



March 19, 2019

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# ENGROSSED SENATE BILL No. 604

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DIGEST OF SB 604 (Updated March 18, 2019 1:14 pm - DI 123)

**Citations Affected:** IC 32-20; IC 32-28.

**Synopsis:** Voiding and releasing claims in land interests. Adds a provision to the statute concerning marketable title for real property to provide that after a person has filed a claim for an interest in land, the claim is void if: (1) the owner of the property subject to the claim (or any person having an interest in the property) provides written notice to the claimant to file an action to enforce the claim; and (2) the claimant fails to file, within 30 days after receiving the notice to enforce the claim, an action to enforce the claim in the county where the property is located. Provides that upon the claimant's failure to file an action to enforce the claim within the 30 day period, the person who provided the notice to the claimant may file with the recorder of the county where the property is located an affidavit stating that the person has served notice on the claimant to enforce the claim and that no action for enforcement of the claim is pending. Requires the county recorder to record the affidavit of service. Requires that an affidavit of service must also include a reference to the recording information of the recorded notice of claim. Requires that, when the recorder records the affidavit of service, the recorder must include a reference to the recorded notice of claim in the record book. Allows a recorder to certify certain records by cross reference in certain instances.

**Effective:** July 1, 2019.

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## Doriot, Head, Koch

(HOUSE SPONSOR — MANNING)

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January 15, 2019, read first time and referred to Committee on Judiciary.  
February 21, 2019, amended, reported favorably — Do Pass.  
February 25, 2019, read second time, ordered engrossed.  
February 26, 2019, engrossed. Read third time, passed. Yeas 48, nays 1.

HOUSE ACTION

March 7, 2019, read first time and referred to Committee on Judiciary.  
March 18, 2019, amended, reported — Do Pass.

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ES 604—LS 6740/DI 101





March 19, 2019

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.

## ENGROSSED SENATE BILL No. 604

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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 32-20-4-4 IS ADDED TO THE INDIANA CODE  
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2019]: **Sec. 4. (a) A claim for an interest in land filed under this**  
4 **chapter is void if both of the following occur:**  
5 (1) **The owner of the property subject to the claim or any**  
6 **person or corporation having an interest in the property,**  
7 **including a mortgagee or a lienholder, provides written notice**  
8 **to the claimant to file an action to enforce the claim.**  
9 (2) **The claimant fails to file an action to enforce the claim in**  
10 **the county where the property is located not later than thirty**  
11 **(30) days after receiving the notice described in subdivision**  
12 **(1).**  
13 **However, this section does not prevent any other claim with**  
14 **respect to the land from being collected or enforced as other claims**  
15 **are collected or enforced by law.**  
16 (b) **A person who has given notice under subsection (a)(1) by**  
17 **registered or certified mail to the claimant, at the address given by**

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1 the claimant in the recorded notice of the claim, may file with the  
 2 recorder of the county in which the property is located an affidavit  
 3 of service of the notice under subsection (a)(1) to file an action to  
 4 enforce the claim. The affidavit must state the following:

5 (1) The facts of the notice of claim.

6 (2) That more than thirty (30) days have passed since the  
 7 notice of claim was received by the claimant.

8 (3) That no action for enforcement of the claim is pending.

9 (4) That no unsatisfied judgment has been rendered on the  
 10 claim.

11 (5) A reference to the recording information of the notice of  
 12 claim recorded under sections 1 and 2 of this chapter.

13 (c) The recorder shall record the affidavit of service in the  
 14 miscellaneous record book of the recorder's office, with a reference  
 15 to the recorded notice of claim identified in the affidavit of service  
 16 under subsection (b). When the recorder records the affidavit of  
 17 service with a reference to the notice of claim under this  
 18 subsection, the land described in the claim is released from the  
 19 claim.

