

HOUSE BILL No. 1318

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-1.1-24-7.5; IC 24-9-3-7.

Synopsis: Tax sale surplus funds. Provides that the attorney general and the attorney general's homeowner protection unit shall enforce the statute governing an agreement between: (1) a real property owner who is divested of ownership of the property at a tax sale; and (2) a person that, for compensation, offers to assist in the recovery of the property owner's interest in tax sale surplus funds. Authorizes: (1) the attorney general to maintain an action to enforce the provisions; and (2) a court in which an action is brought to order certain remedies and impose a civil penalty for violations. Provides that a real estate transaction involving the sale, transfer, or assignment of any: (1) legal or equitable interest in real property sold at a tax sale; or (2) interest in a tax sale surplus fund; is subject to certain prohibitions set forth in the home loan practices act. Provides that, after May 1, 2016, if a third party seeks to enter into a such a real estate transaction with a property owner before the disbursement of tax sale surplus funds, the third party shall do the following: (1) Provide the property owner with a written form that must be signed and attested to by both parties and set forth certain information, including the value, at the time the agreement is entered into, of the property owner's share of the amount deposited in the tax sale surplus fund but not yet disbursed. (2) Maintain a \$25,000 surety bond payable to the state for the benefit of a person damaged by a violation of these provisions. (3) File a copy of the surety bond with the attorney general.

Effective: Upon passage.

Price, Truitt, Pryor

January 12, 2016, read first time and referred to Committee on Ways and Means.



Second Regular Session of the 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1318

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-1.1-24-7.5, AS ADDED BY P.L.73-2010,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 7.5. (a) For purposes of this section, "property
4 owner" refers to the owner of record of real property at the time the tax
5 deed is issued and who is divested of ownership by the issuance of the
6 tax deed.
7 (b) If a property owner enters into an agreement on or after May 1,
8 2010, that has the primary purpose of paying compensation to locate,
9 deliver, recover, or assist in the recovery of money deposited in the tax
10 sale surplus fund under section 7(a)(3) of this chapter with respect to
11 real property as a result of a tax sale, the agreement is valid only if the
12 agreement:
13 (1) requires payment of compensation of not more than ten
14 percent (10%) of the amount collected from the tax sale surplus
15 fund with respect to the real property, unless the amount collected
16 is fifty dollars (\$50) or less;
17 (2) is in writing;



1 (3) is signed by the property owner; and

2 (4) clearly sets forth:

3 (A) the amount deposited in the tax sale surplus fund under
4 section 7(a)(3) of this chapter with respect to the real property;
5 and

6 (B) the value of the property owner's share of the amount
7 collected from the tax sale surplus fund with respect to the real
8 property after the compensation is deducted.

9 **(c) If a property owner enters into an agreement on or after**
10 **May 1, 2016, that has the primary purpose of transferring or**
11 **assigning the property owner's share of the amount deposited in**
12 **the tax sale surplus fund under section 7(a)(3) of this chapter with**
13 **respect to the real property, the transaction is valid only if it**
14 **complies with IC 24-9-3-7(e).**

15 **(d) The attorney general and the attorney general's homeowner**
16 **protection unit established under IC 4-6-12 shall enforce this**
17 **section.**

18 **(e) The attorney general may maintain an action in a court with**
19 **jurisdiction to enforce this section. A court in which an action is**
20 **brought to enforce this section may do the following:**

21 **(1) Issue an injunction.**

22 **(2) Order restitution to a property owner aggrieved by a**
23 **violation of this section.**

24 **(3) Order a person that violates this section to reimburse the**
25 **state for the reasonable costs of the attorney general's**
26 **investigation and prosecution of the violation.**

27 **(4) Impose a civil penalty, in an amount determined by the**
28 **court, on a person that violates this section.**

29 SECTION 2. IC 24-9-3-7, AS AMENDED BY P.L.13-2013,
30 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 UPON PASSAGE]: Sec. 7. (a) As used in this section, "mortgage
32 transaction" includes the following:

33 (1) A home loan subject to this article.

34 (2) To the extent allowed under federal law, a loan described in
35 IC 24-9-1-1 that is secured by a mortgage or a land contract (or
36 another consensual security interest equivalent to a mortgage or
37 a land contract) on real estate in Indiana on which there is located
38 or will be located a structure or structures:

39 (A) designed primarily for occupancy of one (1) to four (4)
40 families; and

41 (B) that is or will be occupied by a borrower as the borrower's
42 principal dwelling.



- 1 (3) A first lien mortgage transaction (as defined in
 2 IC 24-4.4-1-301) subject to IC 24-4.4.
 3 (4) A consumer credit sale subject to IC 24-4.5-2 in which a
 4 mortgage or a land contract (or another consensual security
 5 interest equivalent to a mortgage or a land contract) that
 6 constitutes a lien is created or retained against land:
 7 (A) that is located in Indiana; and
 8 (B) upon which there is constructed or intended to be
 9 constructed a dwelling that is or will be used by the debtor
 10 primarily for personal, family, or household purposes.
 11 (5) A consumer loan subject to IC 24-4.5-3 in which a mortgage
 12 or a land contract (or another consensual security interest
 13 equivalent to a mortgage or a land contract) that constitutes a lien
 14 is created or retained against land:
 15 (A) that is located in Indiana; and
 16 (B) upon which there is constructed or intended to be
 17 constructed a dwelling that is or will be used by the debtor
 18 primarily for personal, family, or household purposes.
 19 (6) A loan in which a mortgage or a land contract (or another
 20 consensual security interest equivalent to a mortgage or a land
 21 contract) that constitutes a lien is created or retained against land:
 22 (A) that is located in Indiana;
 23 (B) upon which there is constructed or intended to be
 24 constructed a dwelling that is not or will not be used by the
 25 borrower primarily for personal, family, or household
 26 purposes; and
 27 (C) that is classified as residential for property tax purposes.
 28 The term includes a loan that is secured by land in Indiana upon
 29 which there is constructed or intended to be constructed a
 30 dwelling that is purchased by or through the borrower for
 31 investment or other business purposes.
 32 (7) A reverse mortgage transaction that is secured by real estate
 33 in Indiana on which there is located a structure that is occupied by
 34 a borrower as the borrower's principal dwelling.
 35 (b) As used in this section, "real estate transaction" means:
 36 (1) the sale or lease of any legal or equitable interest in real estate:
 37 (1) (A) that is located in Indiana;
 38 (2) (B) upon which there is constructed or intended to be
 39 constructed a dwelling; and
 40 (3) (C) that is classified as residential for property tax
 41 purposes; or
 42 (2) the sale, transfer, or assignment of any:



