

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 492**

Citations Affected: IC 5-20; IC 24-5.5; IC 24-9; IC 25-1-11; IC 25-34.1-6-2.5; IC 27-7-3-15.5; IC 32-29-7-10; IC 32-30; IC 33-37.

Synopsis: Residential mortgage foreclosures. Conference committee report for ESB 492. 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 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 an exception to these conditions and to the need for a settlement conference if the court finds that a settlement conference would be of limited value based on the result of a prior loss mitigation effort between the creditor and the debtor. 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) Encourage 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. 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. Establishes a \$50 court fee for mortgage foreclosure actions that are filed after June 30, 2009, and before January 1, 2013. Provides that the fees are to be deposited in the home ownership education account administered by the authority. **(This conference committee report does the following: (1) Removes language prohibiting the issuance of a gift card that is subject to an expiration date or a fee. (2) Removes a provision that would require a sheriff's sale of abandoned residential real estate for which a judgment of foreclosure has been issued if: (A) 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; and (B) the municipality or county in which the property is located files a petition with the county clerk requesting a sheriff's sale. (3) With respect to provisions concerning proposed settlement conferences for residential**

mortgages: (A) provides an exception to: (i) the need for a settlement conference; and (ii) specified conditions that must be met before a court may issue a judgment of foreclosure; if the court finds that a settlement conference would be of limited value based on the result of a prior loss mitigation effort between the creditor and the debtor; and (B) provides that the court's notice of a settlement conference must encourage (rather than require) the debtor to contact a mortgage foreclosure counselor before the date of the settlement conference. (4) Adds language establishing a \$50 court fee for mortgage foreclosure actions that are filed after June 30, 2009, and before January 1, 2013.)

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

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 492 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
2 SECTION 1. IC 5-20-1-4, AS AMENDED BY P.L.133-2008,
3 SECTION 1, AND AS AMENDED BY P.L.145-2008, SECTION 3, IS
4 CORRECTED AND AMENDED TO READ AS FOLLOWS
5 [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The authority has all of
6 the powers necessary or convenient to carry out and effectuate the
7 purposes and provisions of this chapter, including the power:
8 (1) to make or participate in the making of construction loans *to*
9 *sponsors of for* multiple family residential housing *that is*
10 *federally assisted or assisted by a government sponsored*
11 *enterprise, such as the Federal National Mortgage Association,*
12 *the Federal Home Loan Mortgage Corporation, or the Federal*
13 *Agricultural Mortgage Corporation, the Federal Home Loan*
14 *Bank, and other similar entities under terms that are approved by*
15 *the authority;*
16 (2) to make or participate in the making of mortgage loans *to*
17 *sponsors of for* multiple family residential housing *that is*
18 *federally assisted or assisted by a government sponsored*
19 *enterprise, such as the Federal National Mortgage Association,*
20 *the Federal Home Loan Mortgage Corporation, or the Federal*
21 *Agricultural Mortgage Corporation, the Federal Home Loan*
22 *Bank, and other similar entities under terms that are approved by*

1 the authority;

2 (3) to purchase or participate in the purchase from mortgage

3 lenders of mortgage loans made to persons of low and moderate

4 income for residential housing;

5 (4) to make loans to mortgage lenders for the purpose of

6 furnishing funds to such mortgage lenders to be used for making

7 mortgage loans for persons and families of low and moderate

8 income. However, the obligation to repay loans to mortgage

9 lenders shall be general obligations of the respective mortgage

10 lenders and shall bear such date or dates, shall mature at such

11 time or times, shall be evidenced by such note, bond, or other

12 certificate of indebtedness, shall be subject to prepayment, and

13 shall contain such other provisions consistent with the purposes

14 of this chapter as the authority shall by rule or resolution

15 determine;

16 (5) to collect and pay reasonable fees and charges in connection

17 with making, purchasing, and servicing of its loans, notes, bonds,

18 commitments, and other evidences of indebtedness;

19 (6) to acquire real property, or any interest in real property, by

20 conveyance, including purchase in lieu of foreclosure, or

21 foreclosure, to own, manage, operate, hold, clear, improve, and

22 rehabilitate such real property and sell, assign, exchange, transfer,

23 convey, lease, mortgage, or otherwise dispose of or encumber

24 such real property where such use of real property is necessary or

25 appropriate to the purposes of the authority;

26 (7) to sell, at public or private sale, all or any part of any mortgage

27 or other instrument or document securing a construction loan, a

28 land development loan, a mortgage loan, or a loan of any type

29 permitted by this chapter;

30 (8) to procure insurance against any loss in connection with its

31 operations in such amounts and from such insurers as it may deem

32 necessary or desirable;

33 (9) to consent, subject to the provisions of any contract with

34 noteholders or bondholders which may then exist, whenever it

35 deems it necessary or desirable in the fulfillment of its purposes

36 to the modification of the rate of interest, time of payment of any

37 installment of principal or interest, or any other terms of any

38 mortgage loan, mortgage loan commitment, construction loan,

39 loan to lender, or contract or agreement of any kind to which the

40 authority is a party;

41 (10) to enter into agreements or other transactions with any

42 federal, state, or local governmental agency for the purpose of

43 providing adequate living quarters for such persons and families

44 in cities and counties where a need has been found for such

45 housing;

46 (11) to include in any borrowing such amounts as may be deemed

47 necessary by the authority to pay financing charges, interest on

48 the obligations (for a period not exceeding the period of

49 construction and a reasonable time thereafter or if the housing is

50 completed, two (2) years from the date of issue of the

51 obligations), consultant, advisory, and legal fees and such other

1 expenses as are necessary or incident to such borrowing;
2 (12) to make and publish rules respecting its lending programs
3 and such other rules as are necessary to effectuate the purposes of
4 this chapter;
5 (13) to provide technical and advisory services to sponsors,
6 builders, and developers of residential housing and to residents
7 and potential residents, including housing selection and purchase
8 procedures, family budgeting, property use and maintenance,
9 household management, and utilization of community resources;
10 (14) to promote research and development in scientific methods
11 of constructing low cost residential housing of high durability;
12 (15) to encourage community organizations to participate in
13 residential housing development;
14 (16) to make, execute, and effectuate any and all agreements or
15 other documents with any governmental agency or any person,
16 corporation, association, partnership, limited liability company,
17 or other organization or entity necessary or convenient to
18 accomplish the purposes of this chapter;
19 (17) to accept gifts, devises, bequests, grants, loans,
20 appropriations, revenue sharing, other financing and assistance
21 and any other aid from any source whatsoever and to agree to, and
22 to comply with, conditions attached thereto;
23 (18) to sue and be sued in its own name, plead and be impleaded;
24 (19) to maintain an office in the city of Indianapolis and at such
25 other place or places as it may determine;
26 (20) to adopt an official seal and alter the same at pleasure;
27 (21) to adopt and from time to time amend and repeal bylaws for
28 the regulation of its affairs and the conduct of its business and to
29 prescribe rules and policies in connection with the performance
30 of its functions and duties;
31 (22) to employ fiscal consultants, engineers, attorneys, real estate
32 counselors, appraisers, and such other consultants and employees
33 as may be required in the judgment of the authority and to fix and
34 pay their compensation from funds available to the authority
35 therefor;
36 (23) notwithstanding IC 5-13, but subject to the requirements of
37 any trust agreement entered into by the authority, to invest:
38 (A) the authority's money, funds, and accounts;
39 (B) any money, funds, and accounts in the authority's custody;
40 and
41 (C) proceeds of bonds or notes;
42 in the manner provided by an investment policy established by
43 resolution of the authority;
44 (24) to make or participate in the making of construction loans,
45 mortgage loans, or both, to individuals, partnerships, limited
46 liability companies, corporations, and organizations for the
47 construction of residential facilities for individuals with a
48 developmental disability or for individuals with a mental illness
49 or for the acquisition or renovation, or both, of a facility to make
50 it suitable for use as a new residential facility for individuals with
51 a developmental disability or for individuals with a mental illness;

