

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7510
BILL NUMBER: SB 582

NOTE PREPARED: Feb 17, 2011
BILL AMENDED: Feb 15, 2011

SUBJECT: Settlement Conferences in Residential Foreclosures.

FIRST AUTHOR: Sen. Tallian
FIRST SPONSOR: Rep. Burton

BILL STATUS: As Passed Senate

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. 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. The bill specifies that the debtor's contact information is confidential. It 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 also 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 also 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, the bill 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.

This bill 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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