

## **IC 32-29**

### **ARTICLE 29. MORTGAGES**

#### **IC 32-29-1**

##### **Chapter 1. Mortgage of Real Estate**

#### **IC 32-29-1-0.2**

##### **Application of prior law**

Sec. 0.2. The addition of IC 32-8-11-9 (before its repeal, now codified at section 10 of this chapter) by P.L.157-1990 applies to a mortgage lien created after June 30, 1990.

*As added by P.L.220-2011, SEC.525.*

#### **IC 32-29-1-1**

##### **Possession premises**

Sec. 1. (a) This section does not apply to security interests in rents and profits arising from real estate.

(b) Unless a mortgage specifically provides that the mortgagee shall have possession of the mortgaged premises, the mortgagee is not entitled to possession of the mortgaged premises.

*As added by P.L.2-2002, SEC.14.*

#### **IC 32-29-1-2**

##### **Construction of mortgage**

Sec. 2. A mortgage may not be construed to imply a covenant for the payment of the sum intended to be secured by the mortgage so as to enable the mortgagee or the mortgagee's assignees or representatives to maintain an action for the recovery of this sum. If an express covenant is not contained in the mortgage for the payment and a bond or other separate instrument to secure the payment has not been given, the remedy of the mortgagee is confined to the real property described in the mortgage.

*As added by P.L.2-2002, SEC.14.*

#### **IC 32-29-1-2.5**

##### **Hazard insurance**

Sec. 2.5. A mortgagee or a mortgagee's assignee or representative may not require a mortgagor, as a condition of receiving or maintaining a mortgage, to obtain hazard insurance coverage against risks to improvements on the mortgaged property in an amount exceeding the replacement value of the improvements.

*As added by P.L.73-2004, SEC.45.*

#### **IC 32-29-1-3**

##### **Sale of premises**

Sec. 3. A mortgage of real estate, including an instrument having the legal effect of a mortgage, may not authorize the mortgagee to sell the mortgaged property. The sale of mortgaged property by the mortgagee may only be made under a judicial proceeding.

*As added by P.L.2-2002, SEC.14.*

#### **IC 32-29-1-4**

##### **Purchase money mortgage**

Sec. 4. A mortgage granted by a purchaser to secure purchase money has priority over a prior judgment against the purchaser.

*As added by P.L.2-2002, SEC.14.*

#### **IC 32-29-1-5**

##### **Form; mortgage**

Sec. 5. A mortgage of land that is:

(1) worded in substance as "A.B. mortgages and warrants to C.D." (here describe the premises) "to secure the repayment of" (here recite the sum for which the mortgage is granted, or the notes or other evidences of debt, or a description of the debt sought to be secured, and the date of the repayment); and

(2) dated and signed, sealed, and acknowledged by the grantor; is a good and sufficient mortgage to the grantee and the grantee's heirs, assigns, executors, and administrators, with warranty from the grantor (as defined in IC 32-17-1-1) and the grantor's legal representatives of perfect title in the grantor and against all previous encumbrances. However, if in the mortgage form the words "and warrant" are omitted, the mortgage is good but without warranty.

*As added by P.L.2-2002, SEC.14.*

#### **IC 32-29-1-6**

##### **Payment in full; release and discharge of mortgage**

Sec. 6. After a mortgagee of property whose mortgage has been recorded has received full payment from the mortgagor of the sum specified in the mortgage, the mortgagee shall, at the request of the mortgagor, enter in the record of the mortgage that the mortgage has been satisfied. An entry in the record showing that a mortgage has been satisfied operates as a complete release and discharge of the mortgage.

*As added by P.L.2-2002, SEC.14.*

#### **IC 32-29-1-7**

##### **Certificate of payments and satisfaction**

Sec. 7. If a mortgage has been paid and satisfied by the mortgagor, the mortgagor may take a certificate of satisfaction, duly acknowledged by the mortgagee or the mortgagee's lawful agent, as required for the acknowledgment of conveyances to entitle them to be recorded. The certificate and acknowledgment shall be recorded by the recorder in whose office the mortgage is recorded, with a reference to the location of the record of the mortgage. The recorded certificate discharges and releases the mortgagor from the mortgage (or portion of the mortgage as indicated in a partial satisfaction), and bars all suits and actions on the mortgage.