1 (25) to make or participate in the making of construction and
 2 mortgage loans to individuals, partnerships, corporations, limited
 3 liability companies, and organizations for the construction,
 4 rehabilitation, or acquisition of residential facilities for children;
 5 (26) to purchase or participate in the purchase of mortgage loans
 6 from:

7 (A) public utilities (as defined in IC 8-1-2-1); or

8 (B) municipally owned gas utility systems organized under
 9 IC 8-1.5;

10 if those mortgage loans were made for the purpose of insulating
 11 and otherwise weatherizing single family residences in order to
 12 conserve energy used to heat and cool those residences;

13 (27) to provide financial assistance to mutual housing
 14 associations (IC 5-20-3) in the form of grants, loans, or a
 15 combination of grants and loans for the development of housing
 16 for low and moderate income families;

17 (28) to service mortgage loans made or acquired by the authority
 18 and to impose and collect reasonable fees and charges in
 19 connection with such servicing;

20 (29) subject to the authority's investment policy, to enter into
 21 swap agreements (as defined in IC 8-9.5-9-4) in accordance with
 22 IC 8-9.5-9-5 and IC 8-9.5-9-7;

23 (30) to promote and foster community revitalization through
 24 community services and real estate development;

25 (31) to coordinate and establish linkages between governmental
 26 and other social services programs to ensure the effective delivery
 27 of services to low income individuals *and families, including*
 28 *individuals or families facing or experiencing homelessness;*

29 (32) to cooperate with local housing officials and plan
 30 commissions in the development of projects that the officials or
 31 commissions have under consideration;

32 (33) to take actions necessary to implement its powers that the
 33 authority determines to be appropriate and necessary to ensure the
 34 availability of state or federal financial assistance; and

35 (34) to administer any program or money designated by the state
 36 or available from the federal government or other sources that is
 37 consistent with the authority's powers and duties.

38 The omission of a power from the list in this subsection does not imply
 39 that the authority lacks that power. The authority may exercise any
 40 power that is not listed in this subsection but is consistent with the
 41 powers listed in this subsection to the extent that the power is not
 42 expressly denied by the Constitution of the State of Indiana or by
 43 another statute.

44 (b) The authority shall *structure and administer any program*
 45 *conducted ensure that a mortgage loan acquired by the authority*
 46 *under subsection (a)(3) or made by a mortgage lender with funds*
 47 *provided by the authority under subsection (a)(4) in order to assure*
 48 *that no mortgage loan shall is not knowingly be made to a person*
 49 *whose adjusted family income, shall exceed as determined by the*
 50 *authority, exceeds one hundred twenty-five percent (125%) of the*
 51 *median income for the geographic area within which the person resides*

1 *and at least forty percent (40%) of the mortgage loans so financed*
 2 *shall be for persons whose adjusted family income shall be below*
 3 *eighty percent (80%) of the median income for such area. involved.*
 4 *However, if the authority determines that additional encouragement is*
 5 *needed for the development of the geographic area involved, a*
 6 *mortgage loan acquired or made under subsection (a)(3) or (a)(4) may*
 7 *be made to a person whose adjusted family income, as determined by*
 8 *the authority, does not exceed one hundred forty percent (140%) of the*
 9 *median income for the geographic area involved. The authority shall*
 10 *establish procedures that the authority determines are appropriate to*
 11 *structure and administer any program conducted under subsection*
 12 *(a)(3) or (a)(4) for the purpose of acquiring or making mortgage loans*
 13 *to persons of low or moderate income. In determining what constitutes*
 14 *low income, moderate income, or median income for purposes of any*
 15 *program conducted under subsection (a)(3) or (a)(4), the authority*
 16 *shall consider:*

17 *(1) the appropriate geographic area in which to measure income*
 18 *levels; and*

19 *(2) the appropriate method of calculating low income, moderate*
 20 *income, or median income levels including:*

21 *(A) sources of;*

22 *(B) exclusions from; and*

23 *(C) adjustments to;*

24 *income.*

25 *(c) In addition to the powers set forth in subsection (a), the*
 26 *authority may, with the proceeds of bonds and notes sold to retirement*
 27 *plans covered by IC 5-10-1.7, structure and administer a program of*
 28 *purchasing or participating in the purchasing from mortgage lenders*
 29 *of mortgage loans made to qualified members of retirement plans and*
 30 *other individuals. The authority shall structure and administer any*
 31 *program conducted under this subsection to assure that:*

32 *(1) each mortgage loan is made as a first mortgage loan for real*
 33 *property:*

34 *(A) that is a single family dwelling, including a condominium*
 35 *or townhouse, located in Indiana;*

36 *(B) for a purchase price of not more than ninety-five thousand*
 37 *dollars (\$95,000);*

38 *(C) to be used as the purchaser's principal residence; and*

39 *(D) for which the purchaser has made a down payment in an*
 40 *amount determined by the authority;*

41 *(2) no mortgage loan exceeds seventy-five thousand dollars*
 42 *(\$75,000);*

43 *(3) any bonds or notes issued which are backed by mortgage*
 44 *loans purchased by the authority under this subsection shall be*
 45 *offered for sale to the retirement plans covered by IC 5-10-1.7;*
 46 *and*

47 *(4) qualified members of a retirement plan shall be given*
 48 *preference with respect to the mortgage loans that in the*
 49 *aggregate do not exceed the amount invested by their retirement*
 50 *plan in bonds and notes issued by the authority that are backed*
 51 *by mortgage loans purchased by the authority under this*

1 *subsection.*

2 *(d) As used in this section, "a qualified member of a retirement*
3 *plan" means an active or retired member:*

4 *(1) of a retirement plan covered by IC 5-10-1.7 that has invested*
5 *in bonds and notes issued by the authority that are backed by*
6 *mortgage loans purchased by the authority under subsection (c);*
7 *and*

8 *(2) who for a minimum of two (2) years preceding the member's*
9 *application for a mortgage loan has:*

10 *(A) been a full-time state employee, teacher, judge, police*
11 *officer, or firefighter;*

12 *(B) been a full-time employee of a political subdivision*
13 *participating in the public employees' retirement fund;*

14 *(C) been receiving retirement benefits from the retirement*
15 *plan; or*

16 *(D) a combination of employment and receipt of retirement*
17 *benefits equaling at least two (2) years.*

18 ~~(e)~~ (c) The authority, when directed by the governor, shall
19 administer programs and funds under 42 U.S.C. 1437 et seq.

