good faith has made  
27 valuable improvements to the property and, if so, the value of all  
28 lasting improvements made to the property before the  
29 commencement of the action under this section.

30 (3) The amount of any taxes and assessments, along with any  
31 related interest payments, related to the property and paid by an  
32 interested person or by any person under whose title to the  
33 property an interested person claims.

34 (g) If the court determines that the omitted party is entitled to  
35 redemption under subsection (d), and after considering the factors set  
36 forth in subsection (f), the court shall grant redemption rights to the  
37 omitted party that the court considers equitable under the  
38 circumstances, subject to the following:

39 (1) The amount to be paid for redemption may not be less than the  
40 sale price resulting from the foreclosure of the interested person's  
41 senior lien, plus interest at the statutory judgment rate.

42 (2) The time allowed for payment of the redemption amount may



1 not exceed ninety (90) days after the date of the court's decree  
2 under subsection (d).

3 (h) The senior lien upon which the foreclosure action was based is  
4 not extinguished by merger with the title to the property conveyed to  
5 a purchaser through a sheriff's deed executed and delivered under  
6 IC 32-29-7-10 until the interest of any omitted party has been  
7 terminated:

- 8 (1) through an action brought under this section; or  
9 (2) by operation of law.

10 Until an omitted party's interest is terminated as described in this  
11 subsection, any owner of the property as a holder of a sheriff's deed  
12 executed and delivered under IC 32-29-7-10, or any person claiming  
13 by, through, or under such an owner, is the equitable owner of the  
14 senior lien upon which the foreclosure action was based and has all  
15 rights against an omitted party as existed before the judicial sale.

16 (i) An interested person may not terminate an omitted party's  
17 interest in real property that is the subject of a foreclosure action except  
18 through an action brought under this section. An interested person's  
19 rights under this section may not be denied because the interested  
20 person:

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

27 SECTION 3. IC 32-30-10-8 IS AMENDED TO READ AS  
28 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8. (a) The copy of the  
29 court's order of sale and judgment shall be issued and certified by the  
30 clerk under the seal of the court to the sheriff.

31 (b) After receiving the order under subsection (a), the sheriff shall  
32 proceed to sell the mortgaged premises, or as much of the mortgaged  
33 premises as is necessary to satisfy the judgment, interest, and costs. If  
34 any part of the judgment, interest, and costs remain unsatisfied after the  
35 sale of the mortgaged premises, the sheriff shall proceed to sell the  
36 remaining property of the defendant. If the mortgaged property is  
37 located in more than one (1) county, a common description of the  
38 property, the sale of the property, and the location of the sale must be  
39 advertised **in accordance with the procedures set forth in**  
40 **IC 32-29-7-3** in each county where the property is located.

