

Determination of Abandonment for Property Subject to a Mortgage Foreclosure Action

This Act establishes a procedure to allow a creditor in a mortgage or an enforcement authority with jurisdiction in the location of the mortgaged property to petition the court having jurisdiction over an existing mortgage foreclosure action to find that the mortgaged property is abandoned. It establishes criteria that constitute prima facie evidence that a mortgage property is abandoned.

Submitted as:

Indiana

[HOUSE ENROLLED ACT No. 1238](#)

Status: Enacted into law in 2012.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Establish Procedures to
2 Determine if Property Subject to a Mortgage Foreclosure Action is Abandoned.”

3
4 Section 2. [*Determination of Abandonment for Property Subject to a Mortgage Foreclosure*
5 *Action.*]

6 (A) This Act applies to a mortgage foreclosure action filed under [insert citation].

7 (B) As used in this Act, “enforcement authority” refers to the enforcement authority as
8 defined in [insert citation] that has jurisdiction in the location of the property that is the subject of a
9 mortgage foreclosure action.

10 (C) At any time during a mortgage foreclosure action, the creditor may petition the court for
11 a determination that the mortgaged property is abandoned. A petition filed with the court under this
12 subsection must allege that the mortgaged property is abandoned and include evidence that [one (1)]
13 or more of the conditions set forth in subsection (G) of this section apply. A petition under this
14 subsection shall be served on the debtor in the manner prescribed by [insert citation].

15 (D) At any time during a mortgage foreclosure action, the enforcement authority that has
16 jurisdiction in the location of the mortgaged property may petition the court for a determination that
17 the mortgaged property is abandoned by filing a motion to intervene in the foreclosure action in the
18 manner prescribed by [insert citation]. The motion to intervene must include a statement of the
19 enforcement authority’s jurisdiction in the location of the mortgaged property; allege that the
20 mortgaged property is abandoned; and include evidence that [one (1)] or more of the conditions set
21 forth in subsection (G) or (H) of this section apply.

22 (E) Upon receiving a request for a determination of abandonment from a creditor or an
23 enforcement authority through a petition or motion filed with the court and served on the required
24 parties in accordance with subsections (C) or (D) of this section, the court shall issue an order to
25 show cause as to why the property should not be found to be abandoned and directing the petitioner,
26 the debtor, and any other person or party the court considers appropriate to appear before the court
27 on a date and time specified in the order under subdivision (1) of this subsection. The court’s order
28 under this subsection must do the following:

29 (1) Direct the parties subject to the order to appear before the court on a date and time
30 specified by the court. The date specified under this subdivision must not be earlier than [fifteen

31 (15)] days or later than [twenty-five (25)] days after the date of the court's order under this
32 subsection (E).

33 (2) Notify the parties subject to the order that any party ordered to appear may present
34 evidence or objections on the issue of abandonment to the court in writing before the appearance
35 date specified by the court under subdivision (1); or in writing or by oral testimony on the date and
36 at the time specified by the court under subdivision (1); in the manner specified by the court; and has
37 the right to be represented by an attorney when appearing before the court.

38 (3) Notify the parties subject to the order that if the debtor fails to submit written
39 evidence or objections to the court before the appearance date specified by the court under
40 subdivision (1); or appear before the court on the date and at the time specified by the court under
41 subdivision (1); the debtor's failure to submit evidence or objections or to appear before the court
42 will result in a finding of abandonment by the court.

43 (F) A party subject to an order issued by the court under this section has the following rights,
44 as described in the court's order under subsection (E):

45 (1) The right to present evidence or objections on the issue of abandonment to the
46 court in writing before the appearance date specified in the court's order under subsection (E)(1); or
47 in writing or by oral testimony on the date and at the time specified in the court's order under
48 subsection (E)(1); in the manner specified by the court.

49 (2) The right to be represented by an attorney when appearing before the court.

50 (G) Subject to subsection (H) of this section, for purposes of an abandonment determination
51 under this Act, [one (1)] or more of the following constitute prima facie evidence that mortgaged
52 property is abandoned:

53 (1) The enforcement authority that has jurisdiction in the location of the mortgaged
54 property has issued an order under [insert citation] with respect to the property.

55 (2) Windows or entrances to the mortgaged property are boarded up or closed off.

56 (3) Multiple window panes on the mortgaged property are broken and unrepaired.

57 (4) [One (1)] or more doors to the mortgaged property are smashed through, broken
58 off, unhinged, or continuously unlocked.

59 (5) Gas service, electric service, water service, or other utility service to the
60 mortgaged property has been terminated.

61 (6) Rubbish, trash, or debris has accumulated on the mortgaged property.

62 (7) The mortgaged property is deteriorating and is either below or in imminent danger
63 of falling below minimum community standards for public safety and sanitation.

64 (8) The creditor has changed the locks on the mortgaged property and for at least
65 [fifteen (15)] days after the changing of the locks the owner has not requested entrance to the
66 mortgaged property.

67 (9) There exist [one (1)] or more written statements, including documents of
68 conveyance, that have been executed by the debtor, or by the debtor's personal representatives or
69 assigns, and that indicate a clear intent to abandon the mortgaged property.

70 (10) There exists other evidence indicating a clear intent to abandon the mortgaged
71 property.

72 (H) Regardless of whether any of the conditions described in subsection (G) are found to
73 apply, the debtor's failure to either present evidence or objections on the issue of abandonment to the
74 court in writing before the appearance date specified in the court's order under subsection (E)(1) of
75 this section or appear before the court on the date specified in the court's order under subsection
76 (E)(1) of this section; constitutes prima facie evidence that the mortgaged property is abandoned.

77 (I) If the court finds that [one (1)] or more of the conditions described in subsection (G)
78 apply or the circumstances described in subsection (H) apply; the court shall issue an order finding
79 that the mortgaged property is abandoned.

80
81 Section 3. [*Severability.*] [Insert severability clause.]
82
83 Section 4. [*Repealer.*] [Insert repealer clause.]
84
85 Section 5. [*Effective Date.*] [Insert effective date.]