



Reprinted
April 15, 2009

ENGROSSED
SENATE BILL No. 492

DIGEST OF SB 492 (Updated April 14, 2009 2:56 pm - DI 101)

Citations Affected: IC 24-5; IC 24-5.5; IC 24-9; IC 25-1; IC 25-34.1; IC 27-7; IC 32-29; IC 32-30.

Synopsis: Consumer practices and residential mortgage foreclosures. Provides that a person may not issue a gift card that is subject to an expiration date or a fee. Requires a foreclosure consultant to retain all records and documents related to services performed on behalf of a homeowner for at least three years after the termination or conclusion of the foreclosure consultant contract. Prohibits a person from engaging in, or soliciting to engage in, a real estate or mortgage transaction without a permit or license required by law. Prohibits a person from making certain representations with respect to: (1) a mortgage or real estate transaction; or (2) the property that is the subject of the transaction; if the representation is not true and the person knows or reasonably should know that the representation is not true. Specifies that the board that regulates a licensed profession may not approve the
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Effective: July 1, 2009; January 1, 2010.

Tallian, Bray, Randolph, Lanane
(HOUSE SPONSORS — BARDON, KOCH, BURTON, DAY)

January 15, 2009, read first time and referred to Committee on Judiciary.
February 12, 2009, amended, reported favorably — Do Pass.
February 19, 2009, read second time, amended, ordered engrossed.
February 20, 2009, engrossed.
February 23, 2009, read third time, passed. Yeas 46, nays 3.
HOUSE ACTION
March 3, 2009, read first time and referred to Committee on Financial Institutions.
April 9, 2009, amended, reported — Do Pass.
April 14, 2009, read second time, amended, ordered engrossed.

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surrender of a practitioner's license if the attorney general's office: (1) has filed an administrative complaint concerning the practitioner's license; and (2) opposes the surrender. Provides that a practitioner of a licensed profession who has been subjected to disciplinary sanctions by the board that regulates the profession may be required to pay the costs of any real estate review appraisal obtained in connection with the disciplinary proceedings. Provides that a violation of the statutes concerning: (1) credit service organizations; and (2) mortgage rescue protection fraud; by a person licensed or required to be licensed as a real estate salesperson or broker is a violation of the statute governing the regulation of real estate salespersons and brokers and is subject to certain specified enforcement procedures and sanctions. Provides that the electronic system to be established by the department of insurance not later than September 1, 2009, for the collection and storage of certain information concerning persons participating in or assisting with single family residential mortgage transactions must include the names of the buyer and the seller in a first lien purchase money mortgage transaction. Provides that in a foreclosure action that is filed after June 30, 2009, with respect to a first lien residential mortgage transaction, the creditor shall, not later than 30 days before the creditor files the action, send to the debtor a presuit notice, on a form prescribed by the housing and community development authority (authority), that: (1) informs the debtor that the debtor is in default; (2) informs the debtor that the debtor is encouraged to obtain assistance from a mortgage foreclosure counselor; and (3) provides contact information for the Indiana Foreclosure Prevention Network. Provides that in prescribing the form for the presuit notice, the authority must include the statement concerning mortgage foreclosure consultants that mortgagees are required to provide under existing law upon filing a foreclosure action. Provides that if the creditor proceeds to file an action to foreclose the mortgage, the creditor shall include with the complaint served on the debtor a notice that informs the debtor that the debtor: (1) has a right to participate in a settlement conference; and (2) may schedule a settlement conference by notifying the court, not later than 30 days after the notice is served, of the debtor's intent to participate in a settlement conference. Specifies certain circumstances under which a creditor is not required to provide: (1) the presuit notice; and (2) the notice of the debtor's right to a settlement conference. Provides that after June 30, 2009, a court may not issue a judgment of foreclosure with respect to a first lien residential mortgage transaction unless the following apply: (1) The creditor has given the required notice to the debtor of the availability of a settlement conference. (2) The debtor either: (A) does not contact the court within 30 days to schedule a settlement conference; or (B) contacts the court within the required 30 day period to schedule a settlement conference and, upon conclusion of the settlement conference, the parties are unable agree to a foreclosure prevention agreement. (3) At least 60 days have elapsed since the date the presuit notice was sent, unless the mortgaged property is abandoned. Provides that if the debtor contacts the court to schedule a settlement conference, the court shall issue a notice of a settlement conference to the parties. Provides that the court's notice of a settlement conference must do the following: (1) Order the creditor and the debtor to conduct a settlement conference on or before a date and time specified in the notice. (2) Require the debtor to contact a mortgage foreclosure counselor before the settlement conference. (3) Require the debtor to bring to the settlement conference certain documents needed to engage in good faith negotiations. (4) Require the creditor to bring to the settlement conference a transaction history for the mortgage. (5) Inform the parties that each has the right to be represented by an attorney or assisted by a mortgage foreclosure counselor. (6) Inform the parties that the settlement conference will be conducted at the county courthouse, or at another place designated by

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the court, on the date and at the time specified by the court, unless the parties stipulate otherwise. Requires the creditor to ensure that any person representing the creditor: (1) at a settlement conference; or (2) in any other negotiations with the debtor designed to reach agreement on a foreclosure prevention agreement; has authority to represent the creditor. Provides that if, as a result of a settlement conference, the debtor and the creditor agree to enter into a foreclosure prevention agreement, the agreement shall be reduced to writing and signed by both parties. Provides that at the election of the creditor, the foreclosure shall be dismissed or stayed for as long as the debtor complies with the terms of the foreclosure prevention agreement. After a settlement conference has occurred, requires the creditor to notify the court as to whether a foreclosure prevention agreement has been reached. Provides that participation in a settlement conference satisfies any mediation or alternative dispute resolution requirement established by court rule. Provides that immediately after a foreclosure sale, the sheriff that conducted the sale shall: (1) execute and deliver to the purchaser; and (2) except in a foreclosure action involving a mortgage insured by the United States Department of Housing and Urban Development, record with the recorder of the county in which the premises are located; a deed of conveyance for the premises. Provides that in a foreclosure action filed after June 30, 2009, if: (1) a judgment and decree of foreclosure is entered by the court; (2) a person that may enforce the judgment has not filed a praecipe to execute the judgment within 180 days after the entry of the judgment; (3) the legislative body of any municipality (or county, if the property is not located in a municipality) in which the property is located files a petition with the county clerk requesting a sheriff's sale; and (4) the court finds that the property is residential real estate and has been abandoned; the county clerk shall issue and certify to the sheriff a copy of the judgment and decree. Provides that upon receiving the judgment and decree, the sheriff shall sell the property. Provides that if, after the sheriff's sale is conducted, any part of the judgment, interest, or costs remains unsatisfied, the judgment holder may not pursue any deficiency judgment against the debtor.

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Reprinted
April 15, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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ENGROSSED SENATE BILL No. 492

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation, property, and courts and court officers.

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

1 SECTION 1. IC 24-5-26 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]:

4 **Chapter 26. Gift Cards**

5 **Sec. 1. (a) As used in this chapter, "gift card" means a record**
6 **evidencing a promise, made for consideration by the seller or**
7 **issuer of the record, that goods or services will be provided to the**
8 **holder of the record for the value shown in the record.**

9 **(b) The term includes the following:**

10 **(1) A gift certificate.**

11 **(2) A stored value card or certificate.**

12 **(3) An online gift account.**

13 **(c) The term does not include a prepaid calling card used to**
14 **make telephone calls.**

15 **Sec. 2. As used in this chapter, "person" means an individual, a**

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1 corporation, the state or its subdivisions or agencies, a business
2 trust, an estate, a trust, a partnership, an association, a
3 cooperative, or any other legal entity.

4 Sec. 3. (a) Except as provided in this section, this chapter applies
5 to gift cards that are issued after June 30, 2009.

6 (b) Section 4 of this chapter does not apply to the following:

7 (1) A gift card issued without consideration by a person under
8 an awards, loyalty, or promotional program.

9 (2) A gift card issued by either of the following:

10 (A) A financial institution (as defined in IC 22-2-4-1).

11 (B) A person licensed by the department of financial
12 institutions under IC 28-8-4.

13 (3) A gift card issued for less than face value to:

14 (A) an employer;

15 (B) a charitable organization exempt from federal taxation
16 under Section 501 of the Internal Revenue Code; or

17 (C) a nonprofit organization.

18 (4) A gift card that is sold by:

19 (A) a charitable organization exempt from federal taxation
20 under Section 501 of the Internal Revenue Code; or

21 (B) a nonprofit organization.

22 (5) A gift card that an employer issues to an employee in
23 recognition of services performed by the employee.

24 Sec. 4. (a) A person may not issue a gift card that is subject to:

25 (1) an expiration date; or

26 (2) a fee, including a service fee, maintenance fee, dormancy
27 charge, or inactivity charge.

28 (b) A gift card may be subject to an initial fee at the time the gift
29 card is issued.

30 Sec. 5. A provision in an agreement creating a gift card that
31 conflicts with this chapter is void.

32 SECTION 2. IC 24-5.5-1-1, AS ADDED BY P.L.209-2007,
33 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2009]: Sec. 1. Except for IC 24-5.5-3-1, this article does not
35 apply to the following:

36 (1) A person organized or chartered under the laws of this state,
37 any other state, or the United States that relate to a bank, a trust
38 company, a savings association, a savings bank, a credit union, or
39 an industrial loan and investment company.

40 (2) The Federal National Mortgage Association, the Federal
41 Home Loan Mortgage Corporation, or a Federal Home Loan
42 Bank.