20 ~~(f)~~ (d) The authority shall identify, promote, assist, and fund:

21 (1) home ownership education programs; **and**

22 (2) **mortgage foreclosure counseling and education programs**
23 **under IC 5-20-6;**

24 conducted throughout Indiana by nonprofit counseling agencies **that**
25 **the authority has certified, by the authority, or by any other public,**
26 **private, or nonprofit entity in partnership with a nonprofit agency**
27 **that the authority has certified,** using funds appropriated under
28 section 27 of this chapter. The attorney general and the entities listed
29 in IC 4-6-12-4(a)(1) through IC 4-6-12-4(a)(10) shall cooperate with
30 the authority in implementing this subsection.

31 ~~(g)~~ (e) *The authority shall:*

32 *(1) oversee and encourage a regional homeless delivery system*
33 *that:*

34 *(A) considers the need for housing and support services;*

35 *(B) implements strategies to respond to gaps in the delivery*
36 *system; and*

37 *(C) ensures individuals and families are matched with optimal*
38 *housing solutions;*

39 *(2) facilitate the dissemination of information to assist individuals*
40 *and families accessing local resources, programs, and services*
41 *related to homelessness, housing, and community development;*
42 *and*

43 *(3) each year, estimate and reasonably determine the number of*
44 *the following:*

45 *(A) Individuals in Indiana who are homeless.*

46 *(B) Individuals in Indiana who are homeless and less than*
47 *eighteen (18) years of age.*

48 *(C) Individuals in Indiana who are homeless and not residents*
49 *of Indiana.*

50 SECTION 2. IC 5-20-1-27, AS AMENDED BY P.L.145-2008,
51 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

1 UPON PASSAGE]: Sec. 27. (a) The home ownership education
2 account within the state general fund is established to support: ~~the~~

3 (1) home ownership education programs established under section
4 4(d) of this chapter; **and**

5 (2) **mortgage foreclosure counseling and education programs**
6 **established under IC 5-20-6-2.**

7 The account is administered by the authority.

8 (b) The home ownership education account consists of:

9 (1) **court** fees collected under ~~IC 24-9-9~~; **IC 33-37-5-30 (before**
10 **its expiration on January 1, 2013)**; and

11 (2) civil penalties imposed and collected under:

12 (A) IC 6-1.1-12-43(g)(2)(B); or

13 (B) IC 27-7-3-15.5(e).

14 (c) The expenses of administering the home ownership education
15 account shall be paid from money in the account.

16 (d) The treasurer of state shall invest the money in the home
17 ownership education account not currently needed to meet the
18 obligations of the account in the same manner as other public money
19 may be invested.

20 SECTION 3. IC 5-20-6-3, AS ADDED BY P.L.176-2007,
21 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 UPON PASSAGE]: Sec. 3. **In addition to using money provided for**
23 **the program from court fees under IC 33-37-5-30 (before its**
24 **expiration on January 1, 2013)**, the authority may solicit
25 contributions and grants from the private sector, nonprofit entities, and
26 the federal government to assist in carrying out the purposes of this
27 chapter.

28 SECTION 4. IC 24-5.5-1-1, AS ADDED BY P.L.209-2007,
29 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2009]: Sec. 1. **Except for IC 24-5.5-3-1**, this article does not
31 apply to the following:

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

36 (2) The Federal National Mortgage Association, the Federal
37 Home Loan Mortgage Corporation, or a Federal Home Loan
38 Bank.

39 (3) A department or agency of the United States or of Indiana.

40 (4) A person that is servicing or enforcing a loan that it owns.

41 (5) A person that is servicing a loan:

42 (A) for a person described in subdivisions (1) through (4); ~~of~~
43 ~~this section~~; or

44 (B) insured by the Department of Housing and Urban
45 Development or guaranteed by the Veterans Administration.

46 (6) An attorney licensed to practice law in Indiana who is
47 representing a mortgagor.

48 SECTION 5. IC 24-5.5-3-1, AS ADDED BY P.L.209-2007,
49 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
50 JULY 1, 2009]: Sec. 1. In addition to any other notice required by law,
51 a mortgagee, or the mortgagee's assignee, that proceeds under

1 IC 32-30-10 to foreclose a mortgage or deed of trust shall, ~~at the time~~
 2 ~~of not later than thirty (30) days before~~ filing the complaint in the
 3 action, provide the following written notice, **on a form prescribed by**
 4 **the Indiana housing and community development authority under**
 5 **IC 32-30-10.5-8(a)**, to the mortgagor in a statement printed in at least
 6 14 point boldface type:

7 "NOTICE REQUIRED BY STATE LAW

8 Mortgage foreclosure is a complex process. People may
 9 approach you about "saving" your home. You should be
 10 careful about any such promises. There are government
 11 agencies and nonprofit organizations you may contact for
 12 helpful information about the foreclosure process. For the
 13 name and telephone number of an organization near you,
 14 please call the Indiana housing and community development
 15 authority."

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

19 SECTION 6. IC 24-5.5-5-7.2 IS ADDED TO THE INDIANA
 20 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 21 **[EFFECTIVE JULY 1, 2009]: Sec. 7.2. A foreclosure consultant shall**
 22 **retain all records and documents, including the foreclosure**
 23 **consultant contract, related to services performed on behalf of a**
 24 **homeowner for at least three (3) years after the termination or**
 25 **conclusion of the foreclosure consultant contract entered into by**
 26 **the foreclosure consultant and the homeowner.**

27 SECTION 7. IC 24-9-1-1, AS AMENDED BY HEA 1176-2009,
 28 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2009]: Sec. 1. Except for IC 24-9-3-7(c)(3), ~~and~~
 30 IC 24-9-3-7(c)(4), **and IC 24-9-3-7(c)(5)**, this article does not apply to:

31 (1) a loan made or acquired by a person organized or chartered
 32 under the laws of this state, any other state, or the United States
 33 relating to banks, trust companies, savings associations, savings
 34 banks, credit unions, or industrial loan and investment companies;
 35 or

36 (2) a loan:

37 (A) that can be purchased by the Federal National Mortgage
 38 Association, the Federal Home Loan Mortgage Association, or
 39 the Federal Home Loan Bank;

40 (B) to be insured by the United States Department of Housing
 41 and Urban Development;

42 (C) to be guaranteed by the United States Department of
 43 Veterans Affairs;

44 (D) to be made or guaranteed by the United States Department
 45 of Agriculture Rural Housing Service;

46 (E) to be funded by the Indiana housing and community
 47 development authority; or

48 (F) with a principal amount that exceeds the conforming loan
 49 size limit for a single family dwelling as established by the
 50 Federal National Mortgage Association.

