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**FISCAL IMPACT STATEMENT**

**LS 7387**

**BILL NUMBER:** SB 492

**NOTE PREPARED:** May 1, 2009

**BILL AMENDED:** Apr 29, 2009

**SUBJECT:** Residential Mortgage Foreclosures.

**FIRST AUTHOR:** Sen. Tallian

**FIRST SPONSOR:** Rep. Bardon

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:**  GENERAL  
 DEDICATED  
 FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** *Foreclosure Consultant Retention of Records*- The bill 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.

*Prohibitions*- The bill 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. The bill 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.

*Licensing Board Provisions*- The bill specifies that the board that regulates a licensed profession may not approve the surrender of a practitioner's license if the Attorney General's (AG) office: (1) has filed an administrative complaint concerning the practitioner's license; and (2) opposes the surrender. The bill 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.

*Violation of Statutes by Real Estate Salesperson/Broker*- The bill 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.

*Department of Insurance Electronic System-* The bill provides that the electronic system to be established by the Department of Insurance (DOI) 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.

*Presuit Notice-* The bill 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 (IHCDA), 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. The bill 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.

*Right of Settlement Conference Notice-* The bill 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. The bill 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.

*Court Action-* The bill 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 to 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. The bill provides an exception to these conditions and to the need for a settlement conference if the settlement conference would be of limited value based on the result of a prior loss mitigation effort between the creditor and the debtor.

*Settlement Conference Notice-* The bill 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. The bill 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 the court, on the date and at the time specified by the court, unless the parties stipulate otherwise.

*Settlement Conference Conduct-* The bill 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. The bill 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. The bill 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. The bill after a settlement conference has occurred, requires the creditor to notify the court as to whether a foreclosure prevention agreement has been reached. The bill provides that participation in a settlement conference satisfies any mediation or alternative dispute resolution requirement established by court rule.

*Sheriff Sale-* The bill 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.

*Court Fee for Mortgage Foreclosure Actions-* The bill establishes a \$50 court fee for mortgage foreclosure actions that are filed after June 30, 2009, and before January 1, 2013. The bill provides that the fees are to be deposited in the Home Ownership Education Account administered by the authority.

**Effective Date:** Upon passage; July 1, 2009; January 1, 2010.

**Explanation of State Expenditures:** *Presuit Notice-* The Indiana Housing and Community Development Authority would prescribe the form for presuit notices. The effect on IHEDA expenditures to prescribe the form would be negligible.

*Licensing Board Provisions-* The state could experience a cost savings if the Professional Licensing Agency via the Board of Appraisers could require a licensee to recoup all or some of the complaint investigation costs incurred by the Attorney General. This provision could also increase the workload of a professional licensing board if action had to be taken against more practitioners.

*Prohibitions-* By broadening the scope of the Home Loan Practices Act to include consumer credit mortgages, the AG's Homeowner Protection Unit (HPU) could see an increase in civil litigation, which would increase the AG expenditures. The bill does not make an appropriation; therefore, the AG and HPU would have to accomplish additional cases within their existing level of resources.

*Violation of Statutes by Real Estate Salesperson/Broker & Prohibitions-* The Real Estate Commission (REC) could realize an increase in workload if more disciplinary proceedings occur.

*Department of Insurance Electronic System-* The DOI may need to revise the plans for the electronic system required to be in place under current law. It is likely that the proposed change could result in a minor increase in expenditure to accomplish.

**Background Information-** The AG expended \$250 to \$500 per appraisal complaint investigation and reviewed 130 appraiser cases during 2008.

**Explanation of State Revenues:** *Foreclosure Consultant Records-* A foreclosure consultant that fails to retain records as required by the bill could be subject to civil penalties for fraudulent acts if brought by the AG to a court of record. The penalty for an incurable deceptive act under IC 24-5-0.5 is \$500.

*Prohibitions-* The bill changes which persons would not be allowed to engage in a real estate transaction or mortgage transaction. Under current law, the person would have to be engaged in a deceptive act. Under the bill, the person would have to be licensed. This provision could increase the number of persons held in violation of the Home Loan Practices Act, under which a person may be charged with a Class A misdemeanor. If a violator faced violation of the Home Loan Practices Act, a civil penalty could be up to \$10,000 per violation.

*Violation of Statutes by Real Estate Salesperson/Broker & Prohibitions-* A licensed person or person requiring licensure that violates this provision would commit a Class A infraction. The maximum judgment for a Class A infraction is \$10,000, which would be deposited in the state General Fund.

*Court Fee for Mortgage Foreclosure Actions-* This provision would place a \$50 per court filing fee from the circuit court clerks into the Home Ownership Education Account (HOEA). Over the past six years (CY 2002-CY 2007), the annual median number of foreclosure action filings was 32,505. The average annual number of filings over that time period was approximately 34,900. Recent trends have seen a greater number of foreclosure action filings (approximately 40,900 in CY 2006 and 43,800 in CY 2007).

The duration of a high level of foreclosures is unknown, and would depend on market and economic conditions. If it is assumed that filings will return to the median, then the new filing fee could generate approximately \$1.75 M annually. This provision is effective upon passage. The HOEA would also be used to provide mortgage foreclosure counseling and education programs. As of December 24, 2008, the HOEA had collected \$891.50 in fines and penalties. There were no fines or penalties deposited into this account during FY 2008.

**Explanation of Local Expenditures:** *Summary: Court Action-* The court provisions within the bill could slow filings of foreclosure actions. However, if these provisions slowed proceedings once an action was allowed to be filed under the bill, courts could see an increase in their case backlog. [During 2007, trial courts had 43,804 new filings, 42,600 cases disposed, and 23,331 cases pending on December 31, 2007, related to mortgage foreclosure.]

*Sheriff Sale-* This provision would increase the responsibilities to sheriffs conducting sales. The result of this provision on local expenditures would be negligible.

**Explanation of Local Revenues:** *Prohibitions-* The following fee distributions would apply for additional court actions.

If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**State Agencies Affected:** AG, professional licensing boards; IHCD; DOI; REC.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** *2002-2007 Indiana Judicial Service Report*; Matt Light, Deputy Attorney General, 232-4774; State Budget Agency: Auditor's Data.

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