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- 1 (3) A department or agency of the United States or of Indiana.
- 2 (4) A person that is servicing or enforcing a loan that it owns.
- 3 (5) A person that is servicing a loan:
- 4 (A) for a person described in subdivisions (1) through (4); ~~of~~
- 5 ~~this section~~; or
- 6 (B) insured by the Department of Housing and Urban
- 7 Development or guaranteed by the Veterans Administration.
- 8 (6) An attorney licensed to practice law in Indiana who is
- 9 representing a mortgagor.

10 SECTION 3. IC 24-5.5-3-1, AS ADDED BY P.L.209-2007,
 11 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2009]: Sec. 1. In addition to any other notice required by law,
 13 a mortgagee, or the mortgagee's assignee, that proceeds under
 14 IC 32-30-10 to foreclose a mortgage or deed of trust shall, ~~at the time~~
 15 **of not later than thirty (30) days before** filing the complaint in the
 16 action, provide the following written notice, **on a form prescribed by**
 17 **the Indiana housing and community development authority under**
 18 **IC 32-30-10.5-8(a)**, to the mortgagor in a statement printed in at least
 19 14 point boldface type:

20 "NOTICE REQUIRED BY STATE LAW

21 Mortgage foreclosure is a complex process. People may
 22 approach you about "saving" your home. You should be
 23 careful about any such promises. There are government
 24 agencies and nonprofit organizations you may contact for
 25 helpful information about the foreclosure process. For the
 26 name and telephone number of an organization near you,
 27 please call the Indiana housing and community development
 28 authority."

29 Service of the written notice required by this chapter shall be made as
 30 provided in the Indiana Rules of Trial Procedure governing service of
 31 process upon a person.

32 SECTION 4. IC 24-5.5-5-7.2 IS ADDED TO THE INDIANA
 33 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 34 [EFFECTIVE JULY 1, 2009]: **Sec. 7.2. A foreclosure consultant shall**
 35 **retain all records and documents, including the foreclosure**
 36 **consultant contract, related to services performed on behalf of a**
 37 **homeowner for at least three (3) years after the termination or**
 38 **conclusion of the foreclosure consultant contract entered into by**
 39 **the foreclosure consultant and the homeowner.**

40 SECTION 5. IC 24-9-1-1, AS AMENDED BY P.L.181-2006,
 41 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2009]: Sec. 1. Except for ~~IC 24-9-3-7(3)~~ **IC 24-9-3-7(c)(3)**,

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1 **IC 24-9-3-7(c)(4), and IC 24-9-3-7(c)(5)**, this article does not apply
2 to:

3 (1) a loan made or acquired by a person organized or chartered
4 under the laws of this state, any other state, or the United States
5 relating to banks, trust companies, savings associations, savings
6 banks, credit unions, or industrial loan and investment companies;
7 or

- 8 (2) a loan:
 - 9 (A) that can be purchased by the Federal National Mortgage
 - 10 Association, the Federal Home Loan Mortgage Association, or
 - 11 the Federal Home Loan Bank;
 - 12 (B) to be insured by the United States Department of Housing
 - 13 and Urban Development;
 - 14 (C) to be guaranteed by the United States Department of
 - 15 Veterans Affairs;
 - 16 (D) to be made or guaranteed by the United States Department
 - 17 of Agriculture Rural Housing Service;
 - 18 (E) to be funded by the Indiana housing and community
 - 19 development authority; or
 - 20 (F) with a principal amount that exceeds the conforming loan
 - 21 size limit for a single family dwelling as established by the
 - 22 Federal National Mortgage Association.

23 **SECTION 6. IC 24-9-3-7, AS AMENDED BY P.L.141-2005,**
24 **SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
25 **JULY 1, 2009]: Sec. 7. (a) As used in this section, "mortgage**
26 **transaction" includes the following:**

- 27 (1) **A home loan subject to this article.**
- 28 (2) **A loan described in IC 24-9-1-1 that is secured by a**
29 **mortgage or deed of trust on real estate in Indiana on which**
30 **there is located or will be located a structure or structures:**
 - 31 (A) **designed primarily for occupancy of one (1) to four (4)**
32 **families; and**
 - 33 (B) **that is or will be occupied by a borrower as the**
34 **borrower's principal dwelling.**
- 35 (3) **A first lien mortgage transaction (as defined in**
36 **IC 24-4.4-1-301) subject to IC 24-4.4.**
- 37 (4) **A consumer credit sale subject to IC 24-4.5-2 in which a**
38 **mortgage, deed of trust, or land contract that constitutes a**
39 **lien is created or retained against land upon which there is a**
40 **dwelling that is or will be used by the debtor primarily for**
41 **personal, family, or household purposes.**
- 42 (5) **A consumer credit loan subject to IC 24-4.5-3 in which a**

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1 mortgage, deed of trust, or land contract that constitutes a
 2 lien is created or retained against land upon which there is a
 3 dwelling that is or will be used by the debtor primarily for
 4 personal, family, or household purposes.

5 **(6) A loan in which a mortgage, deed of trust, or land contract**
 6 **that constitutes a lien is created or retained against land:**

7 **(A) that is located in Indiana;**

8 **(B) upon which there is a dwelling that is not or will not be**
 9 **used by the borrower primarily for personal, family, or**
 10 **household purposes; and**

11 **(C) that is classified as residential for property tax**
 12 **purposes.**

13 **The term includes a loan that is secured by land in Indiana**
 14 **upon which there is a dwelling that is purchased by or**
 15 **through the borrower for investment or other business**
 16 **purposes.**

17 **(7) A reverse mortgage transaction that is secured by real**
 18 **estate in Indiana on which there is located a structure that is**
 19 **occupied by a borrower as the borrower's principal dwelling.**

20 **(b) As used in this section, "real estate transaction" means the**
 21 **sale or lease of any legal or equitable interest in real estate:**

22 **(1) that is located in Indiana;**

23 **(2) upon which there is a dwelling; and**

24 **(3) that is classified as residential for property tax purposes.**

25 **(c) A person may not:**

26 **(1) divide a loan transaction into separate parts with the intent of**
 27 **evading a provision of this article;**

28 **(2) structure a home loan transaction as an open-end loan with the**
 29 **intent of evading the provisions of this article if the loan would be**
 30 **a high cost home loan if the home loan had been structured as a**
 31 **closed-end loan; or**

32 **(3) engage in, a deceptive act in connection with a: (A) home**
 33 **loan; or (B) loan described in IC 24-9-1-1;**

34 **(4) solicit to engage in a real estate transaction or a mortgage**
 35 **transaction without a permit or license required by law; or**

36 **(5) with respect to a real estate transaction or a mortgage**
 37 **transaction, represent that:**

38 **(A) the transaction has:**

39 **(i) certain terms or conditions; or**

40 **(ii) the sponsorship or approval of a particular person or**
 41 **entity;**

42 **that it does not have and that the person knows or**

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**reasonably should know it does not have; or
(B) the real estate or property that is the subject of the
transaction has any improvements, appurtenances, uses,
characteristics, or associated benefits that it does not have
and that the person knows or reasonably should know it
does not have.**

SECTION 7. IC 24-9-5-4, AS AMENDED BY P.L.3-2005,
SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2009]: Sec. 4. (a) **This section does not apply to a violation
of IC 24-9-3-7(c)(4) or IC 24-9-3-7(c)(5).** A person who violates this
article is liable to a person who is a party to the home loan transaction
that gave rise to the violation for the following:

- (1) Actual damages, including consequential damages. A person is not required to demonstrate reliance in order to receive actual damages.
- (2) Statutory damages equal to two (2) times the finance charges agreed to in the home loan agreement.
- (3) Costs and reasonable attorney's fees.

(b) A person may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

(c) The right of rescission granted under 15 U.S.C. 1601 et seq. for a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et seq.) is available to a person acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a home loan at any time during the term of the loan. Any recoupment claim asserted under this provision is limited to the amount required to reduce or extinguish the person's liability under the home loan plus amounts required to recover costs, including reasonable attorney's fees. This article shall not be construed to limit the recoupment rights available to a person under any other law.

(d) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a person. Except as provided in subsection (e), a person is not required to exhaust any administrative remedies under this article or under any other applicable law.

(e) Before bringing an action regarding an alleged deceptive act under this chapter, a person must:

- (1) notify the homeowner protection unit established by IC 4-6-12-2 of the alleged violation giving rise to the action; and
- (2) allow the homeowner protection unit at least ninety (90) days to institute appropriate administrative and civil action to redress

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1 a violation.

2 (f) An action under this chapter must be brought within five (5)
3 years after the date that the person knew, or by the exercise of
4 reasonable diligence should have known, of the violation of this article.

5 (g) An award of damages under subsection (a) has priority over a
6 civil penalty imposed under this article.

7 SECTION 8. IC 24-9-8-1 IS AMENDED TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2009]: Sec. 1. A person who knowingly or
9 intentionally violates this article commits:

- 10 (1) a Class A misdemeanor; and
- 11 (2) **except for a violation of IC 24-9-7-3(c)(4) by a person**
12 **required to be licensed by the department of financial**
13 **institutions**, an act that is actionable by the attorney general
14 under IC 24-5-0.5 and is subject to the penalties listed in
15 IC 24-5-0.5.

16 SECTION 9. IC 24-9-8-3 IS AMENDED TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **This section does not apply**
18 **to a violation of IC 24-9-7-3(c)(4) by a person required to be**
19 **licensed by the department of financial institutions.** The attorney
20 general may bring an action to enjoin a violation of this article. A court
21 in which the action is brought may:

- 22 (1) issue an injunction;
- 23 (2) order a person to make restitution;
- 24 (3) order a person to reimburse the state for reasonable costs of
25 the attorney general's investigation and prosecution of the
26 violation of this article; and
- 27 (4) impose a civil penalty of not more than ten thousand dollars
28 (\$10,000) per violation.