51 SECTION 8. IC 24-9-3-7, AS AMENDED BY HEA 1176-2009,

1 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2009]: Sec. 7. (a) As used in this section, "mortgage
3 transaction" includes the following:

4 (1) A home loan subject to this article.

5 (2) A loan described in IC 24-9-1-1 **that is secured by a**
6 **mortgage or deed of trust on real estate in Indiana on which**
7 **there is located or will be located a structure or structures:**

8 (A) **designed primarily for occupancy of one (1) to four (4)**
9 **families; and**

10 (B) **that is or will be occupied by a borrower as the**
11 **borrower's principal dwelling.**

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

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

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

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

26 (A) that is located in Indiana;

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

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

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

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

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

39 (1) that is located in Indiana;

40 (2) upon which there is a dwelling; and

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

42 (c) A person may not:

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

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

49 (3) **engage in a deceptive act in connection with a mortgage**
50 **transaction or a real estate transaction;**

51 ~~(4)~~ (4) engage in, or solicit to engage in, a real estate transaction

1 or a mortgage transaction without a permit or license required by
 2 law; or
 3 ~~(4)~~ **(5)** with respect to a real estate transaction or a mortgage
 4 transaction, represent that:

5 (A) the transaction has:

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

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

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

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

16 SECTION 9. IC 24-9-3-8, AS AMENDED BY HEA 1176-2009,
 17 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2009]: Sec. 8. A person seeking to enforce section 7(c)(3), ~~or~~
 19 7(c)(4), **or 7(c)(5)** of this chapter may not knowingly or intentionally
 20 intimidate, coerce, or harass another person.

21 SECTION 10. IC 24-9-5-4, AS AMENDED BY P.L.3-2005,
 22 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2009]: Sec. 4. (a) **This section does not apply to a violation**
 24 **of IC 24-9-3-7(c)(4) or IC 24-9-3-7(c)(5).** A person who violates this
 25 article is liable to a person who is a party to the home loan transaction
 26 that gave rise to the violation for the following:

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

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

32 (3) Costs and reasonable attorney's fees.

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

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

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

51 (e) Before bringing an action regarding an alleged deceptive act

1 under this chapter, a person must:

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

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

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

12 SECTION 11. IC 24-9-8-1 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. A person who
 14 knowingly or intentionally violates this article commits:

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

21 SECTION 12. IC 24-9-8-3 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **This section does
 23 not apply to a violation of IC 24-9-7-3(c)(4) by a person required
 24 to be licensed by the department of financial institutions.** The
 25 attorney general may bring an action to enjoin a violation of this article.

26 A court in which the action is brought may:

- 27 (1) issue an injunction;
 28 (2) order a person to make restitution;
 29 (3) order a person to reimburse the state for reasonable costs of
 30 the attorney general's investigation and prosecution of the
 31 violation of this article; and
 32 (4) impose a civil penalty of not more than ten thousand dollars
 33 (\$10,000) per violation.

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

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

39 SECTION 13. IC 25-1-11-17 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. (a) **Except as
 41 provided in subsection (b)**, a practitioner may petition the board to
 42 accept the surrender of the practitioner's license instead of having a
 43 hearing before the board. The practitioner may not surrender the
 44 practitioner's license without the written approval of the board, and the
 45 board may impose any conditions appropriate to the surrender or
 46 reinstatement of a surrendered license.

47 (b) **The board may not approve the surrender of a practitioner's
 48 license under subsection (a) if the office of the attorney general:**

- 49 (1) **has filed an administrative complaint concerning the
 50 practitioner's license; and**
 51 (2) **opposes the surrender of the practitioner's license.**

1 SECTION 14. IC 25-1-11-18, AS AMENDED BY P.L.194-2005,
 2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to
 4 disciplinary sanctions may be required by a board to pay the costs of
 5 the proceeding. The practitioner's ability to pay shall be considered
 6 when costs are assessed. If the practitioner fails to pay the costs, a
 7 suspension may not be imposed solely upon the practitioner's inability
 8 to pay the amount assessed. These costs are limited to costs for the
 9 following:

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

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

21 SECTION 15. IC 25-34.1-6-2.5 IS ADDED TO THE INDIANA
 22 CODE AS A NEW SECTION TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2009]: **Sec. 2.5. (a) A violation of:**

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

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

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

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

34 SECTION 16. IC 27-7-3-15.5, AS ADDED BY P.L.145-2008,
 35 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JANUARY 1, 2010]: Sec. 15.5. (a) This section applies to a transaction
 37 that:

- 38 (1) is a single family residential:
 - 39 (A) first lien purchase money mortgage transaction; or
 - 40 (B) refinancing transaction; and
- 41 (2) is closed after December 31, 2009.

42 (b) Not later than September 1, 2009, the department shall establish
 43 and maintain an electronic system for the collection and storage of the
 44 following information concerning any of the following persons that
 45 have participated in or assisted with a transaction to which this section
 46 applies, or that will participate in or assist with a transaction to which
 47 this section applies:

- 48 (1) The name and license number (under IC 23-2-5) of each loan
 49 brokerage business involved in the transaction.
- 50 (2) The name and registration number (under IC 23-2-5) of each
 51 originator involved in the transaction.

- 1 (3) The name and license number (under IC 25-34.1) of each:
 2 (A) principal broker; and
 3 (B) salesperson or broker-salesperson, if any;
 4 involved in the transaction.
- 5 (4) The:
 6 (A) name of; and
 7 (B) code assigned by the National Association of Insurance
 8 Commissioners (NAIC) to;
 9 each title insurance underwriter involved in the transaction.
- 10 (5) The name and license number (under IC 27-1-15.6) of each
 11 title insurance agency and agent involved in the transaction as a
 12 closing agent (as defined in IC 6-1.1-12-43(a)(2)).
- 13 (6) The name and:
 14 (A) license or certificate number (under IC 25-34.1-3-8) of
 15 each licensed or certified real estate appraiser; or
 16 (B) license number (under IC 25-34.1) of each broker;
 17 who appraises the property that is the subject of the transaction.
- 18 (7) The name of the mortgagee and, if the mortgagee is required
 19 to be licensed under:
 20 (A) IC 24-4.4; or
 21 (B) IC 24-4.5-3-502;
 22 the license number of the mortgagee.
- 23 **(8) In the case of a first lien purchase money mortgage**
 24 **transaction, the name of the seller of the property that is the**
 25 **subject of the transaction.**
- 26 **(9) In the case of a first lien purchase money mortgage**
 27 **transaction, the name of the buyer of the property that is the**
 28 **subject of the transaction.**
- 29 **(10) The:**
 30 **(A) name; and**
 31 **(B) license number, certificate number, registration**
 32 **number, or other code, as appropriate;**
 33 **of any other person that participates in or assists with a**
 34 **transaction to which this section applies, as the department**
 35 **may prescribe.**
- 36 (c) The system established by the department under this section
 37 must include a form that:
 38 (1) is uniformly accessible in an electronic format to the closing
 39 agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and
 40 (2) allows the closing agent to do the following:
 41 (A) Input information identifying the property that is the
 42 subject of the transaction by lot or parcel number, street
 43 address, or some other means of identification that the
 44 department determines:
 45 (i) is sufficient to identify the property; and
 46 (ii) is determinable by the closing agent.
 47 (B) Subject to subsection (d) and to the extent determinable,
 48 input the information described in subsection (b) with respect
 49 to each person described in subsection (b) that participates in
 50 or assists with the transaction.
 51 (C) Respond to the following questions:

