

HOUSE BILL No. 1421

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-29-8-4.

Synopsis: Mortgage foreclosure. Provides that, at any time after a judgment and decree of sale is entered in an action to foreclose a mortgage on an interest in real property, a purchaser or an omitted lienholder may bring a civil action to: (1) determine the extent of the omitted lienholder's interest; (2) determine the amount of the proceeds from the judicial sale to which the omitted lienholder may be entitled; (3) determine the liability and the extent of liability due to negligent misrepresentation, professional malpractice, or negligence on the part of a participant in the foreclosure action who, in the course of the participant's business, profession, or employment, supplied false information for the guidance of the parties to the transaction or failed to exercise reasonable care or competence in obtaining or communicating the information; and (4) terminate the interest of an omitted lienholder in the property subject to the sale.

Effective: July 1, 2015.

Speedy

January 14, 2015, read first time and referred to Committee on Judiciary.



First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1421

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 32-29-8-4, AS AMENDED BY P.L.13-2013,
2 SECTION 80, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 4. (a) As used in this section, "~~interested person~~,"
4 "**purchaser**", with respect to an action to foreclose a mortgage on an
5 interest in real property in Indiana, means:
6 (1) the holder of the evidence of debt secured by the mortgage,
7 **lien, or secured interest** being foreclosed;
8 (2) a person:
9 (A) who purchases the property at a judicial sale after a
10 judgment and decree of sale is entered in the action; and
11 (B) to whom a deed is executed and delivered by the sheriff
12 under IC 32-29-7-10; or
13 (3) any person claiming by, through, or under a person described
14 in subdivision (1) or (2).
15 (b) As used in this section, "~~omitted party~~", **lienholder**", with



1 respect to an action to foreclose a mortgage on an interest in real
 2 property in Indiana, means a person, **or any person claiming by,**
 3 **through, or under a person described in this subsection,** who:

4 (1) before the commencement of the action ~~has~~ acquired in the
 5 property an interest that:

6 (A) is **adjudged to be** junior or subordinate to the mortgage
 7 being foreclosed; and

8 (B) ~~would otherwise be extinguished by~~ **is subject to**
 9 **extinguishment through** the foreclosure **action by operation**
 10 **of law;** 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~~ **notified of the**
 14 **foreclosure action in accordance with the requirements of**
 15 **due process. or**

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

18 The term includes any person claiming by, through, or under a person
 19 described in this subsection:

20 (c) At any time after a judgment and decree of sale is entered in an
 21 action to foreclose a mortgage on an interest in real property in Indiana,
 22 ~~an interested person a purchaser~~ or an omitted ~~party~~ **lienholder** may
 23 bring a civil action to:

24 (1) determine the extent of ~~and the omitted lienholder's interest;~~

25 (2) **determine the amount of the proceeds from the judicial**
 26 **sale to which the omitted lienholder may be entitled;**

27 (3) **determine the liability and the extent of liability due to**
 28 **negligent misrepresentation, professional malpractice, or**
 29 **negligence on the part of a participant in the foreclosure**
 30 **action who, in the course of the participant's business,**
 31 **profession, or employment:**

32 (A) **supplied false information for the guidance of the**
 33 **parties to the transaction; or**

34 (B) **failed to exercise reasonable care or competence in**
 35 **obtaining or communicating the information; and**

36 (4) terminate the interest of an omitted ~~party~~ **lienholder** in the
 37 property subject to the sale.

38 (d) Except as provided in subsection (e) and subject to subsections
 39 (f) and (g), upon the filing of an action described in subsection (c), the
 40 court shall determine the extent of the omitted ~~party's~~ **lienholder's**
 41 interest in the property and issue a decree terminating that interest,
 42 subject to the right of the omitted ~~party~~ **lienholder** to redeem the



1 property on terms as the court considers equitable under the
 2 circumstances after considering the factors set forth in subsection (f),
 3 if the omitted ~~party~~ **lienholder** would have had redemption rights:

- 4 (1) before the sale under IC 32-29-7-7; or
 5 (2) after the sale, as described in IC 34-55-4-8(a)(2).

