

IC 32-30-10

Chapter 10. Mortgage Foreclosure Actions

IC 32-30-10-0.2

Application of certain amendments to prior law

Sec. 0.2. The:

- (1) amendments made to IC 34-1-53-10 (before its repeal, later codified at IC 32-15-6-10 (before its repeal), now codified at section 12 of this chapter); and
- (2) addition of IC 34-1-53-12 (before its repeal, later codified at IC 32-15-6-12 (before its repeal), now codified at section 14 of this chapter);

by P.L.56-1996 apply to all sheriff's sales conducted to foreclose mortgages on or after March 14, 1996.

As added by P.L.220-2011, SEC.528.

IC 32-30-10-1

"Auctioneer" defined

Sec. 1. As used in this chapter, "auctioneer" means an auctioneer licensed under IC 25-6.1.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-2

"Economically feasible"; required findings

Sec. 2. For purposes of section 9 of this chapter, the sale of a property through the services of an auctioneer is "economically feasible" if the court determines that:

- (1) a reasonable probability exists that, with the use of the services of an auctioneer, a valid and enforceable bid will be made at a foreclosure for a sale price equal to or greater than the amount of the judgment and the costs and expenses necessary to its satisfaction, including the costs of the auctioneer; and
- (2) the reasonable probability would not exist without the use of an auctioneer.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-3

Mortgagee's right to foreclose if mortgagor defaults; venue

Sec. 3. (a) Subject to IC 32-30-10.5 with respect to mortgage transactions described in IC 32-30-10.5-5, if a mortgagor defaults in the performance of any condition contained in a mortgage, the mortgagee or the mortgagee's assigns may proceed in the circuit court of the county where the real estate is located to foreclose the equity of redemption contained in the mortgage.

(b) If the real estate is located in more than one (1) county, the circuit court of any county in which the real estate is located has jurisdiction for an action for the foreclosure of the equity of redemption contained in the mortgage.

As added by P.L.2-2002, SEC.15. Amended by P.L.105-2009, SEC.18.

IC 32-30-10-4

Remedy

Sec. 4. If there is not an express agreement in the mortgage or a separate instrument for the payment of the sum secured by the mortgage, the remedy of the mortgagee is confined to the property mortgaged.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-5

Judgment of foreclosure; personal judgment; sale of property

Sec. 5. In rendering judgment of foreclosure, the courts shall:

- (1) give personal judgment against any party to the suit liable upon any agreement for the payment of any sum of money secured by the mortgage; and
- (2) order the mortgaged premises, or as much of the mortgaged premises as may be necessary to satisfy the mortgage and court costs, to be sold first before the sale of other property of the defendant.

The judgment is satisfied by the payment of the mortgage debt, with interest and costs, at any time before sale.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-6

Satisfaction of judgment; recording; recorder's fee

Sec. 6. Upon:

- (1) the foreclosure of a recorded mortgage in a court of any county having jurisdiction in Indiana; and
- (2) the payment and satisfaction of the judgment as may be rendered in the foreclosure proceeding;

the prevailing party shall immediately after satisfaction of the judgment record the satisfaction of the mortgage on the records of the recorder's office of the county where the property is located. The record in foreclosure and satisfaction must show that the whole debt, secured by the mortgage, has been paid. The recorder must be paid a fee of not more than the amount specified in IC 36-2-7-10(b)(1) and IC 36-2-7-10(b)(2) in each case of foreclosure requiring satisfaction.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-7

Balance due and costs that remain unsatisfied levied on any property of debtor

Sec. 7. If there is an express written agreement for the payment of the sum of money that is secured by a mortgage or a separate instrument, the court shall direct in the order of sale that the balance due on the mortgage and costs that may remain unsatisfied after the sale of the mortgaged premises be levied on any property of the

mortgage-debtor.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-8

Order of sale; certification; sheriff's sale; sale of remaining property to pay unsatisfied judgment, interest, and costs

Sec. 8. (a) The copy of the court's order of sale and judgment shall be issued and certified by the clerk under the seal of the court to the sheriff.

(b) After receiving the order under subsection (a), the sheriff shall proceed to sell the mortgaged premises, or as much of the mortgaged premises as is necessary to satisfy the judgment, interest, and costs. If any part of the judgment, interest, and costs remain unsatisfied after the sale of the mortgaged premises, the sheriff shall proceed to sell the remaining property of the defendant. If the mortgaged property is located in more than one (1) county, a common description of the property, the sale of the property, and the location of the sale must be advertised in each county where the property is located.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-9

Manner of sale; use of auctioneer; auctioneer's fee

Sec. 9. (a) A sheriff shall sell property on foreclosure in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer and sale.