- 1 (i) "On what date did you receive the closing instructions
2 from the creditor in the transaction?"
- 3 (ii) "On what date did the transaction close?"
- 4 (D) Submit the form electronically to a data base maintained
5 by the department.
- 6 (d) Not later than the time of the closing, each person described in
7 subsection (b), **other than a person described in subsection (b)(8) or**
8 **(b)(9)**, shall provide to the closing agent in the transaction the person's:
9 (1) legal name; and
10 (2) license number, certificate number, registration number, or
11 NAIC code, as appropriate;
- 12 to allow the closing agent to comply with subsection (c)(2)(B). A
13 person described in subsection (b)(7) shall provide the information
14 required by this subsection for any person described in subsection
15 (b)(6) that appraises the property that is the subject of the transaction
16 on behalf of the person described in subsection (b)(7). A person
17 described in subsection (b)(3)(B) who is involved in the transaction
18 may provide the information required by this subsection for a person
19 described in subsection (b)(3)(A) that serves as the principal broker for
20 the person described in subsection (b)(3)(B). **In the case of a first lien**
21 **purchase money mortgage transaction, the closing agent shall**
22 **determine the information described in subsection (b)(8) and (b)(9)**
23 **from the HUD-1 settlement statement.**
- 24 (e) **Except for a person described in subsection (b)(8) or (b)(9)**,
25 a person described in subsection (b) who fails to comply with
26 subsection (d) is subject to a civil penalty of one hundred dollars
27 (\$100) for each closing with respect to which the person fails to comply
28 with subsection (d). The penalty:
29 (1) may be enforced by the state agency that has administrative
30 jurisdiction over the person in the same manner that the agency
31 enforces the payment of fees or other penalties payable to the
32 agency; and
33 (2) shall be paid into the home ownership education account
34 established by IC 5-20-1-27.
- 35 (f) Subject to subsection (g), the department shall make the
36 information stored in the data base described in subsection (c)(2)(D)
37 accessible to:
38 (1) each entity described in IC 4-6-12-4; and
39 (2) the homeowner protection unit established under IC 4-6-12-2.
- 40 (g) The department, a closing agent who submits a form under
41 subsection (c), each entity described in IC 4-6-12-4, and the
42 homeowner protection unit established under IC 4-6-12-2 shall exercise
43 all necessary caution to avoid disclosure of any information:
44 (1) concerning a person described in subsection (b), including the
45 person's license, registration, or certificate number; and
46 (2) contained in the data base described in subsection (c)(2)(D);
47 except to the extent required or authorized by state or federal law.
- 48 (h) The department may adopt rules under IC 4-22-2 to implement
49 this section. Rules adopted by the department under this subsection
50 may establish procedures for the department to:
51 (1) establish;

- 1 (2) collect; and
 2 (3) change as necessary;
 3 an administrative fee to cover the department's expenses in establishing
 4 and maintaining the electronic system required by this section.
 5 (i) If the department adopts a rule under IC 4-22-2 to establish an
 6 administrative fee to cover the department's expenses in establishing
 7 and maintaining the electronic system required by this section, as
 8 allowed under subsection (h), the department may:
 9 (1) require the fee to be paid:
 10 (A) to the closing agent responsible for inputting the
 11 information and submitting the form described in subsection
 12 (c)(2); and
 13 (B) by the borrower in the transaction;
 14 (2) allow the closing agent described in subdivision (1)(A) to
 15 retain a part of the fee collected to cover the closing agent's costs
 16 in inputting the information and submitting the form described in
 17 subsection (c)(2); and
 18 (3) require the closing agent to pay the remainder of the fee
 19 collected to the department for deposit in the title insurance
 20 enforcement fund established by IC 27-7-3.6-1, for the
 21 department's use in establishing and maintaining the electronic
 22 system required by this section.

23 SECTION 17. IC 32-29-7-10 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) Immediately
 25 after a foreclosure sale under this chapter, the sheriff shall:

- 26 (1) execute and deliver to the purchaser; **and**
 27 (2) **except as provided in subsection (b), record with the**
 28 **recorder of the county in which the premises are located;**

29 a deed of conveyance for the premises, which must be valid to convey
 30 all the right, title, and interest held or claimed by all of the parties to
 31 the action and all persons claiming under them. The sheriff shall file a
 32 return with the clerk of the court.

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

38 SECTION 18. IC 32-30-10-3 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **Subject to**
 40 **IC 32-30-10.5 with respect to mortgage transactions described in**
 41 **IC 32-30-10.5-5**, if a mortgagor defaults in the performance of any
 42 condition contained in a mortgage, the mortgagee or the mortgagee's
 43 assigns may proceed in the circuit court of the county where the real
 44 estate is located to foreclose the equity of redemption contained in the
 45 mortgage.

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

50 SECTION 19. IC 32-30-10-10 IS AMENDED TO READ AS
 51 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. A plaintiff may not:

- 1 (1) proceed to foreclose the mortgagee's mortgage:
 2 (A) while the plaintiff is prosecuting any other action for the
 3 same debt or matter that is secured by the mortgage; or
 4 (B) while the plaintiff is seeking to obtain execution of any
 5 judgment in any other action; or
 6 (C) **until the notice under IC 32-30-10.5-8(a) has been sent,**
 7 **if required, in the case of a mortgage transaction described**
 8 **in IC 32-30-10.5-5; or**
 9 (2) prosecute any other action for the same matter while the
 10 plaintiff is foreclosing the mortgagee's mortgage or prosecuting
 11 a judgment of foreclosure.