6 (e) If the omitted ~~party~~ **lienholder** proves that the omitted ~~party~~
 7 **lienholder** has a right to receive proceeds actually paid at the judicial
 8 sale, the omitted ~~party's~~ **lienholder's** interest in the property is not
 9 subject to termination by an action brought under this section unless
 10 the proceeds ~~that to which~~ the omitted ~~party~~ **would have received at**
 11 **lienholder is entitled through** the judicial sale are paid to the omitted
 12 ~~party.~~ **lienholder.**

13 (f) In an action brought under this section, if the court determines
 14 that the omitted ~~party~~ **is lienholder would have been** entitled to
 15 redemption **or execution** under subsection (d), the court shall consider
 16 the following in deciding the terms of the redemption:

- 17 (1) Whether the omitted ~~party.~~ **lienholder:**
 18 (A) ~~was given or had notice of the foreclosure action in~~
 19 **accordance with the requirements for due process;**
 20 (B) had actual notice or knowledge of the foreclosure **action;**
 21 and
 22 ~~(B)~~ (C) had opportunity to intervene in the foreclosure action
 23 or otherwise exercise any right to redeem the property.
 24 (2) ~~Whether any interested person in good faith has made~~
 25 **valuable** ~~The extent to which the purchaser relied on the~~
 26 **representations of professionals who:**
 27 (A) **had actual or constructive notice of the omitted**
 28 **lienholder's interest in the property;**
 29 (B) **were negligent in examining county records;**
 30 (C) **were engaged in the business of lending or regularly**
 31 **engaged in real estate transactions; or**
 32 (D) **issued a title search or commitment or a title insurance**
 33 **policy.**
 34 (3) **The value of repairs and lasting improvements to the**
 35 **property and, if so, the value of all lasting improvements made to**
 36 **the property by the purchaser after the purchase and before the**
 37 **commencement of the action under this section.**
 38 (3) **The amount of any taxes and assessments, along with any**
 39 **related interest payments, related to the property and paid by an**
 40 **interested person or by any person under whose title to the**
 41 **property an interested person claims.**
 42 (4) **The respective tax liability of the parties to the action.**



1 (g) If the court determines that the omitted **party lienholder** is
 2 entitled to redemption under subsection (d), ~~and after considering the~~
 3 ~~factors set forth in subsection (f)~~; the court shall grant redemption
 4 rights to the omitted **party lienholder** that the court considers equitable
 5 under the circumstances, subject to the following **guidelines**:

6 (1) The amount to be paid ~~for redemption may to the purchaser~~
 7 **normally must** not be less than the sale price resulting from the
 8 foreclosure of the interested person's senior lien, plus interest at
 9 the statutory judgment rate, **taking into consideration the**
 10 **difference between the appraised value:**

11 (A) **at the time of the sheriff's sale; and**

12 (B) **at the commencement of an action under this section.**

13 (2) **The court shall determine the extent of and amount of**
 14 **liability and allocate costs other than the amount of**
 15 **redemption among participants in the foreclosure action,**
 16 **judicial sale, and costs of an action under this section based on**
 17 **damages sustained by the purchaser and omitted lienholder**
 18 **as a result of the actions or inactions of the parties to those**
 19 **matters.**

20 (3) The time allowed for payment of the redemption amount may
 21 not exceed ninety (90) days after the date of the court's decree
 22 under subsection (d).

23 (h) **If the real property is subsequently conveyed by the**
 24 **purchaser**, the senior lien upon which the foreclosure action was based
 25 is not extinguished by merger with the title to the property conveyed to
 26 a purchaser through a sheriff's deed executed and delivered under
 27 IC 32-29-7-10. ~~until the interest of any omitted party has been~~
 28 ~~terminated:~~

29 (1) ~~through an action brought under this section; or~~

30 (2) ~~by operation of law.~~

31 Until an omitted **party's lienholder's** interest is terminated as described
 32 in this subsection, **any owner of the property as the purchaser who is**
 33 a holder of a sheriff's deed executed and delivered under
 34 IC 32-29-7-10, or any person claiming by, through, or under such an
 35 owner, is the equitable owner of the senior lien upon which the
 36 foreclosure action was based and has all rights against an omitted **party**
 37 **lienholder** as existed before the judicial sale.

38 (i) ~~An interested person~~ **A purchaser** may not terminate an omitted
 39 **party's lienholder's** interest in real property that is the subject of a
 40 foreclosure action except through an action brought under this section.
 41 ~~An interested person's~~ **A purchaser's** rights under this section ~~may not~~
 42 ~~be denied because the interested person:~~ **extend to all necessary and**



1 **proper parties participating in conveyances of the real estate from**
2 **the occurrence of the judicial sale through the bringing of an action**
3 **under this section who:**

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