20 SECTION 2. IC 32-28-3-10 IS AMENDED TO READ AS  
 21 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10. (a) A lien is void if  
 22 both of the following occur:

23 (1) The owner of property subject to a mechanic's lien or any  
 24 person or corporation having an interest in the property, including  
 25 a mortgagee or a lienholder, provides written notice to the owner  
 26 or holder of the lien to file an action to foreclose the lien.

27 (2) The owner or holder of the lien fails to file an action to  
 28 foreclose the lien in the county where the property is located not  
 29 later than thirty (30) days after receiving the notice.

30 However, this section does not prevent the claim from being collected  
 31 as other claims are collected by law.

32 (b) A person who gives notice under subsection (a)(1) by registered  
 33 or certified mail to the lienholder at the address given in the recorded  
 34 statement and notice of intention to hold a lien may file an affidavit of  
 35 service of the notice to file an action to foreclose the lien with the  
 36 recorder of the county in which the property is located. The affidavit  
 37 must state the following:

38 (1) The facts of the notice.

39 (2) That more than thirty (30) days have passed since the notice  
 40 was received by the lienholder.

41 (3) That no action for foreclosure of the lien is pending.

42 (4) That no unsatisfied judgment has been rendered on the lien.



- 1 (c) The recorder shall:  
 2 (1) record the affidavit of service in the miscellaneous record  
 3 book of the recorder's office; and  
 4 (2) certify **on the face of by cross reference to** the record any lien  
 5 that is fully released.

6 When the recorder records the affidavit and certifies **by cross**  
 7 **reference** the record under this subsection, the real estate described in  
 8 the lien is released from the lien.

9 SECTION 3. IC 32-28-4-2, AS AMENDED BY P.L.18-2013,  
 10 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 11 JULY 1, 2019]: Sec. 2. (a) Except as provided in section 3 of this  
 12 chapter, if the record of a mortgage or vendor's lien described in section  
 13 1 of this chapter does not show when the debt or the last installment of  
 14 the debt secured by the mortgage or vendor's lien becomes due, the  
 15 following apply:

16 (1) If the mortgage or vendor's lien was created before July 1,  
 17 2012, the mortgage or vendor's lien expires twenty (20) years after  
 18 the date on which the mortgage or vendor's lien was executed  
 19 unless an action to foreclose is brought not later than twenty (20)  
 20 years after the date on which the mortgage or vendor's lien was  
 21 executed.

22 (2) If the mortgage or vendor's lien was created after June 30,  
 23 2012, the mortgage or vendor's lien expires ten (10) years after  
 24 the date on which the mortgage or vendor's lien was executed  
 25 unless an action to foreclose is brought not later than ten (10)  
 26 years after the date on which the mortgage or vendor's lien was  
 27 executed.

28 (b) If:  
 29 (1) the record of a mortgage or vendor's lien described in section  
 30 1 of this chapter does not show when the debt or the last  
 31 installment of the debt secured by the mortgage or vendor's lien  
 32 becomes due;

33 (2) the date of execution has been omitted in the mortgage or  
 34 vendor's lien; and

35 (3) the mortgage or vendor's lien was created before July 1, 2012;  
 36 the mortgage or vendor's lien expires twenty (20) years after the date  
 37 on which the mortgage or vendor's lien was recorded unless an action  
 38 to foreclose is brought not later than twenty (20) years after the date on  
 39 which the mortgage or vendor's lien was recorded.

40 (c) If:  
 41 (1) the record of a mortgage or vendor's lien described in section  
 42 1 of this chapter does not show when the debt or the last



