

SENATE BILL No. 41

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-17-4-2.5; IC 34-55.

Synopsis: Partition of property. Provides that property sold at auction in a partition action shall be sold without relief from valuation or appraisal laws. Permits any person with an interest in property being sold at a sheriff's sale in a partition action to request that the court order the sale be conducted by an auctioneer. Makes a technical correction.

Effective: July 1, 2014.

Steele

January 6, 2014, read first time and referred to Committee on Judiciary.



Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 41



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 32-17-4-2.5, AS ADDED BY P.L.41-2012,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 2.5. (a) Not later than forty-five (45) days after the
4 court has acquired jurisdiction over all the parties who have an interest
5 in the property that is the subject of the action, the court shall refer the
6 matter to mediation in accordance with the Indiana rules of alternative
7 dispute resolution.
8 (b) Except as provided in subsection (c), mediation of the case may
9 not begin until an appraiser files an appraisal report with the court.
10 (c) If each party waives the appraisal of the property, the case may
11 move to mediation without the filing of an appraisal report.
12 (d) In its order referring the matter for mediation, the court shall
13 advise the parties:
14 (1) that the real or personal property will be sold if the parties are
15 unable to reach an agreement not later than sixty (60) days after
16 the order is issued; and



- 1 (2) that the parties may agree upon a method of the sale of the
2 property, and if the parties do not agree upon a method of the sale
3 of the property, the property may be sold at public auction or by
4 the sheriff under subsection (g).
- 5 (e) Except if the parties agree to waive the appraisal of the property,
6 not later than thirty (30) days after the court acquires jurisdiction under
7 subsection (a), the court shall appoint a licensed real estate appraiser
8 to appraise the property. The appraiser shall file the appraisal with the
9 court.
- 10 (f) After receiving the appraisal, the court shall notify the parties of
11 the appraised value of the property.
- 12 (g) If an agreed settlement is not reached in mediation or if the
13 parties agree upon a method of sale, the court shall not later than thirty
14 (30) days after the date the mediator files a report with the court that
15 the mediation was not successful, or the parties file their agreement
16 establishing the method of sale:
- 17 (1) order the property to be sold using the method that all the
18 parties agree upon; or
- 19 (2) order the parties to select an auctioneer to sell the property. If
20 the parties fail to select an auctioneer not later than thirty (30)
21 days after the court's order to select an auctioneer, the court shall
22 order the sheriff to sell the property in the same manner that
23 property is sold at execution under IC 34-55-6, **without relief**
24 **from valuation or appraisal under IC 34-55-4 or any**
25 **other statute.**
- 26 (h) At the time the court orders the property to be sold, the court
27 shall notify all lienholders and other persons with an interest in the lien
28 or property, as identified in the title search or lien search required
29 under IC 29-1-17-11 or section 2 of this chapter, of the sale. The
30 property must be sold free and clear of all liens and special assessments
31 except prescriptive easements, easements of record, and irrevocable
32 licenses, with any sum secured by a lien or special assessment to be
33 satisfied from the proceeds of the sale.
- 34 (i) The person who causes a title search to be conducted under
35 section 2 of this chapter or a title or lien search to be conducted under
36 IC 29-1-17-11 is entitled to reimbursement from the proceeds of the
37 sale.
- 38 (j) Any person who has paid a tax or special assessment on the
39 property is entitled to pro rata reimbursement from the proceeds of the
40 sale.
- 41 (k) Any person may advertise a sale under this section at the
42 person's own expense, but is not entitled to reimbursement for these



1 expenses.

2 (l) After deduction of the amounts described in subsections (h), (i),
3 and (j) and the reasonable expenses of the sale, the court shall divide
4 the proceeds of the sale among the remaining property owners in
5 proportion to their ownership interest.

6 (m) If a party having an ownership interest in the property becomes
7 the successful purchaser of the property either through agreed
8 settlement or through auction, that person shall be given a full credit
9 based on the percentage of the person's interest in the property before
10 the purchase.

11 (n) As used in this subsection, "real estate professional" has the
12 meaning set forth in IC 23-1.5-1-13.5. If the court has ordered that
13 some or all of the property be sold at auction and, at any time before
14 the property is sold at auction, all parties inform the court in writing
15 that they:

16 (1) wish to sell some or all of the property through a real estate
17 professional;

18 (2) have jointly selected a real estate professional; and

19 (3) have agreed upon a listing price for the property;

20 the court shall rescind its order that the property, or a part of the
21 property, be sold at auction and permit the property to be sold through
22 a real estate professional. If some or all of the property has not been
23 sold at the expiration of the listing agreement with the real estate
24 professional, upon petition by any party, the court shall order the
25 property to be sold at auction in accordance with subsection (h).

26 SECTION 2. IC 34-55-4-1 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. **(a) This section**
28 **does not apply to the sale of property that is the subject of a**
29 **partition action under IC 32-17-4-2.5.**

30 **(b)** Property shall not be sold on any execution or order of sale
31 issued out of any court for less than two-thirds (2/3) of the appraised
32 cash value of the property, exclusive of liens and encumbrances, except
33 where otherwise provided by law.

34 SECTION 3. IC 34-55-6-3 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. Upon prior petition
36 of the debtor, ~~or~~ any creditor involved in the execution proceedings, **or,**
37 **in the case of a partition action, any party having an interest in the**
38 **property,** the court in its order of execution shall order the property
39 sold by the sheriff through the services of an auctioneer if the court
40 determines that:

41 (1) a sale is economically feasible; or

42 (2) all the creditors in the proceedings agree to both that method



1 of sale and the compensation to be paid the auctioneer.
2 SECTION 4. IC 34-55-6-5 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) The auctioneer's
4 fee shall be a reasonable amount stated in the court's order.
5 **(b) This subsection does not apply to a partition action.**
6 ~~However,~~ If the sale by use of an auctioneer has not been agreed to by
7 the creditors in the proceedings and the sale price is less than the
8 ~~amount set out in section 3 of this chapter,~~ **sale price described in**
9 **IC 34-6-2-35**, the auctioneer is entitled only to the auctioneer's
10 advertising expenses plus one hundred dollars (\$100).
11 ~~(b)~~ **(c)** The amount due the auctioneer for the auctioneer's expenses
12 and fee, if any, shall be paid as a cost of the sale from the sale proceeds
13 before the payment of any other payment from the sale proceeds.