12 SECTION 20. IC 32-30-10.5 IS ADDED TO THE INDIANA
 13 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2009]:

15 **Chapter 10.5. Foreclosure Prevention Agreements for**
 16 **Residential Mortgages**

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

- 18 (1) **Indiana faces a serious threat to its state economy and to**
 19 **the economies of its political subdivisions because of Indiana's**
 20 **high rate of residential mortgage foreclosures, which**
 21 **constitutes an emergency.**
 22 (2) **Indiana's high rate of residential mortgage foreclosures**
 23 **has adversely affected property values in Indiana, and may**
 24 **have an even greater adverse effect on property values if the**
 25 **foreclosure rate continues to rise.**
 26 (3) **It is in the public interest for the state to modify the**
 27 **foreclosure process to encourage mortgage modification**
 28 **alternatives.**

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

- 32 (1) **requiring early contact and communications among**
 33 **creditors, their authorized agents, and debtors in order to**
 34 **engage in negotiations that could avoid foreclosure; and**
 35 (2) **facilitating the modification of residential mortgages in**
 36 **appropriate circumstances.**

37 **Sec. 2. (a) As used in this chapter, "creditor" means a person:**

- 38 (1) **that regularly engages in the extension of mortgages that**
 39 **are subject to a credit service charge or loan finance charge,**
 40 **as applicable, or are payable by written agreement in more**
 41 **than four (4) installments (not including a down payment);**
 42 **and**
 43 (2) **to which the obligation is initially payable, either on the**
 44 **face of the note or contract, or by agreement if there is not a**
 45 **note or contract.**

46 (b) **The term includes a mortgage servicer.**

47 **Sec. 3. As used in this chapter, "debtor", with respect to a**
 48 **mortgage, refers to the maker of the note secured by the mortgage.**

49 **Sec. 4. As used in this chapter, "foreclosure prevention**
 50 **agreement" means a written agreement that:**

- 51 (1) **is executed by both the creditor and the debtor; and**

- 1 **(2) offers the debtor an individualized plan that may include:**
 2 **(A) a temporary forbearance with respect to the mortgage;**
 3 **(B) a reduction of any arrearage owed by the debtor;**
 4 **(C) a reduction of the interest rate that applies to the**
 5 **mortgage;**
 6 **(D) a repayment plan;**
 7 **(E) a deed in lieu of foreclosure;**
 8 **(F) reinstatement of the mortgage upon the debtor's**
 9 **payment of any arrearage;**
 10 **(G) a sale of the property; or**
 11 **(H) any loss mitigation arrangement or debtor relief plan**
 12 **established by federal law, rule, regulation, or guideline.**

13 **Sec. 5. As used in this chapter, "mortgage" means a loan in**
 14 **which a first mortgage, or a land contract that constitutes a first**
 15 **lien, is created or retained against land upon which there is a**
 16 **dwelling that is or will be used by the debtor primarily for**
 17 **personal, family, or household purposes.**

18 **Sec. 6. As used in this chapter, "mortgage foreclosure**
 19 **counselor" means a foreclosure prevention counselor who is part**
 20 **of, or has been trained or certified by, the Indiana Foreclosure**
 21 **Prevention Network.**

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

- 24 **(1) a debtor in a mortgage; or**
 25 **(2) the debtor's successor in interest;**
 26 **has been instructed to send payments on the mortgage.**

27 **Sec. 8. (a) This section applies to a foreclosure action that is filed**
 28 **after June 30, 2009. Except as provided in subsection (e) and**
 29 **section 10(g) of this chapter, not later than thirty (30) days before**
 30 **a creditor files an action for foreclosure, the creditor shall send to**
 31 **the debtor by certified mail a presuit notice on a form prescribed**
 32 **by the Indiana housing and community development authority**
 33 **created by IC 5-20-1-3. In prescribing the form required by this**
 34 **section, the Indiana housing and community development**
 35 **authority shall include in the notice the statement set forth in**
 36 **IC 24-5.5-3-1. In addition, the notice required by this subsection**
 37 **must:**

- 38 **(1) inform the debtor that:**
 39 **(A) the debtor is in default; and**
 40 **(B) the debtor is encouraged to obtain assistance from a**
 41 **mortgage foreclosure counselor; and**
 42 **(2) provide the contact information for the Indiana**
 43 **Foreclosure Prevention Network.**

- 44 **(b) The notice required by subsection (a) shall be sent to:**
 45 **(1) the address of the mortgaged property; or**
 46 **(2) the last known mailing address of the debtor if the**
 47 **creditor's records indicate that the mailing address of the**
 48 **debtor is other than the address of the mortgaged property.**

49 **If the creditor provides evidence that the notice required by**
 50 **subsection (a) was sent by certified mail, return receipt requested,**
 51 **and as prescribed by this subsection, it is not necessary that the**

1 debtor accept receipt of the notice for an action to proceed as
2 allowed under this chapter.

3 (c) Except as provided in subsection (e) and section 10(g) of this
4 chapter, if a creditor files an action to foreclose a mortgage, the
5 creditor shall include with the complaint served on the debtor a
6 notice that informs the debtor of the debtor's right to participate
7 in a settlement conference. The notice must be in a form prescribed
8 by the Indiana housing and community development authority
9 created by IC 5-20-1-3. The notice must inform the debtor that the
10 debtor may schedule a settlement conference by notifying the
11 court, not later than thirty (30) days after the notice is served, of
12 the debtor's intent to participate in a settlement conference.

13 (d) In a foreclosure action filed under IC 32-30-10-3 after June
14 30, 2009, the creditor shall attach to the complaint filed with the
15 court a copy of the notices sent to the debtor under subsections (a)
16 and (c).

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

- 19 (1) the loan is secured by a dwelling that is not the debtor's
20 primary residence;
- 21 (2) the loan has been the subject of a prior foreclosure
22 prevention agreement under this chapter and the debtor has
23 defaulted with respect to the terms of that foreclosure
24 prevention agreement; or
- 25 (3) bankruptcy law prohibits the creditor from participating
26 in a settlement conference under this chapter with respect to
27 the loan.

28 **Sec. 9. (a)** Except as provided in subsection (b), after June 30,
29 2009, a court may not issue a judgment of foreclosure under
30 IC 32-30-10 on a mortgage subject to this chapter unless all of the
31 following apply:

- 32 (1) The creditor has given the notice required under section
33 8(c) of this chapter.
- 34 (2) The debtor either:
 - 35 (A) does not contact the court within the thirty (30) day
36 period described in section 8(c) of this chapter to schedule
37 a settlement conference under section 8(c) of this chapter;
38 or
 - 39 (B) contacts the court within the thirty (30) day period
40 described in section 8(c) of this chapter to schedule a
41 conference under section 8(c) of this chapter and, upon
42 conclusion of the conference, the parties are unable to
43 reach agreement on the terms of a foreclosure prevention
44 agreement.
- 45 (3) At least sixty (60) days have elapsed since the date the
46 notice required by section 8(a) of this chapter was sent, unless
47 the mortgaged property is abandoned.