- 1 installment of the debt secured by the mortgage or vendor's lien  
 2 becomes due;
- 3 (2) the date of execution has been omitted in the mortgage or  
 4 vendor's lien; and
- 5 (3) the mortgage or vendor's lien was created after June 30, 2012;  
 6 the mortgage or vendor's lien expires ten (10) years after the date on  
 7 which the mortgage or vendor's lien was recorded unless an action to  
 8 foreclose is brought not later than ten (10) years after the date on which  
 9 the mortgage or vendor's lien was recorded.
- 10 (d) Upon the request of the owner of record of real estate  
 11 encumbered by a mortgage or vendor's lien that has expired under this  
 12 section, the recorder of the county in which the real estate is situated  
 13 shall certify ~~on~~ **by cross reference to** the record that the mortgage or  
 14 vendor's lien is fully paid and satisfied by lapse of time, and the real  
 15 estate is released from the mortgage or vendor's lien.
- 16 SECTION 4. IC 32-28-4-3, AS AMENDED BY P.L.18-2013,  
 17 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 18 JULY 1, 2019]: Sec. 3. (a) If the record of a mortgage or vendor's lien  
 19 to which this chapter applies does not show the time when the debt or  
 20 the last installment of the debt secured by the mortgage or vendor's lien  
 21 becomes due:
- 22 (1) the original mortgagee;  
 23 (2) the owner of the mortgage; or  
 24 (3) the owner of a vendor's lien;
- 25 may file an affidavit with the recorder of the county where the  
 26 mortgage or vendor's lien is recorded, stating when the debt becomes  
 27 due.
- 28 (b) An affidavit must be filed under this section not later than the  
 29 following:
- 30 (1) If the mortgage or vendor's lien was created before July 1,  
 31 2012, not later than twenty (20) years after:
- 32 (A) the date on which the mortgage or vendor's lien was  
 33 executed; or
- 34 (B) if the mortgage or vendor's lien does not contain the date  
 35 on which the mortgage or vendor's lien was executed, the date  
 36 on which the mortgage or vendor's lien was recorded.
- 37 (2) If the mortgage or vendor's lien was created after June 30,  
 38 2012, ten (10) years after the date of execution of the mortgage or  
 39 vendor's lien, or, if the mortgage or vendor's lien contains no date  
 40 of execution, not later than ten (10) years from the date the  
 41 mortgage or vendor's lien was recorded.
- 42 Upon the filing of the affidavit, the recorder shall note in the record of



1 the mortgage or vendor's lien that an affidavit has been filed, showing  
2 the location where the affidavit is recorded.

3 (c) The filing of an affidavit under subsection (a) has the same effect  
4 with respect to the duration of the mortgage or vendor's lien described  
5 in the affidavit and with respect to the time within which an action may  
6 be brought to foreclose the mortgage or vendor's lien as though the time  
7 of maturity of the debt or the last installment of the debt secured by the  
8 mortgage or vendor's lien had been stated in the mortgage or vendor's  
9 lien when recorded. The affidavit is prima facie evidence of the truth  
10 of the averments contained in the affidavit.

11 (d) A mortgage or vendor's lien on the real estate described in the  
12 affidavit expires as follows:

13 (1) If the mortgage or vendor's lien was created before July 1,  
14 2012, twenty (20) years after the date on which the debt or the last  
15 installment of the debt secured by the mortgage or vendor's lien  
16 becomes due, as shown by the affidavit.

17 (2) If the mortgage or vendor's lien was created after June 30,  
18 2012, ten (10) years after the time when the debt or the last  
19 installment of the debt secured by the mortgage or vendor's lien  
20 becomes due, as shown by the affidavit.

21 Upon the expiration of a mortgage or vendor's lien as described in this  
22 section and at the request of the real estate owner, the recorder of the  
23 county in which the affidavit is recorded shall certify ~~on~~ **by cross**  
24 **reference to** the record of the mortgage or vendor's lien that the  
25 mortgage or vendor's lien is fully paid and satisfied by lapse of time  
26 and that the real estate is released from the mortgage or vendor's lien.

27 (e) The recorder shall charge a fee for filing the affidavit in  
28 accordance with the fee schedule established in IC 36-2-7-10.