29 (b) A person who violates an injunction under this section is subject
30 to a civil penalty of not more than ten thousand dollars (\$10,000) per
31 violation.

32 (c) The court that issues an injunction retains jurisdiction over a
33 proceeding seeking the imposition of a civil penalty under this section.

34 SECTION 10. IC 25-1-11-17 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. (a) **Except as**
36 **provided in subsection (b)**, a practitioner may petition the board to
37 accept the surrender of the practitioner's license instead of having a
38 hearing before the board. The practitioner may not surrender the
39 practitioner's license without the written approval of the board, and the
40 board may impose any conditions appropriate to the surrender or
41 reinstatement of a surrendered license.

42 (b) **The board may not approve the surrender of a practitioner's**

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- 1 **license under subsection (a) if the office of the attorney general:**
- 2 **(1) has filed an administrative complaint concerning the**
- 3 **practitioner's license; and**
- 4 **(2) opposes the surrender of the practitioner's license.**

5 SECTION 11. IC 25-1-11-18, AS AMENDED BY P.L.194-2005,
 6 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to
 8 disciplinary sanctions may be required by a board to pay the costs of
 9 the proceeding. The practitioner's ability to pay shall be considered
 10 when costs are assessed. If the practitioner fails to pay the costs, a
 11 suspension may not be imposed solely upon the practitioner's inability
 12 to pay the amount assessed. These costs are limited to costs for the
 13 following:

- 14 (1) Court reporters.
- 15 (2) Transcripts.
- 16 (3) Certification of documents.
- 17 (4) Photo duplication.
- 18 (5) Witness attendance and mileage fees.
- 19 (6) Postage.
- 20 (7) Expert witnesses.
- 21 (8) Depositions.
- 22 (9) Notarizations.
- 23 (10) Administrative law judges.

24 **(11) Real estate review appraisals, if applicable.**

25 SECTION 12. IC 25-34.1-6-2.5 IS ADDED TO THE INDIANA
 26 CODE AS A NEW SECTION TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2009]: **Sec. 2.5. (a) A violation of:**

- 28 **(1) IC 24-5-15; or**
- 29 **(2) IC 24-5.5;**

30 **by a person licensed or required to be licensed under this article is**
 31 **a violation of this article.**

32 **(b) A person who commits a violation described in subsection (a)**
 33 **commits a Class A infraction and is subject to:**

- 34 **(1) the enforcement procedures described in section 2 of this**
 35 **chapter; and**
- 36 **(2) any sanction that may be imposed by the commission**
 37 **under IC 25-1-11-12 for an act described in IC 25-1-11-11.**

38 SECTION 13. IC 27-7-3-15.5, AS ADDED BY P.L.145-2008,
 39 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JANUARY 1, 2010]: Sec. 15.5. (a) This section applies to a transaction
 41 that:

- 42 (1) is a single family residential:

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- 1 (A) first lien purchase money mortgage transaction; or
- 2 (B) refinancing transaction; and
- 3 (2) is closed after December 31, 2009.
- 4 (b) Not later than September 1, 2009, the department shall establish
- 5 and maintain an electronic system for the collection and storage of the
- 6 following information concerning any of the following persons that
- 7 have participated in or assisted with a transaction to which this section
- 8 applies, or that will participate in or assist with a transaction to which
- 9 this section applies:
- 10 (1) The name and license number (under IC 23-2-5) of each loan
- 11 brokerage business involved in the transaction.
- 12 (2) The name and registration number (under IC 23-2-5) of each
- 13 originator involved in the transaction.
- 14 (3) The name and license number (under IC 25-34.1) of each:
- 15 (A) principal broker; and
- 16 (B) salesperson or broker-salesperson, if any;
- 17 involved in the transaction.
- 18 (4) The:
- 19 (A) name of; and
- 20 (B) code assigned by the National Association of Insurance
- 21 Commissioners (NAIC) to;
- 22 each title insurance underwriter involved in the transaction.
- 23 (5) The name and license number (under IC 27-1-15.6) of each
- 24 title insurance agency and agent involved in the transaction as a
- 25 closing agent (as defined in IC 6-1.1-12-43(a)(2)).
- 26 (6) The name and:
- 27 (A) license or certificate number (under IC 25-34.1-3-8) of
- 28 each licensed or certified real estate appraiser; or
- 29 (B) license number (under IC 25-34.1) of each broker;
- 30 who appraises the property that is the subject of the transaction.
- 31 (7) The name of the mortgagee and, if the mortgagee is required
- 32 to be licensed under:
- 33 (A) IC 24-4.4; or
- 34 (B) IC 24-4.5-3-502;
- 35 the license number of the mortgagee.
- 36 **(8) In the case of a first lien purchase money mortgage**
- 37 **transaction, the name of the seller of the property that is the**
- 38 **subject of the transaction.**
- 39 **(9) In the case of a first lien purchase money mortgage**
- 40 **transaction, the name of the buyer of the property that is the**
- 41 **subject of the transaction.**
- 42 **(10) The:**

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- 1 (A) name; and
- 2 (B) license number, certificate number, registration
- 3 number, or other code, as appropriate;
- 4 of any other person that participates in or assists with a
- 5 transaction to which this section applies, as the department
- 6 may prescribe.

7 (c) The system established by the department under this section
 8 must include a form that:

- 9 (1) is uniformly accessible in an electronic format to the closing
- 10 agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and
- 11 (2) allows the closing agent to do the following:

12 (A) Input information identifying the property that is the
 13 subject of the transaction by lot or parcel number, street
 14 address, or some other means of identification that the
 15 department determines:

- 16 (i) is sufficient to identify the property; and
- 17 (ii) is determinable by the closing agent.

18 (B) Subject to subsection (d) and to the extent determinable,
 19 input the information described in subsection (b) with respect
 20 to each person described in subsection (b) that participates in
 21 or assists with the transaction.

22 (C) Respond to the following questions:

- 23 (i) "On what date did you receive the closing instructions
- 24 from the creditor in the transaction?"
- 25 (ii) "On what date did the transaction close?"

26 (D) Submit the form electronically to a data base maintained
 27 by the department.

28 (d) Not later than the time of the closing, each person described in
 29 subsection (b), **other than a person described in subsection (b)(8) or**
 30 **(b)(9)**, shall provide to the closing agent in the transaction the person's:

- 31 (1) legal name; and
- 32 (2) license number, certificate number, registration number, or
- 33 NAIC code, as appropriate;

34 to allow the closing agent to comply with subsection (c)(2)(B). A
 35 person described in subsection (b)(7) shall provide the information
 36 required by this subsection for any person described in subsection
 37 (b)(6) that appraises the property that is the subject of the transaction
 38 on behalf of the person described in subsection (b)(7). A person
 39 described in subsection (b)(3)(B) who is involved in the transaction
 40 may provide the information required by this subsection for a person
 41 described in subsection (b)(3)(A) that serves as the principal broker for
 42 the person described in subsection (b)(3)(B). **In the case of a first lien**

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1 **purchase money mortgage transaction, the closing agent shall**
2 **determine the information described in subsection (b)(8) and (b)(9)**
3 **from the HUD-1 settlement statement.**

4 (e) **Except for a person described in subsection (b)(8) or (b)(9),**
5 a person described in subsection (b) who fails to comply with
6 subsection (d) is subject to a civil penalty of one hundred dollars
7 (\$100) for each closing with respect to which the person fails to comply
8 with subsection (d). The penalty:

9 (1) may be enforced by the state agency that has administrative
10 jurisdiction over the person in the same manner that the agency
11 enforces the payment of fees or other penalties payable to the
12 agency; and

13 (2) shall be paid into the home ownership education account
14 established by IC 5-20-1-27.

15 (f) Subject to subsection (g), the department shall make the
16 information stored in the data base described in subsection (c)(2)(D)
17 accessible to:

18 (1) each entity described in IC 4-6-12-4; and

19 (2) the homeowner protection unit established under IC 4-6-12-2.

20 (g) The department, a closing agent who submits a form under
21 subsection (c), each entity described in IC 4-6-12-4, and the
22 homeowner protection unit established under IC 4-6-12-2 shall exercise
23 all necessary caution to avoid disclosure of any information:

24 (1) concerning a person described in subsection (b), including the
25 person's license, registration, or certificate number; and

26 (2) contained in the data base described in subsection (c)(2)(D);
27 except to the extent required or authorized by state or federal law.

28 (h) The department may adopt rules under IC 4-22-2 to implement
29 this section. Rules adopted by the department under this subsection
30 may establish procedures for the department to:

31 (1) establish;

32 (2) collect; and

33 (3) change as necessary;
34 an administrative fee to cover the department's expenses in establishing
35 and maintaining the electronic system required by this section.

36 (i) If the department adopts a rule under IC 4-22-2 to establish an
37 administrative fee to cover the department's expenses in establishing
38 and maintaining the electronic system required by this section, as
39 allowed under subsection (h), the department may:

40 (1) require the fee to be paid:

41 (A) to the closing agent responsible for inputting the
42 information and submitting the form described in subsection

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- 1 (c)(2); and
- 2 (B) by the borrower in the transaction;
- 3 (2) allow the closing agent described in subdivision (1)(A) to
- 4 retain a part of the fee collected to cover the closing agent's costs
- 5 in inputting the information and submitting the form described in
- 6 subsection (c)(2); and
- 7 (3) require the closing agent to pay the remainder of the fee
- 8 collected to the department for deposit in the title insurance
- 9 enforcement fund established by IC 27-7-3.6-1, for the
- 10 department's use in establishing and maintaining the electronic
- 11 system required by this section.

