

# HOUSE BILL No. 1411

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-29-7.

**Synopsis:** Foreclosure prevention and post-foreclosure leases. Requires a court, in a mortgage foreclosure action with respect to an occupied dwelling, to consider evidence concerning the effect of the foreclosure. Requires the court to withhold entry of judgment in a foreclosure action for 180 days if the court finds: (1) entry of a judgment of foreclosure will have a negative effect on the occupant or neighborhood or may lead to the house becoming vacant; and (2) there is a reasonable possibility that withholding entry of judgment in a foreclosure action will reduce the negative effects. Permits a court to require a mortgagee to rent a dwelling to the debtor after entry of the judgment of foreclosure if the mortgagee does not intend to file a praecipe for sale within 60 days after entry of the judgment and certain other conditions are met. Provides that certain maintenance obligations that apply to landlords do not apply to a mortgagee-landlord.

**Effective:** July 1, 2015.

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## Forestal

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January 14, 2015, read first time and referred to Committee on Judiciary.

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First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

# HOUSE BILL No. 1411



A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 32-29-7-3.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2015]: **Sec. 3.5. (a) This section applies only to a mortgage  
4 foreclosure action filed with respect to a dwelling occupied by the  
5 mortgagor.**  
6 **(b) Before entering a judgment in favor of the plaintiff in a  
7 mortgage foreclosure action, the court shall, upon motion by the  
8 defendant or upon the court's own motion, consider evidence  
9 concerning:**  
10 **(1) the effect of foreclosure on the mortgagor;**  
11 **(2) the effect of foreclosure on the neighborhood;**  
12 **(3) efforts the mortgagor has taken to avoid foreclosure;**  
13 **(4) the effect of foreclosure on the mortgagee;**  
14 **(5) the mortgagee's plan for the property;**  
15 **(6) whether the property will be vacant or abandoned after**



1 the foreclosure; and

2 (7) any other effects that the foreclosure is likely to cause.

3 The court may consider evidence from the mortgagor, the  
4 mortgagee, the Indiana housing and community development  
5 authority (created by IC 5-20-1-3), a mortgage foreclosure  
6 counselor (as described in IC 5-20-6-2), the representative of a  
7 neighborhood homeowners association or development group, and  
8 any other person with relevant knowledge and experience.

9 (c) If the court finds that:

10 (1) entry of a judgment of foreclosure:

11 (A) will, more likely than not, have a negative effect on the  
12 mortgagor or the neighborhood; or

13 (B) will, more likely than not, cause the property to become  
14 vacant or abandoned; and

15 (2) there is a reasonable possibility that withholding entry of  
16 a judgment of foreclosure may mitigate the negative effects  
17 described in subdivision (1);

18 the court shall withhold entry of the judgment of foreclosure for  
19 not more than one hundred eighty (180) days.

20 (d) If, during the period in which the judgment of foreclosure is  
21 withheld, the property is sold to another person, the court shall  
22 dismiss the foreclosure action.

23 (e) If, at the conclusion of the period during which the judgment  
24 is withheld, the property has not been sold, the court shall enter the  
25 judgment of foreclosure. However, the court may, for good cause  
26 shown, extend the period during which judgment is withheld by not  
27 more than ninety (90) days.

28 (f) A withheld judgment under this section does not affect:

29 (1) the debt owed by the mortgagor;

30 (2) the accrual of interest during the period in which the  
31 judgment is withheld;

32 (3) the mortgage lien; or

33 (4) any other applicable contractual provisions.

34 SECTION 2. IC 32-29-7-3.7 IS ADDED TO THE INDIANA CODE  
35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
36 1, 2015]: Sec. 3.7. (a) This section applies only to a mortgage  
37 foreclosure action filed with respect to a dwelling occupied by the  
38 mortgagor.

39 (b) Before entering a judgment in favor of the plaintiff in a  
40 mortgage foreclosure action, the court shall, upon motion by the  
41 defendant or upon the court's own motion, consider evidence  
42 concerning:



- 1 (1) the effect of foreclosure on the mortgagor;
- 2 (2) the effect of foreclosure on the neighborhood;
- 3 (3) efforts the mortgagor has taken to avoid foreclosure;
- 4 (4) the effect of foreclosure on the mortgagee;
- 5 (5) the mortgagee's plan for the property;
- 6 (6) the date the mortgagee intends to file the praecipe for
- 7 sheriff's sale;
- 8 (7) whether the property will be vacant or abandoned after
- 9 the foreclosure; and
- 10 (8) any other effects that the foreclosure is likely to cause.

11 The court may consider evidence from the mortgagor, the  
 12 mortgagee, the Indiana housing and community development  
 13 authority (created by IC 5-20-1-3), a mortgage foreclosure  
 14 counselor (as described in IC 5-20-6-2), the representative of a  
 15 neighborhood homeowners association or development group, and  
 16 any other person with relevant knowledge and experience.

17 (c) If the court finds that:

- 18 (1) the mortgagee does not intend to issue a praecipe for
- 19 sheriff's sale within sixty (60) days after the entry of the
- 20 judgment of foreclosure;
- 21 (2) entry of a judgment of foreclosure:
- 22 (A) will, more likely than not, have a negative effect on the
- 23 mortgagor or the neighborhood; or
- 24 (B) will, more likely than not, cause the property to become
- 25 vacant or abandoned;
- 26 (3) the mortgagor desires to stay in the real property as a
- 27 tenant; and
- 28 (4) the mortgagor can afford to pay a monthly rent equal to
- 29 one-half percent (0.05%) of the assessed value of the
- 30 property;

31 the court may require the mortgagor to rent the property to the  
 32 mortgagee after entry of the judgment of foreclosure at a monthly  
 33 rent of one-half percent (0.05%) of the assessed value of the  
 34 property.

35 (d) Notwithstanding any other law, a mortgagor renting to a  
 36 mortgagee does not have the obligations of a landlord described in  
 37 IC 32-31-8, including the following obligations:

- 38 (1) To deliver the rental premises to a tenant in a safe, clean,
- 39 and habitable condition.
- 40 (2) To comply with all health and housing codes applicable to
- 41 the rental premises.
- 42 (3) To provide and maintain the following items in good and



- 1           **safe working condition:**
- 2            (A) **Electrical systems.**
- 3            (B) **Plumbing systems.**
- 4            (C) **Sanitary systems.**
- 5            (D) **Heating, ventilating, and air conditioning systems.**
- 6            (E) **Appliances.**
- 7           **(e) A tenancy created under this section is a month-to-month**
- 8 **tenancy. However, a mortgagee-landlord may terminate a tenancy**
- 9 **under this section only:**
- 10           (1) **after filing a praecipe for sheriff's sale, upon thirty (30)**
- 11 **days notice;**
- 12           (2) **if the tenant commits waste or fails to pay rent;**
- 13           (3) **upon sale of the property, with thirty (30) days notice; or**
- 14           (4) **with leave of the court.**