29 SECTION 5. IC 32-28-6-2 IS AMENDED TO READ AS  
30 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. If a person who owns  
31 or has an interest in real estate encumbered by a mechanic's lien  
32 **prepares and** files the affidavit described in section 1(c) of this  
33 chapter, the recorder of the county in which the encumbered real estate  
34 is situated shall immediately record the affidavit and certify on the  
35 record of the lien that the mechanic's lien is fully satisfied and that the  
36 real estate described in the mechanic's lien is released from the lien.  
37 The fee of the recorder for the filing and recording of the affidavit shall  
38 be an amount prescribed by law and shall be paid by the person filing  
39 the affidavit.



## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 604, 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 5, delete "notice." and insert "**notice of claim.**".

Page 2, line 7, after "notice" insert "**of claim**".

Page 2, between lines 10 and 11, begin a new line block indented and insert:

**"(5) A reference to the recording information of the notice of claim recorded under sections 1 and 2 of this chapter."**

Page 2, line 11, delete "shall:" and insert "**shall**".

Page 2, line 12, delete "(1)".

Page 2, line 13, delete "office; and" and insert "**office, with a reference to the recorded notice of claim identified in the affidavit of service under subsection (b).**".

Page 2, delete lines 14 through 15.

Page 2, line 16, delete "and certifies the record" and insert "**of service with a reference to the notice of claim**".

Page 2, run in lines 11 through 16.

and when so amended that said bill do pass.

(Reference is to SB 604 as introduced.)

HEAD, Chairperson

Committee Vote: Yeas 8, Nays 0.

## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 604, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, after line 19, begin a new paragraph and insert:

"SECTION 2. IC 32-28-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10. (a) A lien is void if both of the following occur:

(1) The owner of property subject to a mechanic's lien or any person or corporation having an interest in the property, including

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a mortgagee or a lienholder, provides written notice to the owner or holder of the lien to file an action to foreclose the lien.

(2) The owner or holder of the lien fails to file an action to foreclose the lien in the county where the property is located not later than thirty (30) days after receiving the notice.

However, this section does not prevent the claim from being collected as other claims are collected by law.

(b) A person who gives notice under subsection (a)(1) by registered or certified mail to the lienholder at the address given in the recorded statement and notice of intention to hold a lien may file an affidavit of service of the notice to file an action to foreclose the lien with the recorder of the county in which the property is located. The affidavit must state the following:

- (1) The facts of the notice.
- (2) That more than thirty (30) days have passed since the notice was received by the lienholder.
- (3) That no action for foreclosure of the lien is pending.
- (4) That no unsatisfied judgment has been rendered on the lien.

(c) The recorder shall:

- (1) record the affidavit of service in the miscellaneous record book of the recorder's office; and
- (2) certify **on the face of by cross reference** to the record any lien that is fully released.

When the recorder records the affidavit and certifies **by cross reference** the record under this subsection, the real estate described in the lien is released from the lien.

SECTION 3. IC 32-28-4-2, AS AMENDED BY P.L.18-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) Except as provided in section 3 of this chapter, if the record of a mortgage or vendor's lien described in section 1 of this chapter does not show when the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due, the following apply:

- (1) If the mortgage or vendor's lien was created before July 1, 2012, the mortgage or vendor's lien expires twenty (20) years after the date on which the mortgage or vendor's lien was executed unless an action to foreclose is brought not later than twenty (20) years after the date on which the mortgage or vendor's lien was executed.
- (2) If the mortgage or vendor's lien was created after June 30, 2012, the mortgage or vendor's lien expires ten (10) years after the date on which the mortgage or vendor's lien was executed



unless an action to foreclose is brought not later than ten (10) years after the date on which the mortgage or vendor's lien was executed.

(b) If:

- (1) the record of a mortgage or vendor's lien described in section 1 of this chapter does not show when the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due;
- (2) the date of execution has been omitted in the mortgage or vendor's lien; and
- (3) the mortgage or vendor's lien was created before July 1, 2012; the mortgage or vendor's lien expires twenty (20) years after the date on which the mortgage or vendor's lien was recorded unless an action to foreclose is brought not later than twenty (20) years after the date on which the mortgage or vendor's lien was recorded.