12 SECTION 14. IC 32-29-7-3, AS AMENDED BY P.L.100-2008,
 13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2009]: Sec. 3. (a) In a proceeding for the foreclosure of a
 15 mortgage executed on real estate, process may not issue for the
 16 execution of a judgment or decree of sale for a period of three (3)
 17 months after the filing of a complaint in the proceeding. However:

- 18 (1) the period is:
 - 19 (A) twelve (12) months in a proceeding for the foreclosure of
 - 20 a mortgage executed before January 1, 1958; and
 - 21 (B) six (6) months in a proceeding for the foreclosure of a
 - 22 mortgage executed after December 31, 1957, but before July
 - 23 1, 1975; and
 - 24 (2) **subject to subsection (i)**, if the court finds that the mortgaged
 - 25 real estate is residential real estate and has been abandoned, a
 - 26 judgment or decree of sale may be executed on the date the
 - 27 judgment of foreclosure or decree of sale is entered, regardless of
 - 28 the date the mortgage is executed.

29 (b) A judgment and decree in a proceeding to foreclose a mortgage
 30 that is entered by a court having jurisdiction may be filed with the clerk
 31 in any county as provided in IC 33-32-3-2. After the period set forth in
 32 subsection (a) expires, a person who may enforce the judgment and
 33 decree may file a praecipe with the clerk in any county where the
 34 judgment and decree is filed, and the clerk shall promptly issue and
 35 certify to the sheriff of that county a copy of the judgment and decree
 36 under the seal of the court.

37 (c) Upon receiving a certified judgment under subsection (b) **or (i)**,
 38 the sheriff shall, subject to section 4 of this chapter, sell the mortgaged
 39 premises or as much of the mortgaged premises as necessary to satisfy
 40 the judgment, interest, and costs at public auction at the office of the
 41 sheriff or at another location that is reasonably likely to attract higher
 42 competitive bids. The sheriff shall schedule the date and time of the

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1 sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m.
2 on any day of the week except Sunday.

3 (d) Before selling mortgaged property, the sheriff must advertise the
4 sale by publication once each week for three (3) successive weeks in
5 a daily or weekly newspaper of general circulation. The sheriff shall
6 publish the advertisement in at least one (1) newspaper published and
7 circulated in each county where the real estate is situated. The first
8 publication shall be made at least thirty (30) days before the date of
9 sale. At the time of placing the first advertisement by publication, the
10 sheriff shall also serve a copy of the written or printed notice of sale
11 upon each owner of the real estate. Service of the written notice shall
12 be made as provided in the Indiana Rules of Trial Procedure governing
13 service of process upon a person. The sheriff shall charge a fee of ten
14 dollars (\$10) to one (1) owner and three dollars (\$3) to each additional
15 owner for service of written notice under this subsection. The fee is:

- 16 (1) a cost of the proceeding;
- 17 (2) to be collected as other costs of the proceeding are collected;
- 18 and
- 19 (3) to be deposited in the county general fund for appropriation
- 20 for operating expenses of the sheriff's department.

21 (e) The sheriff also shall post written or printed notices of the sale
22 at the door of the courthouse of each county in which the real estate is
23 located.

24 (f) If the sheriff is unable to procure the publication of a notice
25 within the county, the sheriff may dispense with publication. The
26 sheriff shall state that the sheriff was not able to procure the
27 publication and explain the reason why publication was not possible.

28 (g) Notices under subsections (d) and (e) must contain a statement,
29 for informational purposes only, of the location of each property by
30 street address, if any, or other common description of the property other
31 than legal description. A misstatement in the informational statement
32 under this subsection does not invalidate an otherwise valid sale.

33 (h) The sheriff may charge an administrative fee of not more than
34 two hundred dollars (\$200) with respect to a proceeding referred to in
35 subsection (b) for actual costs directly attributable to the administration
36 of the sale under subsection (c). The fee is:

- 37 (1) payable by the person seeking to enforce the judgment and
- 38 decree; and
- 39 (2) due at the time of filing of the praecipe;
- 40 under subsection (b).

41 (i) **This subsection applies to a foreclosure action that is filed**
42 **under IC 32-30-10 after June 30, 2009. If:**

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- 1 **(1) a judgment and decree in a proceeding to foreclose a**
- 2 **mortgage is entered by a court having jurisdiction;**
- 3 **(2) a person who may enforce the judgment and decree has**
- 4 **not filed a praecipe under subsection (b) with the county clerk**
- 5 **not later than one hundred eighty (180) days after the entry**
- 6 **of the judgment by the court;**
- 7 **(3) the legislative body of any:**
 - 8 **(A) municipality in which the property is located; or**
 - 9 **(B) county in which the property is located, if the property**
 - 10 **is not located in a municipality;**
- 11 **files a petition requesting a sheriff's sale with the clerk of the**
- 12 **county in which the judgment and decree is filed; and**
- 13 **(4) the court, after receiving a petition described in**
- 14 **subdivision (3), finds that the mortgaged real estate is**
- 15 **residential real estate and has been abandoned;**
- 16 **the clerk of the county in which the judgment and decree is filed**
- 17 **shall promptly issue and certify to the sheriff of that county a copy**
- 18 **of the judgment and decree under the seal of the court. Upon**
- 19 **receiving a copy of the judgment and decree under this subsection,**
- 20 **the sheriff shall proceed to sell the mortgaged premises as set forth**
- 21 **in this section. If, after a sheriff's sale is conducted under this**
- 22 **section, any part of the judgment, interest, or costs remain**
- 23 **unsatisfied, the judgment holder may not pursue any deficiency**
- 24 **judgment against the debtor.**

25 SECTION 15. IC 32-29-7-10 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) Immediately
 27 after a foreclosure sale under this chapter, the sheriff shall:

- 28 **(1) execute and deliver to the purchaser; and**
- 29 **(2) except as provided in subsection (b) record with the**
- 30 **recorder of the county in which the premises are located;**
- 31 a deed of conveyance for the premises, which must be valid to convey
- 32 all the right, title, and interest held or claimed by all of the parties to
- 33 the action and all persons claiming under them. The sheriff shall file a
- 34 return with the clerk of the court.

35 **(b) The sheriff is not required to record the deed of conveyance**
 36 **for the premises under subsection (a)(2) if the mortgage involved**
 37 **in the foreclosure action resulting in the foreclosure sale under this**
 38 **chapter was insured by the United States Department of Housing**
 39 **and Urban Development.**

40 SECTION 16. IC 32-30-10-3 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **Subject to**
 42 **IC 32-30-10.5 with respect to mortgage transactions described in**

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1 **IC 32-30-10.5-5**, if a mortgagor defaults in the performance of any
2 condition contained in a mortgage, the mortgagee or the mortgagee's
3 assigns may proceed in the circuit court of the county where the real
4 estate is located to foreclose the equity of redemption contained in the
5 mortgage.

6 (b) If the real estate is located in more than one (1) county, the
7 circuit court of any county in which the real estate is located has
8 jurisdiction for an action for the foreclosure of the equity of redemption
9 contained in the mortgage.

10 SECTION 17. IC 32-30-10-10 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. A plaintiff may not:

- 12 (1) proceed to foreclose the mortgagee's mortgage:
 - 13 (A) while the plaintiff is prosecuting any other action for the
 - 14 same debt or matter that is secured by the mortgage; or
 - 15 (B) while the plaintiff is seeking to obtain execution of any
 - 16 judgment in any other action; or
 - 17 (C) **until the notice under IC 32-30-10.5-8(a) has been sent,**
 - 18 **if required, in the case of a mortgage transaction described**
 - 19 **in IC 32-30-10.5-5; or**

20 (2) prosecute any other action for the same matter while the
21 plaintiff is foreclosing the mortgagee's mortgage or prosecuting
22 a judgment of foreclosure.

23 SECTION 18. IC 32-30-10.5 IS ADDED TO THE INDIANA
24 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
25 [EFFECTIVE JULY 1, 2009]:

26 **Chapter 10.5. Foreclosure Prevention Agreements for**
27 **Residential Mortgages**

28 **Sec. 1. (a) The general assembly makes the following findings:**

- 29 (1) **Indiana faces a serious threat to its state economy and to**
- 30 **the economies of its political subdivisions because of Indiana's**
- 31 **high rate of residential mortgage foreclosures, which**
- 32 **constitutes an emergency.**
- 33 (2) **Indiana's high rate of residential mortgage foreclosures**
- 34 **has adversely affected property values in Indiana, and may**
- 35 **have an even greater adverse effect on property values if the**
- 36 **foreclosure rate continues to rise.**
- 37 (3) **It is in the public interest for the state to modify the**
- 38 **foreclosure process to encourage mortgage modification**
- 39 **alternatives.**

40 (b) **The purpose of this chapter is to avoid unnecessary**
41 **foreclosures of residential properties and thereby provide stability**
42 **to Indiana's statewide and local economies by:**

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1 (1) requiring early contact and communications among
 2 creditors, their authorized agents, and debtors in order to
 3 engage in negotiations that could avoid foreclosure; and
 4 (2) facilitating the modification of residential mortgages in
 5 appropriate circumstances.

6 **Sec. 2. (a) As used in this chapter, "creditor" means a person:**
 7 (1) that regularly engages in the extension of mortgages that
 8 are subject to a credit service charge or loan finance charge,
 9 as applicable, or are payable by written agreement in more
 10 than four (4) installments (not including a down payment);
 11 and
 12 (2) to which the obligation is initially payable, either on the
 13 face of the note or contract, or by agreement if there is not a
 14 note or contract.

