

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7510
BILL NUMBER: SB 582

NOTE PREPARED: May 5, 2011
BILL AMENDED: Apr 4, 2011

SUBJECT: Settlement Conferences in Residential Foreclosures.

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

BILL STATUS: Enrolled

FUNDS AFFECTED: **GENERAL**
 X DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: *Settlement Conferences:* For purposes of the statute, this bill defines "loss mitigation package" as a set of documents, the components of which: (1) are specified by the Indiana Housing and Community Development Authority (authority); (2) provide certain financial information about a debtor; and (3) are necessary for a creditor to make underwriting decisions in connection with a potential foreclosure prevention agreement. 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 following most recent contact information for the debtor that the creditor has on file: (1) All telephone numbers and electronic mail addresses for the debtor. (2) Any mailing address for the debtor other than the address of the mortgaged property. The bill provides that the following are excepted from the act governing access to public records and may not be disclosed: (1) The debtor's contact information. (2) Any document submitted to the court as part of the debtor's loss mitigation package. It requires the following with respect to a residential foreclosure action filed after June 30, 2011: (1) That the creditor include on the first page of the summons that is served on the debtor a notice that informs the debtor of the debtor's right to participate in a settlement conference. (Current law requires that a separate notice be included with the complaint served on the debtor.) (2) That upon the filing of the complaint by the creditor, the court shall send to the debtor a notice that informs the debtor of the debtor's right to participate in a settlement conference. (3) That a debtor who requests a settlement conference must provide a copy of the debtor's loss mitigation package to: (A) the creditor's attorney; and (B) the court; not later than 30 days before the date of the settlement conference. (4) That if the debtor requests a settlement conference, the creditor must send to the debtor, by certified mail and not later than 30 days before the date of the settlement conference: (A) a payment record substantiating the default; and (B) an itemization of all amounts claimed by the creditor as being owed on the mortgage.

The bill provides that not later than June 1, 2011, the authority shall prescribe a list of documents that must

be included as part of a debtor's loss mitigation package in a foreclosure action filed after June 30, 2011. It provides that the authority may amend the list: (1) in response to changes in any federal loan modification programs; or (2) as otherwise determined to be necessary by the authority. It also requires: (1) the authority to make the list available on the authority's Internet web site; and (2) the division of state court administration to make the list available on the Internet web site maintained by the state's judicial branch.

The bill provides that in a residential foreclosure action in which the debtor requests a settlement conference, the court shall do the following: (1) Stay the granting of any dispositive motion in the action until the court receives notice that the settlement conference has concluded and that the creditor and debtor either have agreed to enter into a foreclosure prevention agreement, or were unable to agree on the terms of an agreement. (2) Treat the debtor's request for a settlement conference as the entry of an appearance in the action. It provides that in a residential foreclosure action, any: (1) costs to a creditor associated with a settlement conference; or (2) civil penalty imposed on a creditor by the court for violation of a court order; may not be charged to or collected from the debtor.

The 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. It 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 also 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. The bill 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. It provides that any civil penalties imposed and collected by a court for violation of a court order in a residential foreclosure action shall be deposited in the home ownership education account to support programs conducted by specified entities to facilitate settlement conferences in residential foreclosure actions.

Vacant and Abandoned Property: The bill provides that a person who is not the owner of real property, and who suspects that the property may be vacant or abandoned, may enter upon the premises to do the following: (1) Visually inspect the property to determine whether the property may be vacant or abandoned. (2) Perform certain specified actions to secure and maintain the property. The bill provides that a person who enters the property and, after performing a visual inspection, determines that the property may be vacant or abandoned, may notify the appropriate enforcement authority and request that the enforcement authority determine whether the property is in fact vacant or abandoned. It provides that a person that enters upon the property for one of the permitted purposes: (1) is immune from civil liability for an act or omission related to the entry or to any permitted action; and (2) shall be held harmless with respect to any claims of civil or criminal trespass.

Study Committee: The bill urges the Legislative Council to assign the following topics of study to the Commission on Courts or to another appropriate study committee: (1) Short sale procedures in real estate transactions in Indiana. (2) Specified topics concerning nonjudicial mortgage foreclosure procedures. It provides that any committee assigned the topics must issue a final report on the topics not later than November 1, 2011.

Effective Date: Upon passage.

Explanation of State Expenditures: *IHCDA*: The bill requires the IHCDA to prescribe a list of documents that must be included as part of a debtor's loss mitigation package in a foreclosure action filed after June 30, 2011. It requires the IHCDA to make the list available on their web site; and (2) the division of state court administration to make the list available on the web site maintained by the state's judicial branch. The IHCDA's current level of resources should be sufficient.

(Revised) *Interim Study Committee*: This bill urges the Legislative Council to assign certain topics outlined in the bill to the Commission on Courts or to another appropriate study committee.

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; Legislative Council.

Local Agencies Affected:

Information Sources: Auditor's Data.

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