(c) If:

- (1) the record of a mortgage or vendor's lien described in section 1 of this chapter does not show when the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due;
- (2) the date of execution has been omitted in the mortgage or vendor's lien; and
- (3) the mortgage or vendor's lien was created after June 30, 2012; the mortgage or vendor's lien expires ten (10) years after the date on which the mortgage or vendor's lien was recorded unless an action to foreclose is brought not later than ten (10) years after the date on which the mortgage or vendor's lien was recorded.

(d) Upon the request of the owner of record of real estate encumbered by a mortgage or vendor's lien that has expired under this section, the recorder of the county in which the real estate is situated shall certify ~~on~~ **by cross reference to** the record that the mortgage or vendor's lien is fully paid and satisfied by lapse of time, and the real estate is released from the mortgage or vendor's lien.

SECTION 4. IC 32-28-4-3, AS AMENDED BY P.L.18-2013, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) If the record of a mortgage or vendor's lien to which this chapter applies does not show the time when the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due:

- (1) the original mortgagee;
- (2) the owner of the mortgage; or
- (3) the owner of a vendor's lien;

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may file an affidavit with the recorder of the county where the mortgage or vendor's lien is recorded, stating when the debt becomes due.

(b) An affidavit must be filed under this section not later than the following:

(1) If the mortgage or vendor's lien was created before July 1, 2012, not later than twenty (20) years after:

(A) the date on which the mortgage or vendor's lien was executed; or

(B) if the mortgage or vendor's lien does not contain the date on which the mortgage or vendor's lien was executed, the date on which the mortgage or vendor's lien was recorded.

(2) If the mortgage or vendor's lien was created after June 30, 2012, ten (10) years after the date of execution of the mortgage or vendor's lien, or, if the mortgage or vendor's lien contains no date of execution, not later than ten (10) years from the date the mortgage or vendor's lien was recorded.

Upon the filing of the affidavit, the recorder shall note in the record of the mortgage or vendor's lien that an affidavit has been filed, showing the location where the affidavit is recorded.

(c) The filing of an affidavit under subsection (a) has the same effect with respect to the duration of the mortgage or vendor's lien described in the affidavit and with respect to the time within which an action may be brought to foreclose the mortgage or vendor's lien as though the time of maturity of the debt or the last installment of the debt secured by the mortgage or vendor's lien had been stated in the mortgage or vendor's lien when recorded. The affidavit is prima facie evidence of the truth of the averments contained in the affidavit.

(d) A mortgage or vendor's lien on the real estate described in the affidavit expires as follows:

(1) If the mortgage or vendor's lien was created before July 1, 2012, twenty (20) years after the date on which the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due, as shown by the affidavit.

(2) If the mortgage or vendor's lien was created after June 30, 2012, ten (10) years after the time when the debt or the last installment of the debt secured by the mortgage or vendor's lien becomes due, as shown by the affidavit.

Upon the expiration of a mortgage or vendor's lien as described in this section and at the request of the real estate owner, the recorder of the county in which the affidavit is recorded shall certify **on by cross reference to** the record of the mortgage or vendor's lien that the



mortgage or vendor's lien is fully paid and satisfied by lapse of time and that the real estate is released from the mortgage or vendor's lien.

(e) The recorder shall charge a fee for filing the affidavit in accordance with the fee schedule established in IC 36-2-7-10.

SECTION 5. IC 32-28-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. If a person who owns or has an interest in real estate encumbered by a mechanic's lien **prepares and** files the affidavit described in section 1(c) of this chapter, the recorder of the county in which the encumbered real estate is situated shall immediately record the affidavit and certify on the record of the lien that the mechanic's lien is fully satisfied and that the real estate described in the mechanic's lien is released from the lien. The fee of the recorder for the filing and recording of the affidavit shall be an amount prescribed by law and shall be paid by the person filing the affidavit."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 604 Digest Correction as printed February 26, 2019.)

TORR

Committee Vote: yeas 12, nays 0.