15 **(b) The term includes a mortgage servicer.**
 16 **(c) The term does not include a person that closes mortgages**
 17 **that:**
 18 (1) are made in the person's own name with funds provided by
 19 one (1) or more other persons; and
 20 (2) are assigned simultaneously to the persons providing the
 21 funding not later than one (1) business day after the funding
 22 of the transaction.

23 **Sec. 3. As used in this chapter, "debtor" refers to a person**
 24 **obligated to repay a mortgage.**

25 **Sec. 4. As used in this chapter, "foreclosure prevention**
 26 **agreement" means a written agreement that:**
 27 (1) is executed by both the creditor and the debtor; and
 28 (2) offers the debtor an individualized plan that may include:
 29 (A) a temporary forbearance with respect to the mortgage;
 30 (B) a reduction of any arrearage owed by the debtor;
 31 (C) a reduction of the interest rate that applies to the
 32 mortgage;
 33 (D) a repayment plan;
 34 (E) a deed in lieu of foreclosure;
 35 (F) reinstatement of the mortgage upon the debtor's
 36 payment of any arrearage;
 37 (G) a sale of the property; or
 38 (H) any loss mitigation arrangement or debtor relief plan
 39 established by federal law.

40 **Sec. 5. As used in this chapter, "mortgage" means a loan in**
 41 **which a first mortgage, or a land contract that constitutes a first**
 42 **lien, is created or retained against land upon which there is a**

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1 dwelling that is or will be used by the debtor primarily for
2 personal, family, or household purposes.

3 Sec. 6. As used in this chapter, "mortgage foreclosure
4 counselor" means a foreclosure prevention counselor who is part
5 of, or has been trained or certified by, the Indiana Foreclosure
6 Prevention Network.

7 Sec. 7. As used in this chapter, "mortgage servicer" means the
8 last person to whom:

- 9 (1) a debtor in a mortgage; or
 - 10 (2) the debtor's successor in interest;
- 11 has been instructed to send payments on the mortgage.

12 Sec. 8. (a) This section applies to a foreclosure action that is filed
13 after June 30, 2009. Except as provided in subsection (e) and
14 section 10(g) of this chapter, not later than thirty (30) days before
15 a creditor files an action for foreclosure, the creditor shall send to
16 the debtor by certified mail, return receipt requested, a presuit
17 notice on a form prescribed by the Indiana housing and community
18 development authority created by IC 5-20-1-3. In prescribing the
19 form required by this section, the Indiana housing and community
20 development authority shall include in the notice the statement set
21 forth in IC 24-5.5-3-1. In addition, the notice required by this
22 subsection must:

- 23 (1) inform the debtor that:
 - 24 (A) the debtor is in default; and
 - 25 (B) the debtor is encouraged to obtain assistance from a
 - 26 mortgage foreclosure counselor; and
 - 27 (2) provide the contact information for the Indiana
28 Foreclosure Prevention Network.
- 29 (b) The notice required by subsection (a) shall be sent to:
- 30 (1) the address of the mortgaged property; or
 - 31 (2) the last known mailing address of the debtor if the
 - 32 creditor's records indicate that the mailing address of the
 - 33 debtor is other than the address of the mortgaged property.

34 (c) Except as provided in subsection (e) and section 10(h) of this
35 chapter, if a creditor files an action to foreclose a mortgage, the
36 creditor shall include with the complaint served on the debtor a
37 notice that informs the debtor of the debtor's right to participate
38 in a settlement conference. The notice must be in a form prescribed
39 by the Indiana housing and community development authority
40 created by IC 5-20-1-3. The notice must inform the debtor that the
41 debtor may schedule a settlement conference by notifying the
42 court, not later than thirty (30) days after the notice is served, of

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the debtor's intent to participate in a settlement conference.

(d) In a foreclosure action filed under IC 32-30-10-3 after June 30, 2009, the creditor shall attach to the complaint filed with the court a copy of the notices sent to the debtor under subsections (a) and (c).

(e) A creditor is not required to send the notices described in this section if:

- (1) the loan is secured by a dwelling that is not the debtor's primary residence;
- (2) the loan has been the subject of a prior foreclosure prevention agreement under this chapter and the debtor has defaulted with respect to the terms of that foreclosure prevention agreement;
- (3) bankruptcy law prohibits the creditor from participating in a settlement conference under this chapter with respect to the loan; or
- (4) the court finds that a settlement conference would be of limited value based on the result of a prior loss mitigation effort between the debtor and the creditor, other than a foreclosure prevention agreement under this chapter.

Sec. 9. After June 30, 2009, a court may not issue a judgment of foreclosure under IC 32-30-10 on a mortgage subject to this chapter unless all of the following apply:

- (1) The creditor has given the notice required under section 8(c) of this chapter.
- (2) The debtor either:
 - (A) does not contact the court within the thirty (30) day period described in section 8(c) of this chapter to schedule a settlement conference under section 8(c) of this chapter; or
 - (B) contacts the court within the thirty (30) day period described in section 8(c) of this chapter to schedule a conference under section 8(c) of this chapter and, upon conclusion of the conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement.
- (3) At least sixty (60) days have elapsed since the date the notice required by section 8(a) of this chapter was sent, unless the mortgaged property is abandoned.

Sec. 10. (a) Unless a settlement conference is not required under this chapter, the court shall issue a notice of a settlement conference if the debtor contacts the court to schedule a settlement

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conference as described in section 8(c) of this chapter. The court's notice of a settlement conference must do the following:

(1) Order the creditor and the debtor to conduct a settlement conference on or before a date and time specified in the notice, which date must not be earlier than twenty-five (25) days after the date of the notice or later than sixty (60) days after the date of the notice, for the purpose of attempting to negotiate a foreclosure prevention agreement.

(2) Require the debtor to contact a mortgage foreclosure counselor before the date of the settlement conference. The notice must provide the contact information for the Indiana Foreclosure Prevention Network.

(3) Require the debtor to bring to the settlement conference the following documents needed to engage in good faith negotiations with the creditor:

(A) Documentation of the debtor's present and future income, expenses, assets, and liabilities, including documentation of the debtor's employment history.

(B) Any other documentation or information that the court determines is needed for the debtor to engage in good faith negotiations with the creditor. The court shall identify any documents required under this clause with enough specificity to allow the debtor to obtain the documents before the scheduled settlement conference.

(4) Require the creditor to bring to the settlement conference a transaction history for the mortgage, including the following:

- (A) A copy of the original note and mortgage.
- (B) A record of payments made by the borrower.
- (C) An itemization of all amounts claimed by the lender as being owed on mortgage.
- (D) Any other documentation that the court determines is needed.

(5) Inform the parties that:

(A) each party has the right to be represented by an attorney or assisted by a mortgage foreclosure counselor at the settlement conference; and

(B) an attorney or a mortgage foreclosure counselor may participate in the settlement conference in person or by telephone.

(6) Inform the parties that the settlement conference will be conducted at the county courthouse, or at another place

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1 designated by the court, on the date and time specified in the
2 notice under subdivision (1) unless the parties submit to the
3 court a stipulation to:

4 (A) modify the date, time, and place of the settlement
5 conference; or

6 (B) hold the settlement conference by telephone at a date
7 and time agreed to by the parties.

8 (b) An attorney for the creditor shall attend the settlement
9 conference, and an authorized representative of the creditor shall
10 be available by telephone during the settlement conference. In
11 addition, the court may require any person that is a party to the
12 foreclosure action to appear at or participate in a settlement
13 conference held under this section, and, for cause shown, the court
14 may order the creditor and the debtor to reconvene a settlement
15 conference at any time before judgment is entered.

16 (c) At the court's discretion, a settlement conference may or
17 may not be attended by a judicial officer.

18 (d) The creditor shall ensure that any person representing the
19 creditor:

20 (1) at a settlement conference scheduled under subsection (a);
21 or

22 (2) in any negotiations with the debtor designed to reach
23 agreement on the terms of a foreclosure prevention
24 agreement;

25 has authority to represent the creditor in negotiating a foreclosure
26 prevention agreement with the debtor.

27 (e) If, as a result of a settlement conference held under this
28 section, the debtor and the creditor agree to enter into a
29 foreclosure prevention agreement, the agreement shall be reduced
30 to writing and signed by both parties, and each party shall retain
31 a copy of the signed agreement. Not later than seven (7) business
32 days after the signing of the foreclosure prevention agreement, the
33 creditor shall file with the court a copy of the signed agreement. At
34 the election of the creditor, the foreclosure shall be dismissed or
35 stayed for as long as the debtor complies with the terms of the
36 foreclosure prevention agreement.

37 (f) If, as a result of a settlement conference held under this
38 section, the debtor and the creditor are unable to agree on the
39 terms of a foreclosure prevention agreement, the creditor shall, not
40 later than seven (7) business days after the date of the settlement
41 conference, file with the court a notice indicating that:

42 (1) the settlement conference held under this section has

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1 concluded and a foreclosure prevention agreement was not
 2 reached; or
 3 (2) the settlement conference under this section was held but
 4 negotiations between the debtor and the creditor are
 5 continuing.

6 If the settlement conference held under this section results in an
 7 outcome described in subdivision (2) and the continuing
 8 negotiations described in subdivision (2) are later concluded
 9 without the debtor and creditor being able to agree on the terms of
 10 a foreclosure prevention agreement, the creditor shall file with the
 11 court a notice indicating that a foreclosure prevention agreement
 12 was not reached. If the settlement conference held under this
 13 section results in an outcome described in subdivision (1), or if
 14 continuing negotiations described in subdivision (2) are later
 15 concluded without the debtor and creditor being able to agree on
 16 the terms of a foreclosure prevention agreement, the foreclosure
 17 action filed by the creditor may proceed as otherwise allowed by
 18 law.

