

ORDINANCE NO. 4-2007

**AN ORDINANCE ESTABLISHING
SHERIFF LOCAL FORECLOSURE SERVICES FUND**

WHEREAS, the Board of Commissioners of Clark County (“Board”) is the legislative body of the County pursuant to I.C. 36-1-2-9. The Board also is the County Executive pursuant to I.C. 36-2-2-2 pursuant to section 2;

WHEREAS, the Sheriff of Clark County (“Sheriff”) as an officer of County government, is required by law, upon court order, to conduct public sales after foreclosure judgments are entered in certain instances (see I.C. 32-29-7-3(c), I.C. 32-29-7-4 and related statutes);

WHEREAS, the Sheriff, from time to time, in the conducting of such sales incurs actual expenses and costs, in terms of time, manpower, administrative and clerical services;

WHEREAS, a certain fee structure is set forth in I.C. 32-29-7-3. Specifically, I.C. 32-29-7-3(b) provides that the Sheriff may charge a fee of \$10.00 to one (1) owner and \$3.00 to each additional owner for service of written notice under that subsection of the statute and the fee is to be deemed a “cost of the proceeding” and is to be deposited, when collected, to the General Fund for appropriation for operating expenses of the Sheriff’s Department;

WHEREAS, I.C. 32-29-7-3(h) also provides for the charging of an administrative fee not to exceed Two Hundred Dollars (\$200.00) with respect to a foreclosure sale that is commenced, managed and conducted by the Sheriff for actual cost directly attributable to the administration of the sale;

WHEREAS, a need exists to properly and sufficiently provide for the collection, management and public usage of all administrative fees so collected under subsection (h);

NOW THEREFORE BE IT ORDAINED BY THE BOARD AS FOLLOWS:

1. That each and every recital set forth hereinabove is incorporated into this Ordinance;
2. There is hereby established the "Sheriff Local Foreclosure Services Fund" (short title: "Sheriff Local Foreclosure Fund") to be held and managed and operated consistent with this Ordinance. Said Fund shall be non-reverting in nature.
3. All administrative fees charged by the Sheriff (not to exceed the \$200.00 per sale fee authorized above) in connection with the planning, implementation, dedication of employees, administration, conducting and finalizing foreclosure sales that are ordered by a court consistent with the provisions of I.C. 32-29-7-3 shall be deposited into this fund. The fund shall be managed by the Auditor of Clark County, Indiana;
4. Expenditures from this Fund shall be solely dedicated for part-time employee services, projects, clerical work, court work, transport work, process service work and other work performed by part-time employees or deputies of the Sheriff's Department with respect to delinquent income tax collection and administration;
5. All monies utilized for the purposes set forth above, as provided in this Ordinance, shall be subject to appropriation decisions of the Clark County Council ("Council"). Any part-time employees compensated for the services described herein shall be so compensated at rates and at levels fixed by the said Council from time to time;
6. This Fund is to be utilized only as a supplement to annual existing budgetary appropriations for part-time workers in the Sheriff's Department. It is not to be utilized as a substitute for the primary funding provided by the Council to compensate part-time workers in the Sheriff's budget hereafter;
7. All part-time workers paid by virtue of this Fund are to be considered employees at-will, not subject to the receipt of any benefits as a result of payment through the Clark County government payroll compensation system. Such employees shall perform these services at the will and pleasure of the Sheriff and may be terminated by the Sheriff, in his sole discretion, at any time without any expectation of continued employment after first being assigned part-time duties by the Sheriff;

THIS ORDINANCE PASSED by unanimous vote of the Board on the 25th day of January, 2007. This Ordinance made effective as of the 25 day of JANUARY 2007.

BOARD OF COUNTY COMMISSIONERS

By: _____

M. Edward Meyer
M. Edward Meyer

By: _____

Ralph Guthrie
Ralph Guthrie

By: _____

Mike Moore
Mike Moore

ATTEST:

Barbara Bratcher Haas
Barbara Bratcher Haas
Clark County, Indiana Auditor

Formerly cited as IN ST 32-8-16-1

WEST'S ANNOTATED INDIANA CODE
TITLE 32. PROPERTY
ARTICLE 29. MORTGAGES
CHAPTER 7. FORECLOSURE--REDEMPTION, SALE, RIGHT TO RETAIN POSSESSION
32-29-7-3 Stay of execution; sale of premises; notices; requisites; procedures

Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the execution of a judgment or decree of sale for a period of three (3) months after the filing of a complaint in the proceeding. However:

(1) the period is:

(A) twelve (12) months in a proceeding for the foreclosure of a mortgage executed before January 1, 1958; and

(B) six (6) months in a proceeding for the foreclosure of a mortgage executed after December 31, 1957, but before July 1, 1975; and

(2) if the court finds that the mortgaged real estate is residential real estate and has been abandoned, a judgment or decree of sale may be executed on the date the judgment of foreclosure or decree of sale is entered, regardless of the date the mortgage is executed.

(b) A judgment and decree in a proceeding to foreclose a mortgage that is entered by a court having jurisdiction may be filed with the clerk in any county as provided in IC 33-32-3-2. After the period set forth in subsection (a) expires, a person who may enforce the judgment and decree may file a praecipe with the clerk in any county where the judgment and decree is filed, and the clerk shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court.

(c) Upon receiving a certified judgment under subsection (b), the sheriff shall, subject to section 4 of this chapter, sell the mortgaged premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation. The sheriff shall publish the advertisement in at least one (1) newspaper published and circulated in each county where the real estate is situated. The first publication shall be made at least thirty (30) days before the date of sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars (\$10) to one (1) owner and three dollars (\$3) to each additional owner for service of written notice under this subsection. The fee is:

(1) a cost of the proceeding;

(2) to be collected as other costs of the proceeding are collected; and

(3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale in at least three (3) public places in each township

in which the real estate is situated and at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. The sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement, for informational purposes only, of the location of each property by street address, if any, or other common description of the property other than legal description. A misstatement in the informational statement under this subsection does not invalidate an otherwise valid sale.

(h) The sheriff may charge an administrative fee of not more than two hundred dollars (\$200) with respect to a proceeding referred to in subsection (b) for actual costs directly attributable to the administration of the sale under subsection (c). The fee is:

(1) payable by the person seeking to enforce the judgment and decree; and

(2) due at the time of filing of the praecipe;

under subsection (b).

CREDIT(S)

As added by P.L.2-2002, SEC.14. Amended by P.L.98-2004, SEC.118; P.L.238-2005, SEC.55, and P.L.240-2005, SEC.1.

HISTORICAL AND STATUTORY NOTES

2006 Electronic Update

2004 Legislation

P.L.98-2004, Sec.118, amended this section by substituting "IC 33-32-3-2" for "IC 33-17-2-3" in Subsec. (b).

2005 Legislation

P.L.238-2005, Sec.55, and P.L.240-2005, SEC.1, by identical language, amended this section by substituting "is" for "shall be" in Subsec (a)(1); deleting "However" at the beginning of the second sentence in Subsec. (f); and adding Subsec. (h).

2002 Main Volume

Formerly:

IC 32-8-16-1

Acts 1931, c. 90, s. 1.

Acts 1957, c. 220, s. 1.

Acts 1975, P.L.299, SEC.1.

P.L.32-1983, SEC.5.

P.L.47-1983, SEC.3.

P.L.163-1984, SEC.1.

P.L.299-1987, SEC.1.

P.L.275-1995, SEC.1.

P.L.276-1995, SEC.1.