*As added by P.L.2-2002, SEC.14.*

#### **IC 32-29-1-8**

##### **Assignment of mortgage**

Sec. 8. (a) Any mortgage of record or any part of the mortgage may be assigned by the mortgagee or any assignee of the mortgage, either by an assignment entered on the margin of the record, signed by the person making the assignment and attested by the recorder, or by a separate instrument executed and acknowledged before any person authorized to take acknowledgments, and recorded in the mortgage records of the county. The county recorder shall note the assignment in the margin by reference to the location where the assignment is recorded.

(b) The signature of a person on an assignment under subsection (a) may be a facsimile. The facsimile on the assignment is equivalent to and constitutes the written signature of the person for all requirements regarding mortgage assignments.

(c) Notwithstanding subsection (a), marginal assignments may be accepted at the discretion of the recorder. Except in a county that accepts marginal assignments of mortgage, an assignment of mortgage must be recorded on a separate written instrument from the mortgage. If a recorder accepts marginal assignments of mortgage, an instrument presented for recording in that county may not contain more than one (1) assignment. If a recorder allows an instrument to contain more than one (1) assignment, the fee for recording that instrument is provided in IC 36-2-7-10(b)(3).

(d) After entry is made of record, the mortgagor and all other persons are bound by the record, and the entry is a public record. Any assignee may enter satisfaction or release of the mortgage, or the part of the mortgage held by the assignee of record.

*As added by P.L.2-2002, SEC.14.*

### **IC 32-29-1-9**

#### **Foreclosure to state**

Sec. 9. This chapter does not affect any provisions made by law relating to the foreclosure of mortgages to the state, so far as the provisions conflict with the provisions of this chapter.

*As added by P.L.2-2002, SEC.14.*

### **IC 32-29-1-10**

#### **Obligations a mortgage may secure; future obligations and advances; future modifications, extensions, and renewals of indebtedness; priority of lien**

Sec. 10. (a) In addition to any other obligation secured by a mortgage, a mortgage may also secure:

(1) future obligations and advances up to the maximum amount stated in the mortgage (whether made as an obligation, made at the option of the lender, made after a reduction to a zero (0) or other balance, or made otherwise) to the same extent as if the future obligations and advances were made on the date of execution of the mortgage; and

(2) future modifications, extensions, and renewals of any indebtedness or obligations secured by the mortgage if and to the extent that the mortgage states that the mortgage secures

those future advances, modifications, extensions, and renewals.

(b) The lien of a mortgage with respect to future advances, modifications, extensions, and renewals referred to in subsection (a) has the priority to which the mortgage otherwise would be entitled under IC 32-21-4-1 without regard to the fact that the future advance, modification, extension, or renewal may occur after the mortgage is executed.

*As added by P.L.2-2002, SEC.14.*

### **IC 32-29-1-11**

#### **Rents and profits from real property; enforcement of assignment, mortgage, or pledge; rights not affected; equitable subrogation**

Sec. 11. (a) This chapter does not limit:

- (1) the right to assign, mortgage, or pledge the rents and profits arising from real estate;
- (2) the right of an assignee, a mortgagee, or a pledgee to collect rents and profits for application in accordance with an assignment, a mortgage, or a pledge; or
- (3) the power of a court of equity to appoint a receiver to take charge of real estate to collect rents and profits for application in accordance with an assignment, a mortgage, or a pledge.

(b) A person may enforce an assignment, a mortgage, or a pledge of rents and profits arising from real property:

- (1) whether the person has or does not have possession of the real estate; and
- (2) regardless of the:
  - (A) adequacy of the security; or
  - (B) solvency of the assignor, mortgagor, or pledgor.

(c) If a person:

- (1) enforces an assignment, a mortgage, or a pledge of rents and profits arising from real estate; and
- (2) does not have possession of the real estate;

the obligations of a mortgagee in possession of real estate may not be imposed on the holder of the assignment, mortgage, or pledge.

(d) Except for those instances involving liens defined in IC 32-28-3-1, a mortgagee seeking equitable subrogation with respect to a lien may not be denied equitable subrogation solely because:

- (1) the mortgagee:
  - (A) is engaged in the business of lending; and
  - (B) had constructive notice of the intervening lien over which the mortgagee seeks to assert priority;
- (2) the lien for which the mortgagee seeks to be subrogated was released; or
- (3) the mortgagee obtained a title insurance policy.

(e) Subsection (d) does not apply to a municipal sewer lien under IC 36-9-23 or a mechanic's lien under IC 32-28-3-1.

*As added by P.L.2-2002, SEC.14. Amended by P.L.122-2003, SEC.1; P.L.151-2003, SEC.2; P.L.2-2005, SEC.86.*