19 (g) If:
 20 (1) a foreclosure is dismissed by the creditor under subsection
 21 (f) after a foreclosure prevention agreement is reached; and
 22 (2) a default in the terms of the foreclosure prevention
 23 agreement later occurs;
 24 the creditor or its assigns may bring a foreclosure action under
 25 IC 32-30-10-3 without sending the notices described in section 8 of
 26 this chapter.

27 (h) Participation in a settlement conference under this section
 28 satisfies any mediation or alternative dispute resolution
 29 requirement established by court rule.

30 Sec. 11. (a) This section applies to a mortgage foreclosure action
 31 with respect to which the creditor has filed the complaint in the
 32 proceeding before July 1, 2009, and the court having jurisdiction
 33 over the proceeding has not rendered a judgment of foreclosure
 34 before July 1, 2009.

35 (b) In a mortgage foreclosure action to which this section
 36 applies, the court having jurisdiction of the action shall serve
 37 notice of the availability of a settlement conference under section
 38 8(c) of this chapter.

39 SECTION 19. IC 32-30-12-1 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Except as provided**
 41 **in IC 32-30-10.5 for mortgage transactions described in**
 42 **IC 32-30-10.5-5,** it is not necessary in any action upon a mortgage or

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- 1 lien to give time for:
- 2 (1) the payment of money; or
- 3 (2) performing any other act.
- 4 Final judgment may be given in the first instance.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 492, 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 1, line 3, delete "IC 24-5.5-3-1," and insert "**IC 24-5.5-3**,".

Page 2, between lines 26 and 27, begin a new paragraph and insert:

"SECTION 3. IC 24-5.5-5-7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2009]: **Sec. 7. A foreclosure consultant shall retain all records and documents related to services performed on behalf of a homeowner for at least three (3) years after the termination or conclusion of a contract with the homeowner.**

SECTION 4. IC 24-9-2-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2009]: **Sec. 12.5. "Real estate transaction" has the meaning set forth in IC 25-34.1-10-8.**

SECTION 5. IC 24-9-3-7, AS AMENDED BY P.L.141-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. A person may not:

- (1) divide a loan transaction into separate parts with the intent of evading a provision of this article;
- (2) structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the loan would be a high cost home loan if the home loan had been structured as a closed-end loan; or
- (3) engage in a deceptive act in connection with a:
 - (A) home loan; or
 - (B) loan described in IC 24-9-1-1.
- (3) engage or solicit to engage in a real estate transaction or a consumer credit mortgage transaction without a permit or license required by law; or
- (4) represent that a real estate transaction or a consumer credit mortgage transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits that:
 - (A) the real estate transaction or consumer credit mortgage does not have; and
 - (B) the person knows or reasonably should know the real estate transaction or consumer credit mortgage does not have.

SECTION 6. IC 25-1-11-17 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. A practitioner may petition the board to accept the surrender of the practitioner's license instead of having a hearing before the board. The practitioner may not surrender the practitioner's license without the written approval of the board, and the board may impose any conditions appropriate to the surrender or reinstatement of a surrendered license. **The board may not accept the surrender of a practitioner's license if the office of attorney general:**

(1) has filed an administrative complaint concerning the practitioner's license; and

(2) opposes the surrender of the license.

SECTION 7. IC 25-1-11-18, AS AMENDED BY P.L.194-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to disciplinary sanctions may be required by a board to pay the costs of the proceeding. The practitioner's ability to pay shall be considered when costs are assessed. If the practitioner fails to pay the costs, a suspension may not be imposed solely upon the practitioner's inability to pay the amount assessed. These costs are limited to costs for the following:

- (1) Court reporters.
- (2) Transcripts.
- (3) Certification of documents.
- (4) Photo duplication.
- (5) Witness attendance and mileage fees.
- (6) Postage.
- (7) Expert witnesses.
- (8) Depositions.
- (9) Notarizations.
- (10) Administrative law judges.

(11) Real estate appraisals.

SECTION 8. IC 25-34.1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who:

- (1) performs the acts of a salesperson without a salesperson license;
- (2) performs the acts of a broker without a broker license; or
- (3) conducts, or solicits or accepts enrollment of students for, a course as prescribed in IC 25-34.1-3 without course approval;

commits a Class A infraction. Upon conviction for an offense under this section, the court shall add to any fine imposed, the amount of any fee or other compensation earned in the commission of the offense. Each transaction constitutes a separate offense.

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(b) In all actions for the collection of a fee or other compensation for performing acts regulated by this article, it must be alleged and proved that, at the time the cause of action arose, the party seeking relief was not in violation of this section.

(c) The commission may issue a cease and desist order to prevent violations of this section.

(1) If the commission determines that a person is violating this section, or is believed to be violating this section, the commission may issue an order to that person setting forth the time and place for a hearing at which the affected person may appear and show cause as to why the challenged activities are not in violation of this section.

(2) After an opportunity for hearing, if the commission determines that the person is violating this section, the commission shall issue a cease and desist order which shall describe the person and activities which are the subject of the order.

(3) A cease and desist order issued under this section is enforceable in the circuit courts of this state.

(d) The attorney general, the commission, or the prosecuting attorney of any county in which a violation occurs may maintain an action in the name of the state to enjoin a person from violating this section.

(e) In charging any person in a complaint for an injunction or in affidavit, information, or indictment with the violation of the provisions of this section, it is sufficient, without averring any further or more particular facts, to charge that the person upon a certain day and in a certain county either acted as a real estate broker or salesperson not having a license or conducted, or solicited or accepted enrollment of students for, a broker or salesperson course without course approval.

(f) A licensee who violates IC 24-5-15 or IC 24-5.5 may be disciplined under IC 25-1-11 and this section.

~~(f)~~ (g) Each enforcement procedure established in this section is supplemental to other enforcement procedures established in this section."

Page 5, line 22, delete "will" and insert "**may**".

Page 5, delete lines 25 through 39.

Page 5, line 40, delete "(7)" and insert "**(3)**".

Page 5, line 40, delete "necessary and".

Page 6, delete lines 2 through 14.

Page 6, line 34, delete ":".

Page 6, delete lines 35 through 39.

Page 6, line 40, delete "(B)".

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Page 6, run in lines 34 through 40.

Page 6, line 41, delete "(i)" begin a new line double block indented and insert:

"(A)".

Page 7, line 1, delete "(ii)" begin a new line double block indented and insert:

"(B)".

Page 7, line 2, delete "(iii)" begin a new line double block indented and insert:

"(C)".

Page 7, line 4, delete "(iv)" begin a new line double block indented and insert:

"(D)".

Page 7, line 5, delete "(v)" begin a new line double block indented and insert:

"(E)".

Page 7, line 6, delete "(vi)" begin a new line double block indented and insert:

"(F)".

Page 7, line 8, delete "(vii)" begin a new line double block indented and insert:

"(G)".

Page 7, delete lines 20 through 22.

Page 7, line 23, delete "Sec. 9." and insert "**Sec. 8.**".

Page 7, line 26, delete "written" and insert "**presuit**".

Page 7, line 26, delete "does the following:" and insert "**informs the debtor that the creditor intends to initiate a foreclosure and that the debtor may obtain assistance from a foreclosure counselor and that provides information on how to contact a housing counselor.**".

Page 7, delete lines 27 through 42.

Page 8, delete lines 1 through 30.

Page 8, delete lines 36 through 42, begin a new paragraph and insert:

"(c) If a creditor files an action to foreclose a mortgage, the creditor shall include with the complaint served on the debtor a notice of right to participate in a settlement conference. The notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court of the debtor's intent to participate in a settlement conference not later than thirty (30) days after the complaint is served."

Page 9, delete lines 1 through 39.

Page 9, line 40, delete "Sec. 10." and insert "**Sec. 9.**".

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Page 9, line 40, delete "creditor may not proceed" and insert "**court may not issue a judgment of foreclosure under IC 32-30-10 on a mortgage subject to this chapter**".

Page 9, delete line 41.

Page 9, line 42, delete "by filing a complaint in a court having jurisdiction".

Page 10, line 3, delete "9(a)" and insert "**8(c)**".

Page 10, line 5, delete "creditor" and insert "**court**".

Page 10, line 6, delete "9(a)(4)" and insert "**(8)(c)**".

Page 10, line 7, after "a" insert "**settlement**".

Page 10, line 7, delete "offered by the debtor".

Page 10, line 8, delete "9(a)(2)" and insert "**(8)(c)**".

Page 10, line 9, delete "creditor" and insert "**court**".

Page 10, line 10, delete "9(a)(4)" and insert "**(8)(c)**".

Page 10, line 10, after "a" insert "**settlement**".

Page 10, line 11, delete "offered by the debtor".

Page 10, line 11, delete "9(a)(2)" and insert "**(8)(c)**".

Page 10, line 12, delete "such" and insert "**the**".

Page 10, delete lines 15 through 16.

Page 10, line 17, delete "subsection (a)," and insert "**IC 32-30-10-3,**".

Page 10, line 19, delete "9(a)" and insert "**(8)(a)**".

Page 10, line 21, delete "under subsection (a)".

Page 10, line 22, delete ":".

Page 10, line 23, delete "(1)".

Page 10, line 23, delete "in the" and insert "**if**".

Page 10, run in lines 22 through 23.

Page 10, line 24, delete "case of a complaint filed under".

Page 10, line 24, delete "(a)(2)(A); or" and insert "**(a)(2)(A) applies.**".

Page 10, delete lines 25 through 26.

