

Indiana Mortgages May Unexpectedly Expire on July 1, 2012

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Review your Indiana mortgages! If immediate action is not taken, new Indiana legislation could have a catastrophic effect on a lender's ability to foreclose its Indiana mortgage. Indiana Senate Enrolled Act No. 298, approved by Governor Mitch Daniels, takes effect July 1, 2012, and significantly amends the existing statute of limitations for foreclosing a mortgage. (Indiana Code 32-28-4-1 through 32-38-4-3.) As a result of the amendment, the statute of limitations on ***your mortgage could expire as early as July 1, 2012***, if corrective action is not taken.

The amended statute treats the statute of limitations for mortgage foreclosures differently depending on whether or not the maturity date is stated in the mortgage:

Maturity Date Stated – No corrective action is necessary. The statute of limitations will expire 10 years after the stated maturity date if no foreclosure action is filed.

Maturity Date Not Stated but Execution Date Provided – Corrective action may be necessary to preserve your mortgage. The statute of limitations will expire 10 years after the mortgage execution date if no foreclosure action is filed.

Neither Maturity Date Nor Execution Date Stated – Corrective action may be necessary to preserve your mortgage. The statute of limitations will expire 10 years after the recording date if no foreclosure action is filed.

As an example, assume that borrower grants lender a mortgage on its Indiana real estate to secure payment of a 10-year loan. The loan is made and the mortgage is signed on December 1, 2003. The mortgage is duly recorded on December 10, 2003, and the maturity date is December 1, 2013. The loan then matures on December 1, 2013, and the borrower fails to make its required balloon payment. If the maturity date is stated in the mortgage, then the statute of limitations expires December 1, 2023, and lender has ample time to enforce its rights. If the maturity date is not stated but the execution date is, then the statute of limitations expires on December 1, 2013. That is, the statute of limitations expires on the same day that the loan matures and lender cannot foreclose its mortgage.

Fortunately, there is a statutory procedure that allows the lender to correct the problem by recording an affidavit with the county recorder that sets forth the loan maturity date.

Contact

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