(b) Upon prior petition of the debtor or a creditor involved in the foreclosure proceedings, the court in its order of foreclosure shall order the property sold by the sheriff through the services of the auctioneer requested by the petitioner and approved by the court if:

- (1) the court determines that a sale is economically feasible; or
- (2) all the creditors in the proceedings agree to both that method of sale and the compensation to be paid the auctioneer.

(c) The sheriff shall engage the auctioneer not later than fourteen (14) calendar days after the date of the order entered by the court under subsection (b). The auctioneer shall schedule the auction and conduct the auctioneer's activities as appropriate to bring the highest bid for the property on foreclosure. The advertising conducted by the auctioneer is in addition to any other notice required by law.

(d) The auctioneer's fee must be a reasonable amount stated in the court's order. However, if the sale by use of an auctioneer has not been agreed to by the creditors in the proceedings and the sale price is less than the amount of the judgment and the costs and expenses necessary to the satisfaction of the judgment, the auctioneer is entitled only to the auctioneer's advertising expenses plus one hundred dollars (\$100). The amount due to the auctioneer on account of the auctioneer's expenses and fee, if any, must be paid as a cost of the sale from the proceeds before the payment of any other payment.

As added by P.L.2-2002, SEC.15. Amended by P.L.167-2005, SEC.2.

IC 32-30-10-10

Mutually exclusive actions

Sec. 10. A plaintiff may not:

- (1) proceed to foreclose the mortgagee's mortgage:
 - (A) while the plaintiff is prosecuting any other action for the same debt or matter that is secured by the mortgage;
 - (B) while the plaintiff is seeking to obtain execution of any judgment in any other action; or
 - (C) until the notice under IC 32-30-10.5-8(a) has been sent, if required, in the case of a mortgage transaction described in IC 32-30-10.5-5; or
- (2) prosecute any other action for the same matter while the plaintiff is foreclosing the mortgagee's mortgage or prosecuting a judgment of foreclosure.

As added by P.L.2-2002, SEC.15. Amended by P.L.105-2009, SEC.19.

IC 32-30-10-11

Payment of principal, interest, and costs before final judgment; dismissal; payment after final judgment; stay

Sec. 11. (a) If:

- (1) a complaint is filed for the foreclosure of a mortgage;
- (2) any interest or installment of the principal is due, but no other installments are due; and
- (3) the defendant pays the court the principal and interest due, with costs, at any time before final judgment;

the complaint must be dismissed.

(b) If the defendant pays the court the principal and interest due after the final judgment, the proceedings on the final judgment must be stayed. However, the stay may be removed upon a subsequent default in the payment of any installment of the principal or interest after the payment is due.

(c) In the final judgment, the court shall direct at what time and upon what default any subsequent execution shall issue.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-12

Sale of property in parcels

Sec. 12. (a) In cases under this chapter, the court shall ascertain whether the property can be sold in parcels. If the property can be sold in parcels without injury to the interest of the parties, the court shall direct that only as much of the premises be sold as will be sufficient to pay the amount due on the mortgage, with costs, and the judgment shall remain and be enforced upon any subsequent default, unless the amount due is paid before execution of the judgment is completed.

(b) If the mortgaged premises cannot be sold in parcels, the court shall order the whole mortgaged premises to be sold.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-13

Endorsement of an execution issued on a judgment

Sec. 13. If an execution is issued on a judgment recovered for a debt secured by mortgage of real property, the plaintiff shall endorse on the execution a brief description of the mortgaged premises. However, the equity of redemption may not be sold on the execution of judgment.

As added by P.L.2-2002, SEC.15.

IC 32-30-10-14

Application of proceeds of sale; disposition of excess proceeds

Sec. 14. The proceeds of a sale described in IC 32-29-7 or section 8 or 12(b) of this chapter must be applied in the following order:

- (1) Expenses of the offer and sale, including expenses incurred under IC 32-29-7-4 or section 9 of this chapter (or IC 34-1-53-6.5 or IC 32-15-6-6.5 before their repeal).
- (2) The payment of the principal due, interest, and costs not described in subdivision (1).
- (3) The residue secured by the mortgage and not due.
- (4) If the residue referred to in subdivision (3) does not bear interest, a deduction must be made by discounting the legal interest.

In all cases in which the proceeds of sale exceed the amounts described in subdivisions (1) through (4), the surplus must be paid to the clerk of the court to be transferred, as the court directs, to the mortgage debtor, mortgage debtor's heirs, or other persons assigned by the mortgage debtor.

As added by P.L.2-2002, SEC.15. Amended by P.L.88-2009, SEC.3; P.L.182-2009(ss), SEC.390; P.L.73-2010, SEC.9.