Page 10, line 28, delete "(c)(1)" and insert "**(c)**".

Page 10, line 32, delete "9(a)" and insert "**8(c)**".

Page 10, line 42, delete "9(a)" and insert "**8(c)**".

Page 11, line 6, delete "such" and insert "**the**".

Page 11, delete lines 10 through 42.

Page 12, delete lines 1 through 6, begin a new paragraph, and insert:

"Sec. 10. (a) Unless a settlement conference is not required under this chapter, the court shall issue a notice of a settlement conference. The court's notice of a settlement conference must do the following:".

Page 12, line 16, delete "and for any other mortgage" and insert ".".

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Page 12, delete lines 17 through 18.
 Page 12, line 33, delete "The transaction".
 Page 12, delete lines 34 through 42.
 Page 13, delete lines 1 through 4.
 Page 13, line 7, after "or" insert "**assisted by**".
 Page 13, delete lines 29 through 42.
 Page 14, delete lines 1 through 6.
 Page 14, line 7, delete "(e)" and insert "**(b)**".
 Page 14, line 10, delete "(f)" and insert "**(c)**".
 Page 14, line 11, delete "(c)(6)" and insert "**(a)(6)**".
 Page 14, line 13, delete "(g)" and insert "**(d)**".
 Page 14, line 15, delete "(c);" and insert "**(a);**".
 Page 14, delete lines 22 through 28.
 Page 14, line 29, delete "(i)" and insert "**(e)**".
 Page 14, line 35, delete "and the reporting agency, on a".
 Page 14, line 36, delete "form prescribed by the reporting agency,".
 Page 14, delete lines 38 through 42, begin a new paragraph and insert:

"Sec. 11. (a) This section applies to a mortgage foreclosure action with respect to which the creditor has filed the complaint in the proceeding before July 1, 2009, and the court having jurisdiction over the proceeding has not rendered a judgment of foreclosure before July 1, 2009.

(b) In a mortgage foreclosure action to which this section applies, the court having jurisdiction of the action:

- (1) shall serve notice of a settlement conference described in section 10 of this chapter on the parties to the action not later than August 1, 2009; and**
- (2) may not proceed to render a judgment of foreclosure in an action described in subsection (a) unless, upon the conclusion of a settlement conference described in this section, the parties are unable to agree on the terms of a foreclosure prevention agreement.**

SECTION 8. IC 32-30-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Except as provided in IC 32-30-10.5 for first lien mortgage transactions,** it is not necessary in any action upon a mortgage or lien to give time for:

- (1) the payment of money; or
- (2) performing any other act.

Final judgment may be given in the first instance."

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Delete page 15.
Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 492 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 2.

SENATE MOTION

Madam President: I move that Senate Bill 492 be amended to read as follows:

Page 5, delete lines 12 through 42.

Delete page 6.

Page 7, delete lines 12 through 24.

Page 7, line 29, reset in roman "or".

Page 7, line 31, strike "or".

Page 7, delete lines 32 through 34.

Page 7, line 37, delete "." and insert "; or

(3) proceed to foreclose a mortgage (as defined in IC 32-30-10.5-5) until the notice under IC 32-30-10.5-8(a) has been sent, if required."

Page 8, line 27, delete "a person" and insert "**the mortgagor in a first lien mortgage transaction (as defined in IC 24-4.4-1-301(6))."**

Page 8, delete lines 28 through 29.

Page 8, line 41, delete "or".

Page 8, line 42, delete "." and insert "; or

(H) any loss mitigation arrangement or debtor relief plan established by federal law."

Page 9, line 12, after "2009," insert "**except as provided in subsection (d) and section 10(f) of this chapter, before a creditor files an action for foreclosure,"**

Page 9, line 12, delete "if a debtor defaults in the".

Page 9, line 13, delete "performance of any condition contained in the mortgage,".

Page 9, line 15, after "notice" insert "**in a form prescribed by the Indiana housing and community development authority established by IC 5-20-1-3"**.

Page 9, line 24, delete "If" and insert "**Except as provided in**

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subsection (d) and section 10(f) of this chapter, if".

Page 9, line 26, before "of" insert **"that informs the debtor"**.

Page 9, line 26, after "of" insert **"a"**.

Page 9, line 26, after "conference." insert **"The notice shall be served with the complaint and in a form prescribed by the Indiana housing and community development authority established by IC 5-20-1-3."**

Page 9, line 30, delete "complaint" and insert **"notice"**.

Page 9, between lines 30 and 31, begin a new paragraph and insert:

"(d) A creditor is not required to send the notices described in this section if:

- (1) the loan is secured by a dwelling that is not the debtor's primary residence;**
- (2) the loan has been the subject of a prior foreclosure prevention plan;**
- (3) bankruptcy law prohibits the creditor from participating in a settlement conference under this chapter with respect to the loan; or**
- (4) the court finds that a settlement conference would be of limited value based on the result of a prior loss mitigation effort between the debtor and the creditor."**

Page 10, line 8, delete "Except as provided in subsection (d), in" and insert **"In"**.

Page 10, line 10, delete "complaint is" and insert **"notice required by section 8(a) of this chapter was sent unless the mortgaged property is vacant."**

Page 10, delete lines 11 through 36.

Page 10, line 39, delete "." and insert **"if the debtor contacts the court to schedule a settlement conference as described in section 8(c) of this chapter."**

Page 11, line 32, delete "at the county courthouse" and insert **"by telephone"**.

Page 11, line 34, delete "not later than twenty (20) days after the" and insert **"a stipulation to modify the date, time, and place of the settlement conference."**

Page 11, delete lines 35 through 42.

Page 12, delete lines 1 through 5.

Page 12, line 8, delete "." and insert **", and, for cause shown, the court may order the creditor and the debtor to reconvene a settlement conference at any time before judgment is entered."**

Page 12, line 9, delete "held at a".

Page 12, line 10, delete "county courthouse under subsection

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(a)(6)".

Page 12, line 19, delete "bind the creditor in negotiating a foreclosure" and insert "**conduct negotiations.**".

Page 12, delete line 20.

Page 12, line 28, after "reached." insert "**At the election of the creditor, the foreclosure shall be dismissed or stayed for as long as the debtor complies with the terms of the foreclosure prevention plan.**

(f) If a foreclosure is dismissed and a default in the terms of the foreclosure prevention plan later occurs, the creditor or its assigns may bring a foreclosure action without being required to send the notices described in section 8 of this chapter.

(g) Participation in a settlement conference under this section satisfies any mediation or alternative dispute resolution requirement established by court rule."

Page 12, line 35, delete ":".

Page 12, line 36, delete "(1)".

Page 12, line 36, after "of" insert "**the availability of**".

Page 12, line 36, delete "described in" and insert "**under section 8(c) of this chapter.**".

Page 12, run in lines 35 through 36.

Page 12, delete lines 37 through 42.

Page 13, delete line 1.

Re-number all SECTIONS consecutively.

(Reference is to SB 492 as printed February 13, 2009.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 492, 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:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation, property, and courts and court officers.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 492 as reprinted February 20, 2009.)

BARDON, Chair

Committee Vote: yeas 10, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 492 be amended to read as follows:

Page 3, line 18, delete "IC 32-30-10.5-9(a)," and insert "**IC 32-30-10.5-8(a)**,".

Page 3, line 42, delete "IC 24-9-3-7(c)(3)" and insert "**IC 24-9-3-7(c)(3)**,".

Page 4, line 1, delete "and IC 24-9-3-7(c)(4)," and insert "**IC 24-9-3-7(c)(4), and IC 24-9-3-7(c)(5)**,".

Page 4, delete lines 22 through 42, begin a new paragraph and insert:

"SECTION 6. IC 24-9-3-7, AS AMENDED BY P.L.141-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) As used in this section, "mortgage transaction" includes the following:

- (1) A home loan subject to this article.
- (2) A loan described in IC 24-9-1-1 that is secured by a mortgage or deed of trust on real estate in Indiana on which there is located or will be located a structure or structures:
 - (A) designed primarily for occupancy of one (1) to four (4) families; and
 - (B) that is or will be occupied by a borrower as the



borrower's principal dwelling.

(3) A first lien mortgage transaction (as defined in IC 24-4.4-1-301) subject to IC 24-4.4.

(4) A consumer credit sale subject to IC 24-4.5-2 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(5) A consumer credit loan subject to IC 24-4.5-3 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(6) A loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land:

(A) that is located in Indiana;

(B) upon which there is a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes; and

(C) that is classified as residential for property tax purposes.

The term includes a loan that is secured by land in Indiana upon which there is a dwelling that is purchased by or through the borrower for investment or other business purposes.

(7) A reverse mortgage transaction that is secured by real estate in Indiana on which there is located a structure that is occupied by a borrower as the borrower's principal dwelling.

(b) As used in this section, "real estate transaction" means the sale or lease of any legal or equitable interest in real estate:

(1) that is located in Indiana;

(2) upon which there is a dwelling; and

(3) that is classified as residential for property tax purposes.

(c) A person may not:

(1) divide a loan transaction into separate parts with the intent of evading a provision of this article;

(2) structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the loan would be a high cost home loan if the home loan had been structured as a closed-end loan; or

(3) engage in, a deceptive act in connection with a: (A) home loan; or (B) loan described in IC 24-9-1-1;

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**(4) solicit to engage in a real estate transaction or a mortgage transaction without a permit or license required by law; or
(5) with respect to a real estate transaction or a mortgage transaction, represent that:**

(A) the transaction has:

(i) certain terms or conditions; or

(ii) the sponsorship or approval of a particular person or entity;

that it does not have and that the person knows or reasonably should know it does not have; or

(B) the real estate or property that is the subject of the transaction has any improvements, appurtenances, uses, characteristics, or associated benefits that it does not have and that the person knows or reasonably should know it does not have."

