

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7510
BILL NUMBER: SB 582

NOTE PREPARED: Jan 12, 2011
BILL AMENDED:

SUBJECT: Settlement Conferences in Residential Foreclosures.

FIRST AUTHOR: Sen. Tallian
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 X DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: This bill amends the definition of "mortgage" in the statute concerning foreclosure prevention agreements for residential mortgages to: (1) specify that the term does not include a land contract; (2) specify that the term includes a first lien on residential real estate upon which a dwelling is constructed or intended to be constructed; and (3) more closely correspond to the definition of the term used in the statute concerning first lien mortgage lending. It provides that in a residential foreclosure action filed after June 30, 2011, the creditor shall include with the complaint filed with the court the most recent contact information for the debtor that the creditor has available or on file, including: (1) all telephone numbers and electronic mail addresses used by the debtor; and (2) any mailing address for the debtor other than the address of the mortgaged property. This bill provides that in a residential foreclosure action, any: (1) court costs associated with a settlement conference; or (2) attorney's fees incurred by a creditor in connection with a settlement conference; may not be charged to or collected from the debtor. It provides that in a residential foreclosure action filed after June 30, 2011: (1) a settlement conference between the debtor and creditor must be scheduled by the court upon the creditor's filing of the complaint; and (2) the action may not proceed until the settlement conference has taken place, subject to the debtor's right to opt out of the settlement conference. It also provides that in a residential foreclosure action that: (1) is filed before July 1, 2011, and with respect to which the debtor has requested a settlement conference and the court has not issued a judgment; or (2) is filed after June 30, 2011; the court shall issue a stay in the proceedings until the settlement conference is concluded or, for an action filed after June 30, 2011, until the court receives notice of the debtor's election to opt out of the settlement conference.

The bill provides that in such cases, the court shall treat the debtor's participation in a settlement conference under this chapter as an appearance by the debtor in the foreclosure action, notwithstanding the court's stay. It requires the court to deny a creditor's motion for a default judgment that is based on the debtor's failure

to appear in the action if the motion is filed: (1) before a settlement conference is held, unless the debtor opts out of the conference or fails to participate in a scheduled conference; or (2) after the debtor participates in a settlement conference.

This bill provides that during the pendency of a residential foreclosure action filed after June 30, 2011, if the debtor continues to occupy the mortgaged dwelling, the court may issue an order requiring the debtor to continue to make monthly payments with respect to the mortgage on which the action is based. The bill provides that the court shall determine the amount of the payment, which: (1) may be based on debtor's ability to pay; and (2) may not exceed the debtor's monthly obligation under the mortgage. It provides that any payments made: (1) shall be held in trust for the parties by the clerk of the court or in an attorney trust account; and (2) may be disbursed only upon order of the court. It provides that any payments held shall be credited: (1) to the debtor if the parties subsequently enter into a foreclosure prevention agreement; or (2) against the amount of the judgment entered or the amount owed if a judgment of foreclosure is subsequently entered. In a residential foreclosure action, it provides that a court may impose sanctions, including a civil penalty, on any party for a violation of: (1) the statute concerning foreclosure prevention agreements for residential mortgages; or (2) a court order or rule relating to an action subject to the statute.

It provides that any civil penalties collected shall be deposited in the Home Ownership Education Account to support programs conducted by specified entities to facilitate settlement conferences in residential foreclosure actions. It makes conforming changes.

Effective Date: Upon passage.

Explanation of State Expenditures: *Indiana Housing and Community Development Authority (IHCDA):* This bill could increase administrative expenditures for the IHCDA. The bill requires the IHCDA to update the presuit notice form to incorporate the changes made in the bill. IHCDA's existing resources should be sufficient.

Explanation of State Revenues: *Home Ownership Education Account.* This bill provides that a court may impose a civil penalty on any party for a violation of the statute concerning foreclosure prevention agreements for residential mortgages; or a court order or rule relating to an action subject to the statute. This bill provides that civil penalties collected must be deposited in the Home Ownership Education Account to support programs conducted by specified entities to facilitate settlement conferences in residential foreclosure actions. There is no data to determine the amount civil penalties that would be collected.

Background Information - The Home Ownership Education Account is administered by the IHCDA. In FY 2010 approximately \$1.69 M was deposited in the Home Ownership Education Account.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: IHCDA

Local Agencies Affected:

Information Sources: Auditor's Data

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