48 (b) If the court finds that a settlement conference would be of
49 limited value based on the result of a prior loss mitigation effort
50 between the creditor and the debtor:

- 51 (1) a settlement conference is not required under this chapter;

1 **and**
 2 **(2) the conditions set forth in subsection (a) do not apply, and**
 3 **the foreclosure action may proceed as otherwise allowed by**
 4 **law.**

5 **Sec. 10. (a) Unless a settlement conference is not required under**
 6 **this chapter, the court shall issue a notice of a settlement**
 7 **conference if the debtor contacts the court to schedule a settlement**
 8 **conference as described in section 8(c) of this chapter. The court's**
 9 **notice of a settlement conference must do the following:**

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

16 **(2) Encourage the debtor to contact a mortgage foreclosure**
 17 **counselor before the date of the settlement conference. The**
 18 **notice must provide the contact information for the Indiana**
 19 **Foreclosure Prevention Network.**

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

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

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

32 **(4) Require the creditor to bring to the settlement conference**
 33 **the following transaction history for the mortgage:**

34 **(A) A copy of the original note and mortgage.**

35 **(B) A payment record substantiating the default.**

36 **(C) An itemization of all amounts claimed by the creditor**
 37 **as being owed on the mortgage.**

38 **(D) Any other documentation that the court determines is**
 39 **needed.**

40 **(5) Inform the parties that:**

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

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

47 **(6) Inform the parties that the settlement conference will be**
 48 **conducted at the county courthouse, or at another place**
 49 **designated by the court, on the date and time specified in the**
 50 **notice under subdivision (1) unless the parties submit to the**
 51 **court a stipulation to:**

1 (A) modify the date, time, and place of the settlement
2 conference; or

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

5 If the parties stipulate under clause (B) to conduct the
6 settlement conference by telephone, the parties shall ensure
7 the availability of any technology needed to allow
8 simultaneous participation in the settlement conference by all
9 participants.

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

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

20 (d) The creditor shall ensure that any person representing the
21 creditor:

22 (1) at a settlement conference scheduled under subsection (a);
23 or

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

27 has authority to represent the creditor in negotiating a foreclosure
28 prevention agreement with the debtor.

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

39 (f) If, as a result of a settlement conference held under this
40 section, the debtor and the creditor are unable to agree on the
41 terms of a foreclosure prevention agreement:

42 (1) the creditor shall, not later than seven (7) business days
43 after the conclusion of the settlement conference, file with the
44 court a notice indicating that the settlement conference held
45 under this section has concluded and a foreclosure prevention
46 agreement was not reached; and

47 (2) the foreclosure action filed by the creditor may proceed as
48 otherwise allowed by law.

49 (g) If:

50 (1) a foreclosure is dismissed by the creditor under subsection

51 (e) after a foreclosure prevention agreement is reached; and

1 **(2) a default in the terms of the foreclosure prevention**
 2 **agreement later occurs;**
 3 **the creditor or its assigns may bring a foreclosure action under**
 4 **IC 32-30-10-3 without sending the notices described in section 8 of**
 5 **this chapter.**

6 **(h) Participation in a settlement conference under this section**
 7 **satisfies any mediation or alternative dispute resolution**
 8 **requirement established by court rule.**

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

14 **(b) In a mortgage foreclosure action to which this section**
 15 **applies, the court having jurisdiction of the action shall serve**
 16 **notice of the availability of a settlement conference under section**
 17 **8(c) of this chapter.**

18 SECTION 21. IC 32-30-12-1 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Except as provided**
 20 **in IC 32-30-10.5 for mortgage transactions described in**
 21 **IC 32-30-10.5-5, it is not necessary in any action upon a mortgage or**
 22 **lien to give time for:**

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

25 Final judgment may be given in the first instance.

26 SECTION 22. IC 33-37-4-4, AS AMENDED BY P.L.174-2006,
 27 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 UPON PASSAGE]: Sec. 4. (a) The clerk shall collect a civil costs fee
 29 of one hundred dollars (\$100) from a party filing a civil action. This
 30 subsection does not apply to the following civil actions:

- 31 (1) Proceedings to enforce a statute defining an infraction under
 32 IC 34-28-5 (or IC 34-4-32 before its repeal).
- 33 (2) Proceedings to enforce an ordinance under IC 34-28-5 (or
 34 IC 34-4-32 before its repeal).
- 35 (3) Proceedings in juvenile court under IC 31-34 or IC 31-37.
- 36 (4) Proceedings in paternity under IC 31-14.
- 37 (5) Proceedings in small claims court under IC 33-34.
- 38 (6) Proceedings in actions described in section 7 of this chapter.

39 (b) In addition to the civil costs fee collected under this section, the
 40 clerk shall collect the following fees, if they are required under
 41 IC 33-37-5:

- 42 (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or
 43 IC 33-37-5-4).
- 44 (2) A support and maintenance fee (IC 33-37-5-6).
- 45 (3) A document storage fee (IC 33-37-5-20).
- 46 (4) An automated record keeping fee (IC 33-37-5-21).
- 47 (5) A public defense administration fee (IC 33-37-5-21.2).
- 48 (6) A judicial insurance adjustment fee (IC 33-37-5-25).
- 49 (7) A judicial salaries fee (IC 33-37-5-26).
- 50 (8) A court administration fee (IC 33-37-5-27).
- 51 (9) A service fee (IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2)).

1 (10) A garnishee service fee (IC 33-37-5-28(b)(3) or
2 IC 33-37-5-28(b)(4)).

3 **(11) For a mortgage foreclosure action filed after June 30,**
4 **2009, and before January 1, 2013, a mortgage foreclosure**
5 **counseling and education fee (IC 33-37-5-30 (before its**
6 **expiration on January 1, 2013)).**

7 SECTION 23. IC 33-37-5-30 IS ADDED TO THE INDIANA
8 CODE AS A NEW SECTION TO READ AS FOLLOWS
9 [EFFECTIVE UPON PASSAGE]: **Sec. 30. (a) This section applies to**
10 **a civil action in which the clerk is required to collect a civil costs**
11 **fee under IC 33-37-4-4(a). The clerk shall collect a fifty dollar (\$50)**
12 **mortgage foreclosure counseling and education fee from a party**
13 **filing an action to foreclose a mortgage after June 30, 2009, and**
14 **before January 1, 2013.**

15 **(b) This section expires January 1, 2013.**

16 SECTION 24. IC 33-37-7-2, AS AMENDED BY P.L.122-2008,
17 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 UPON PASSAGE]: Sec. 2. (a) The clerk of a circuit court shall
19 distribute semiannually to the auditor of state as the state share for
20 deposit in the state general fund seventy percent (70%) of the amount
21 of fees collected under the following:

- 22 (1) IC 33-37-4-1(a) (criminal costs fees).
- 23 (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- 24 (3) IC 33-37-4-3(a) (juvenile costs fees).
- 25 (4) IC 33-37-4-4(a) (civil costs fees).
- 26 (5) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
- 27 (6) IC 33-37-4-7(a) (probate costs fees).
- 28 (7) IC 33-37-5-17 (deferred prosecution fees).