Delete page 5.

Page 6, delete lines 1 through 5, begin a new paragraph and insert:

"SECTION 7. IC 24-9-5-4, AS AMENDED BY P.L.3-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) **This section does not apply to a violation of IC 24-9-3-7(c)(4) or IC 24-9-3-7(c)(5).** A person who violates this article is liable to a person who is a party to the home loan transaction that gave rise to the violation for the following:

(1) Actual damages, including consequential damages. A person is not required to demonstrate reliance in order to receive actual damages.

(2) Statutory damages equal to two (2) times the finance charges agreed to in the home loan agreement.

(3) Costs and reasonable attorney's fees.

(b) A person may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

(c) The right of rescission granted under 15 U.S.C. 1601 et seq. for a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et seq.) is available to a person acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a home loan at any time during the term of the loan. Any recoupment claim asserted under this provision is limited to the amount required to reduce or extinguish the person's liability under the home loan plus amounts required to recover costs, including reasonable attorney's fees. This article shall not be construed to limit the recoupment rights available to a person under any other law.

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(d) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a person. Except as provided in subsection (e), a person is not required to exhaust any administrative remedies under this article or under any other applicable law.

(e) Before bringing an action regarding an alleged deceptive act under this chapter, a person must:

- (1) notify the homeowner protection unit established by IC 4-6-12-2 of the alleged violation giving rise to the action; and
- (2) allow the homeowner protection unit at least ninety (90) days to institute appropriate administrative and civil action to redress a violation.

(f) An action under this chapter must be brought within five (5) years after the date that the person knew, or by the exercise of reasonable diligence should have known, of the violation of this article.

(g) An award of damages under subsection (a) has priority over a civil penalty imposed under this article.

SECTION 8. IC 24-9-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. A person who knowingly or intentionally violates this article commits:

- (1) a Class A misdemeanor; and
- (2) **except for a violation of IC 24-9-7-3(c)(4) by a person required to be licensed by the department of financial institutions**, an act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

SECTION 9. IC 24-9-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **This section does not apply to a violation of IC 24-9-7-3(c)(4) by a person required to be licensed by the department of financial institutions.** The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

- (1) issue an injunction;
- (2) order a person to make restitution;
- (3) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this article; and
- (4) impose a civil penalty of not more than ten thousand dollars (\$10,000) per violation.

(b) A person who violates an injunction under this section is subject to a civil penalty of not more than ten thousand dollars (\$10,000) per violation.



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(c) The court that issues an injunction retains jurisdiction over a proceeding seeking the imposition of a civil penalty under this section."

Page 10, line 27, after "10." insert "(a)".

Page 10, line 30, after "(2)" insert "**except as provided in subsection (b)**".

Page 10, between lines 35 and 36, begin a new paragraph and insert:

"(b) The sheriff is not required to record the deed of conveyance for the premises under subsection (a)(2) if the mortgage involved in the foreclosure action resulting in the foreclosure sale under this chapter was insured by the United States Department of Housing and Urban Development."

Page 11, line 13, delete "IC 32-30-10.5-9(a)" and insert "**IC 32-30-10.5-8(a)**".

Page 13, delete lines 8 through 10.

Page 13, line 11, delete "9." and insert "**8**".

Page 13, line 13, delete "11(g)" and insert "**10(g)**".

Page 13, line 33, delete "11(h)" and insert "**10(h)**".

Page 14, line 20, delete "10." and insert "**9**".

Page 14, line 24, delete "9(c)" and insert "**8(c)**".

Page 14, line 27, delete "9(c)" and insert "**8(c)**".

Page 14, line 28, delete "9(c)" and insert "**8(c)**".

Page 14, line 31, delete "9(c)" and insert "**8(c)**".

Page 14, line 32, delete "9(c)" and insert "**8(c)**".

Page 14, line 37, delete "9(a)" and insert "**8(a)**".

Page 14, line 39, delete "11." and insert "**10**".

Page 14, line 42, delete "9(c)" and insert "**8(c)**".

Page 17, line 5, before "If" insert "**If the settlement conference held under this section results in an outcome described in subdivision (2) and the continuing negotiations described in subdivision (2) are later concluded without the debtor and creditor being able to agree on the terms of a foreclosure prevention agreement, the creditor shall file with the court a notice indicating that a foreclosure prevention agreement was not reached.**"

Page 17, line 6, after "(1)," insert "**or if continuing negotiations described in subdivision (2) are later concluded without the debtor and creditor being able to agree on the terms of a foreclosure prevention agreement,**".

Page 17, line 14, delete "9" and insert "**8**".

Page 17, line 19, delete "12." and insert "**11**".

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Page 17, line 27, delete "9(c)" and insert "**8(c)**".
Renumber all SECTIONS consecutively.

(Reference is to ESB 492 as printed April 10, 2009.)

BARDON

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 492 be amended to read as follows:

Page 3, line 18, delete "IC 32-30-10.5-9(a)," and insert "**IC 32-30-10.5-8(a)**,".

Page 10, between lines 25 and 26, begin a new paragraph and insert:
"SECTION 11. IC 32-29-7-3, AS AMENDED BY P.L.100-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the execution of a judgment or decree of sale for a period of three (3) months after the filing of a complaint in the proceeding. However:

- (1) the period is:
 - (A) twelve (12) months in a proceeding for the foreclosure of a mortgage executed before January 1, 1958; and
 - (B) six (6) months in a proceeding for the foreclosure of a mortgage executed after December 31, 1957, but before July 1, 1975; and
- (2) **subject to subsection (i)**, if the court finds that the mortgaged real estate is residential real estate and has been abandoned, a judgment or decree of sale may be executed on the date the judgment of foreclosure or decree of sale is entered, regardless of the date the mortgage is executed.

(b) A judgment and decree in a proceeding to foreclose a mortgage that is entered by a court having jurisdiction may be filed with the clerk in any county as provided in IC 33-32-3-2. After the period set forth in subsection (a) expires, a person who may enforce the judgment and decree may file a praecipe with the clerk in any county where the judgment and decree is filed, and the clerk shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court.

(c) Upon receiving a certified judgment under subsection (b) **or (i)**, the sheriff shall, subject to section 4 of this chapter, sell the mortgaged

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premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation. The sheriff shall publish the advertisement in at least one (1) newspaper published and circulated in each county where the real estate is situated. The first publication shall be made at least thirty (30) days before the date of sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars (\$10) to one (1) owner and three dollars (\$3) to each additional owner for service of written notice under this subsection. The fee is:

- (1) a cost of the proceeding;
- (2) to be collected as other costs of the proceeding are collected; and
- (3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. The sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement, for informational purposes only, of the location of each property by street address, if any, or other common description of the property other than legal description. A misstatement in the informational statement under this subsection does not invalidate an otherwise valid sale.

(h) The sheriff may charge an administrative fee of not more than two hundred dollars (\$200) with respect to a proceeding referred to in subsection (b) for actual costs directly attributable to the administration of the sale under subsection (c). The fee is:

- (1) payable by the person seeking to enforce the judgment and decree; and

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(2) due at the time of filing of the praecipe;
under subsection (b).

(i) This subsection applies to a foreclosure action that is filed under IC 32-30-10 after June 30, 2009. If:

- (1) a judgment and decree in a proceeding to foreclose a mortgage is entered by a court having jurisdiction;**
- (2) a person who may enforce the judgment and decree has not filed a praecipe under subsection (b) with the county clerk not later than one hundred eighty (180) days after the entry of the judgment by the court;**
- (3) the legislative body of any:

 - (A) municipality in which the property is located; or**
 - (B) county in which the property is located, if the property is not located in a municipality;****

files a petition requesting a sheriff's sale with the clerk of the county in which the judgment and decree is filed; and

- (4) the court, after receiving a petition described in subdivision (3), finds that the mortgaged real estate is residential real estate and has been abandoned;**

the clerk of the county in which the judgment and decree is filed shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court. Upon receiving a copy of the judgment and decree under this subsection, the sheriff shall proceed to sell the mortgaged premises as set forth in this section. If, after a sheriff's sale is conducted under this section, any part of the judgment, interest, or costs remain unsatisfied, the judgment holder may not pursue any deficiency judgment against the debtor."

Page 11, line 13, delete "IC 32-30-10.5-9(a)" and insert "**IC 32-30-10.5-8(a)**".

Page 13, delete lines 8 through 10.

Page 13, line 11, delete "9." and insert "**8**".

Page 13, line 13, delete "11(g)" and insert "**10(g)**".

Page 13, line 33, delete "11(h)" and insert "**10(h)**".

Page 14, line 20, delete "10." and insert "**9**".

Page 14, line 24, delete "9(c)" and insert "**8(c)**".

Page 14, line 27, delete "9(c)" and insert "**8(c)**".

Page 14, line 28, delete "9(c)" and insert "**8(c)**".

Page 14, line 31, delete "9(c)" and insert "**8(c)**".

Page 14, line 32, delete "9(c)" and insert "**8(c)**".

Page 14, line 37, delete "9(a)" and insert "**8(a)**".

Page 14, line 39, delete "11." and insert "**10**".

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Page 14, line 42, delete "9(c)" and insert "**8(c)**".

Page 17, line 14, delete "9" and insert "**8**".

Page 17, line 19, delete "12." and insert "**11.**".

Page 17, line 27, delete "9(c)" and insert "**8(c)**".

Renumber all SECTIONS consecutively.

(Reference is to ESB 492 as printed April 10, 2009.)

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