



January 24, 2014

SENATE BILL No. 41

DIGEST OF SB 41 (Updated January 22, 2014 4:45 pm - DI 106)

Citations Affected: IC 32-17; IC 32-21; IC 34-55.

Synopsis: Property transfer. Specifies the appraisal procedure to be used when selling property at auction in a partition action, and provides that the parties may waive appraisal and valuation. 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. Provides that a person may claim title by adverse possession without having paid property taxes and special assessments due on the property if the person is a governmental entity or other person exempt from the payment of property taxes and special assessments.

Effective: July 1, 2014.

Steele

January 7, 2014, read first time and referred to Committee on Judiciary.
January 23, 2014, amended, reported favorably — Do Pass.

SB 41—LS 6173/DI 106



January 24, 2014

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

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- 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. **The manner of**
 24 **appraising property described in this section satisfies the**
 25 **appraisal requirement under IC 34-55-4 or any other statute.**
 26 **However, if the parties waive appraisal of the property:**
 27 **(A) the court shall order the sale to proceed without relief**
 28 **from valuation or appraisal under IC 34-55-4 or any**
 29 **other statute; and**
 30 **(B) IC 34-55-4-1 does not apply to the sale.**
- 31 (h) At the time the court orders the property to be sold, the court
 32 shall notify all lienholders and other persons with an interest in the lien
 33 or property, as identified in the title search or lien search required
 34 under IC 29-1-17-11 or section 2 of this chapter, of the sale. The
 35 property must be sold free and clear of all liens and special assessments
 36 except prescriptive easements, easements of record, and irrevocable
 37 licenses, with any sum secured by a lien or special assessment to be
 38 satisfied from the proceeds of the sale.
- 39 (i) The person who causes a title search to be conducted under
 40 section 2 of this chapter or a title or lien search to be conducted under
 41 IC 29-1-17-11 is entitled to reimbursement from the proceeds of the
 42 sale.



1 (j) Any person who has paid a tax or special assessment on the
 2 property is entitled to pro rata reimbursement from the proceeds of the
 3 sale.

4 (k) Any person may advertise a sale under this section at the
 5 person's own expense, but is not entitled to reimbursement for these
 6 expenses.

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

11 (m) If a party having an ownership interest in the property becomes
 12 the successful purchaser of the property either through agreed
 13 settlement or through auction, that person shall be given a full credit
 14 based on the percentage of the person's interest in the property before
 15 the purchase.

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

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

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

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

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

31 SECTION 2. IC 32-21-7-1, AS AMENDED BY P.L.171-2006,
 32 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2014]: Sec. 1. **(a) Except as provided in subsection (b), in**
 34 **any suit an action** to establish title to ~~land or~~ **real estate property,**
 35 possession of the ~~land or~~ **real estate property** is not adverse to the
 36 owner in a manner as to establish title ~~or rights in and~~ to the ~~land or~~
 37 **real estate property** unless the adverse possessor ~~or claimant~~ pays ~~and~~
 38 ~~discharges~~ all taxes and special assessments that the adverse possessor
 39 ~~or claimant~~ reasonably believes in good faith to be due on the ~~land or~~
 40 **real estate property** during the period the adverse possessor ~~or~~
 41 ~~claimant~~ claims to have **adversely** possessed the ~~land or~~ **real estate**
 42 **property.** ~~adversely.~~ However, this section does not relieve any



1 adverse possessor ~~or claimant~~ from proving all the elements of title by
2 adverse possession required by law.

3 **(b) A person may claim title to real property by adverse**
4 **possession without having paid all taxes and special assessments**
5 **due on the real property during the period of adverse possession if**
6 **the person is a governmental entity or other person who was**
7 **exempt from the payment of property taxes and special**
8 **assessments during the period of adverse possession.**

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

16 (1) a sale is economically feasible; or

17 (2) all the creditors in the proceedings agree to both that method
18 of sale and the compensation to be paid the auctioneer.

19 SECTION 4. IC 34-55-6-5 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) The auctioneer's
21 fee shall be a reasonable amount stated in the court's order.

22 **(b) This subsection does not apply to a partition action.**
23 ~~However,~~ If the sale by use of an auctioneer has not been agreed to by
24 the creditors in the proceedings and the sale price is less than the
25 ~~amount set out in section 3 of this chapter,~~ **sale price described in**
26 **IC 34-6-2-35**, the auctioneer is entitled only to the auctioneer's
27 advertising expenses plus one hundred dollars (\$100).

28 ~~(b)~~ **(c)** The amount due the auctioneer for the auctioneer's expenses
29 and fee, if any, shall be paid as a cost of the sale from the sale proceeds
30 before the payment of any other payment from the sale proceeds.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 41, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 23, delete "," and insert ".".

Page 2, line 23, delete "without relief" and insert "**The manner of appraising property described in this section satisfies the appraisal requirement under IC 34-55-4 or any other statute. However, if the parties waive appraisal of the property:**

(A) the court shall order the sale to proceed without relief from valuation or appraisal under IC 34-55-4 or any other statute; and

(B) IC 34-55-4-1 does not apply to the sale."

Page 2, delete lines 24 through 25.

Page 3, delete lines 26 through 33, begin a new paragraph and insert:

"SECTION 2. IC 32-21-7-1, AS AMENDED BY P.L.171-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. **(a) Except as provided in subsection (b), in any suit an action to establish title to land or real estate property, possession of the land or real estate property is not adverse to the owner in a manner as to establish title or rights in and to the land or real estate property unless the adverse possessor or claimant pays and discharges all taxes and special assessments that the adverse possessor or claimant reasonably believes in good faith to be due on the land or real estate property during the period the adverse possessor or claimant claims to have adversely possessed the land or real estate property. adversely.** However, this section does not relieve any adverse possessor or claimant from proving all the elements of title by adverse possession required by law.

(b) A person may claim title to real property by adverse possession without having paid all taxes and special assessments due on the real property during the period of adverse possession if



the person is a governmental entity or other person who was exempt from the payment of property taxes and special assessments during the period of adverse possession."

and when so amended that said bill do pass.

(Reference is to SB 41 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 6, Nays 0.