29 (b) The clerk of a circuit court shall distribute semiannually to the
30 auditor of state for deposit in the state user fee fund established in
31 IC 33-37-9-2 the following:

- 32 (1) Twenty-five percent (25%) of the drug abuse, prosecution,
33 interdiction, and correction fees collected under
34 IC 33-37-4-1(b)(5).
- 35 (2) Twenty-five percent (25%) of the alcohol and drug
36 countermeasures fees collected under IC 33-37-4-1(b)(6),
37 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- 38 (3) Fifty percent (50%) of the child abuse prevention fees
39 collected under IC 33-37-4-1(b)(7).
- 40 (4) One hundred percent (100%) of the domestic violence
41 prevention and treatment fees collected under IC 33-37-4-1(b)(8).
- 42 (5) One hundred percent (100%) of the highway work zone fees
43 collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).
- 44 (6) One hundred percent (100%) of the safe schools fee collected
45 under IC 33-37-5-18.
- 46 (7) One hundred percent (100%) of the automated record keeping
47 fee (IC 33-37-5-21).

48 (c) The clerk of a circuit court shall distribute monthly to the county
49 auditor the following:

- 50 (1) Seventy-five percent (75%) of the drug abuse, prosecution,
51 interdiction, and correction fees collected under

- 1 IC 33-37-4-1(b)(5).
- 2 (2) Seventy-five percent (75%) of the alcohol and drug
3 countermeasures fees collected under IC 33-37-4-1(b)(6),
4 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- 5 The county auditor shall deposit fees distributed by a clerk under this
6 subsection into the county drug free community fund established under
7 IC 5-2-11.
- 8 (d) The clerk of a circuit court shall distribute monthly to the county
9 auditor fifty percent (50%) of the child abuse prevention fees collected
10 under IC 33-37-4-1(b)(7). The county auditor shall deposit fees
11 distributed by a clerk under this subsection into the county child
12 advocacy fund established under IC 12-17-17.
- 13 (e) The clerk of a circuit court shall distribute monthly to the county
14 auditor one hundred percent (100%) of the late payment fees collected
15 under IC 33-37-5-22. The county auditor shall deposit fees distributed
16 by a clerk under this subsection as follows:
- 17 (1) If directed to do so by an ordinance adopted by the county
18 fiscal body, the county auditor shall deposit forty percent (40%)
19 of the fees in the clerk's record perpetuation fund established
20 under IC 33-37-5-2 and sixty percent (60%) of the fees in the
21 county general fund.
- 22 (2) If the county fiscal body has not adopted an ordinance
23 described in subdivision (1), the county auditor shall deposit all
24 the fees in the county general fund.
- 25 (f) The clerk of the circuit court shall distribute semiannually to the
26 auditor of state for deposit in the sexual assault victims assistance
27 account established by IC 5-2-6-23(h) one hundred percent (100%) of
28 the sexual assault victims assistance fees collected under
29 IC 33-37-5-23.
- 30 (g) The clerk of a circuit court shall distribute monthly to the county
31 auditor the following:
- 32 (1) One hundred percent (100%) of the support and maintenance
33 fees for cases designated as non-Title IV-D child support cases in
34 the Indiana support enforcement tracking system (ISETS)
35 collected under IC 33-37-5-6.
- 36 (2) The percentage share of the support and maintenance fees for
37 cases designated as IV-D child support cases in ISETS collected
38 under IC 33-37-5-6 that is reimbursable to the county at the
39 federal financial participation rate.
- 40 The county clerk shall distribute monthly to the office of the secretary
41 of family and social services the percentage share of the support and
42 maintenance fees for cases designated as Title IV-D child support cases
43 in ISETS collected under IC 33-37-5-6 that is not reimbursable to the
44 county at the applicable federal financial participation rate.
- 45 (h) The clerk of a circuit court shall distribute monthly to the county
46 auditor the following:
- 47 (1) One hundred percent (100%) of the small claims service fee
48 under IC 33-37-4-6(a)(1)(B) or IC 33-37-4-6(a)(2) for deposit in
49 the county general fund.
- 50 (2) One hundred percent (100%) of the small claims garnishee
51 service fee under IC 33-37-4-6(a)(1)(C) or IC 33-37-4-6(a)(3) for

- 1 deposit in the county general fund.
- 2 (i) This subsection does not apply to court administration fees
3 collected in small claims actions filed in a court described in IC 33-34.
4 The clerk of a circuit court shall semiannually distribute to the auditor
5 of state for deposit in the state general fund one hundred percent
6 (100%) of the following:
- 7 (1) The public defense administration fee collected under
8 IC 33-37-5-21.2.
- 9 (2) The judicial salaries fees collected under IC 33-37-5-26.
- 10 (3) The DNA sample processing fees collected under
11 IC 33-37-5-26.2.
- 12 (4) The court administration fees collected under IC 33-37-5-27.
- 13 (j) The clerk of a circuit court shall semiannually distribute to the
14 auditor of state for deposit in the judicial branch insurance adjustment
15 account established by IC 33-38-5-8.2 one hundred percent (100%) of
16 the judicial insurance adjustment fee collected under IC 33-37-5-25.
- 17 (k) The proceeds of the service fee collected under
18 IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2) shall be distributed as
19 follows:
- 20 (1) The clerk shall distribute one hundred percent (100%) of the
21 service fees collected in a circuit, superior, county, or probate
22 court to the county auditor for deposit in the county general fund.
- 23 (2) The clerk shall distribute one hundred percent (100%) of the
24 service fees collected in a city or town court to the city or town
25 fiscal officer for deposit in the city or town general fund.
- 26 (l) The proceeds of the garnishee service fee collected under
27 IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4) shall be distributed as
28 follows:
- 29 (1) The clerk shall distribute one hundred percent (100%) of the
30 garnishee service fees collected in a circuit, superior, county, or
31 probate court to the county auditor for deposit in the county
32 general fund.
- 33 (2) The clerk shall distribute one hundred percent (100%) of the
34 garnishee service fees collected in a city or town court to the city
35 or town fiscal officer for deposit in the city or town general fund.
- 36 **(m) The clerk of the circuit court shall distribute semiannually**
37 **to the auditor of state for deposit in the home ownership education**
38 **account established by IC 5-20-1-27 one hundred percent (100%)**
39 **of the mortgage foreclosure counseling and education fees collected**
40 **under IC 33-37-5-30 (before its expiration on January 1, 2013).**
- 41 SECTION 25. An emergency is declared for this act.
(Reference is to ESB 492 as reprinted April 15, 2009.)

Conference Committee Report
on
Engrossed Senate Bill 492

Signed by:

Senator Bray
Chairperson

Representative Bardon

Senator Tallian

Representative Koch

Senate Conferees

House Conferees