

IC 32-29-8

Chapter 8. Parties to Foreclosure Suit; Redemption

IC 32-29-8-1

Mortgagee or assignee; purchaser at judicial sale

Sec. 1. If a suit is brought to foreclose a mortgage, the mortgagee or an assignee shown on the record to hold an interest in the mortgage shall be named as a defendant.

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

IC 32-29-8-2

Failure of assignee to record assignment

Sec. 2. A person who is assigned a mortgage and fails to have the assignment properly placed on the mortgage record is bound by the court's judgment or decree as if the person were a party to the suit.

As added by P.L.2-2002, SEC.14. Amended by P.L.130-2012, SEC.5; P.L.189-2013, SEC.1.

IC 32-29-8-3

Good faith purchaser at judicial sale

Sec. 3. A person who:

- (1) purchases a mortgaged premises or any part of a mortgaged premises under the court's judgment or decree at a judicial sale or who claims title to the mortgaged premises under the judgment or decree; and
- (2) buys the mortgaged premises or any part of the mortgaged premises without actual notice of an assignment that is not of record;

holds the premises free and discharged of the lien.

As added by P.L.2-2002, SEC.14. Amended by P.L.130-2012, SEC.6; P.L.189-2013, SEC.2.

IC 32-29-8-4

Interested persons and omitted parties; right of action to determine extent of and terminate omitted party's interest; right to redeem

Sec. 4. (a) As used in this section, "interested person", with respect to an action to foreclose a mortgage on an interest in real property in Indiana, means:

- (1) the holder of the evidence of debt secured by the mortgage being foreclosed;
- (2) a person:
 - (A) who purchases the property at a judicial sale after a judgment and decree of sale is entered in the action; and
 - (B) to whom a deed is executed and delivered by the sheriff under IC 32-29-7-10; or
- (3) any person claiming by, through, or under a person described in subdivision (1) or (2).

(b) As used in this section, "omitted party", with respect to an action to foreclose a mortgage on an interest in real property in Indiana, means a person who:

(1) before the commencement of the action has acquired in the property an interest that:

(A) is junior or subordinate to the mortgage being foreclosed; and

(B) would otherwise be extinguished by the foreclosure; and

(2) is either:

(A) not named as a party defendant in the action or, if named as a party defendant, is not served with process; or

(B) not served with a notice of sale under IC 32-29-7-3(d) after a judgment and decree of sale is entered in the action.

The term includes any person claiming by, through, or under a person described in this subsection.

(c) At any time after a judgment and decree of sale is entered in an action to foreclose a mortgage on an interest in real property in Indiana, an interested person or an omitted party may bring a civil action to:

(1) determine the extent of; and

(2) terminate;

the interest of an omitted party in the property subject to the sale.

(d) Except as provided in subsection (e) and subject to subsections (f) and (g), upon the filing of an action described in subsection (c), the court shall determine the extent of the omitted party's interest in the property and issue a decree terminating that interest, subject to the right of the omitted party to redeem the property on terms as the court considers equitable under the circumstances after considering the factors set forth in subsection (f), if the omitted party would have had redemption rights:

(1) before the sale under IC 32-29-7-7; or

(2) after the sale, as described in IC 34-55-4-8(a)(2).

(e) If the omitted party proves that the omitted party has a right to receive proceeds actually paid at the judicial sale, the omitted party's interest in the property is not subject to termination by an action brought under this section unless the proceeds that the omitted party would have received at the judicial sale are paid to the omitted party.

(f) In an action brought under this section, if the court determines that the omitted party is entitled to redemption under subsection (d), the court shall consider the following in deciding the terms of the redemption:

(1) Whether the omitted party:

(A) was given or had actual notice or knowledge of the foreclosure; and

(B) had opportunity to intervene in the foreclosure action or otherwise exercise any right to redeem the property.

(2) Whether any interested person in good faith has made valuable improvements to the property and, if so, the value of

all lasting improvements made to the property before the commencement of the action under this section.

(3) The amount of any taxes and assessments, along with any related interest payments, related to the property and paid by an interested person or by any person under whose title to the property an interested person claims.

(g) If the court determines that the omitted party is entitled to redemption under subsection (d), and after considering the factors set forth in subsection (f), the court shall grant redemption rights to the omitted party that the court considers equitable under the circumstances, subject to the following:

(1) The amount to be paid for redemption may not be less than the sale price resulting from the foreclosure of the interested person's senior lien, plus interest at the statutory judgment rate.

(2) The time allowed for payment of the redemption amount may not exceed ninety (90) days after the date of the court's decree under subsection (d).

(h) The senior lien upon which the foreclosure action was based is not extinguished by merger with the title to the property conveyed to a purchaser through a sheriff's deed executed and delivered under IC 32-29-7-10 until the interest of any omitted party has been terminated:

(1) through an action brought under this section; or

(2) by operation of law.

Until an omitted party's interest is terminated as described in this subsection, any owner of the property as a holder of a sheriff's deed executed and delivered under IC 32-29-7-10, or any person claiming by, through, or under such an owner, is the equitable owner of the senior lien upon which the foreclosure action was based and has all rights against an omitted party as existed before the judicial sale.

(i) An interested person may not terminate an omitted party's interest in real property that is the subject of a foreclosure action except through an action brought under this section. An interested person's rights under this section may not be denied because the interested person:

(1) had actual or constructive notice of the omitted party's interest in the property;

(2) was negligent in examining county records;

(3) was engaged in the business of lending; or

(4) obtained a title search or commitment or a title insurance policy.

As added by P.L.130-2012, SEC.7. Amended by P.L.13-2013, SEC.80.