- 1 **(A) legal or equitable interest in real property sold at a tax**
 2 **sale under IC 6-1.1-24; or**
 3 **(B) interest in a tax sale surplus fund described in**
 4 **IC 6-1.1-24-7.**
- 5 (c) A person may not do any of the following:
- 6 (1) Divide a home loan transaction into separate parts with the
 7 intent of evading a provision of this article.
- 8 (2) Structure a home loan transaction as an open-end loan with
 9 the intent of evading the provisions of this article if the home loan
 10 would be a high cost home loan if the home loan had been
 11 structured as a closed-end loan.
- 12 (3) Engage in a deceptive act in connection with a mortgage
 13 transaction or a real estate transaction.
- 14 (4) Engage in, or solicit to engage in, a real estate transaction or
 15 a mortgage transaction without a permit or license required by
 16 law.
- 17 (5) With respect to a real estate transaction or a mortgage
 18 transaction, represent that:
- 19 (A) the transaction has:
- 20 (i) certain terms or conditions; or
- 21 (ii) the sponsorship or approval of a particular person or
 22 entity;
- 23 that it does not have and that the person knows or reasonably
 24 should know it does not have; or
- 25 (B) the real estate or property that is the subject of the
 26 transaction has any improvements, appurtenances, uses,
 27 characteristics, or associated benefits that it does not have and
 28 that the person knows or reasonably should know it does not
 29 have.
- 30 (6) Maintain or offer to maintain an account for the receipt of
 31 funds for the payment of real estate taxes and insurance unless the
 32 person is any of the following:
- 33 (A) Any of the following that is chartered under the laws of a
 34 state or the United States:
- 35 (i) A bank.
- 36 (ii) A savings and loan association.
- 37 (iii) A credit union.
- 38 (iv) A savings bank.
- 39 (B) The creditor in a mortgage transaction.
- 40 (C) A mortgage servicer acting on behalf of the creditor in a
 41 mortgage transaction.
- 42 (D) A closing agent (as defined in IC 27-7-3.7-1).



- 1 (7) Fail to provide the notice required under subsection (d), within
 2 the time specified in subsection (d), if the person is a seller in a
 3 real estate transaction described in subsection (d).
 4 (d) This subsection applies to a real estate transaction that involves
 5 a land contract between the seller and the buyer in the transaction. If
 6 the real estate that is the subject of the transaction is subject to any
 7 encumbrance, including any tax lien, foreclosure action, legal
 8 judgment, or other encumbrance affecting the title to the real estate, the
 9 seller must provide written notice by certified mail, return receipt
 10 requested, of the encumbrance to the buyer:
 11 (1) not later than the time the land contract is executed, if the
 12 encumbrance is created before or at the time the land contract is
 13 executed; or
 14 (2) not later than ten (10) business days after the encumbrance is
 15 created, if the encumbrance is created after the land contract is
 16 executed.
 17 **(e) This subsection applies to a real estate transaction described**
 18 **in subsection (b)(2) that is entered into on or after May 1, 2016. As**
 19 **used in this subsection, "property owner" has the meaning set**
 20 **forth in IC 6-1.1-24-7.5(a). If a third party seeks to enter into a real**
 21 **estate transaction described in subsection (b)(2) with a property**
 22 **owner before the disbursement of tax sale surplus funds, the third**
 23 **party shall do the following:**
 24 **(1) Provide the property owner with a written form that:**
 25 **(A) must be signed and attested to by both the property**
 26 **owner and the third party; and**
 27 **(B) legibly lists the following:**
 28 **(i) The third party's name, address, and telephone**
 29 **number.**
 30 **(ii) Information identifying the surety bond the third**
 31 **party is required to maintain under subdivision (2).**
 32 **(iii) The final selling price of the real property at the tax**
 33 **sale.**
 34 **(iv) The total tax debt the real property was sold to**
 35 **cover.**
 36 **(v) The value, at the time the agreement under this**
 37 **subsection is entered into, of the property owner's share**
 38 **of the amount deposited in the tax sale surplus fund, but**
 39 **not yet disbursed, with respect to the real property. The**
 40 **disclosure required by this item must be in at least 10**
 41 **point boldface type.**
 42 **(2) Maintain a surety bond in the amount of twenty-five**



1 **thousand dollars (\$25,000), issued by a surety bond company**
2 **authorized to do business in Indiana, and payable to the state**
3 **for the benefit of a person that is damaged by a violation of**
4 **this section.**
5 **(3) File a copy of the surety bond required under subdivision**
6 **(2) with the attorney general.**
7 **SECTION 3. An emergency is declared for this act.**

