



ULTRA-HAZARDOUS AND UNIQUE RISKS
FOR THE STATE OF
INDIANA
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TITLE

I. Vesting

A. Marital Rights

A non-titled spouse is not required to join in the execution of a deed or mortgage under Indiana law, therefore the marital status of the parties does not need to be recited. Indiana does not recognize dower, courtesy or homestead rights.

II. Tenancies and other ways to hold title

A. By the entirety

A husband and wife are presumed to hold title as Tenants by the Entirety if they are married and no tenancy is specifically stated on the deed. That tenancy terminates upon divorce and treats the two individuals as tenants in common. While married, a lien against only one spouse does not attach to real estate held by both, although a lien against both spouses joint does attach. If spouses holding title as TBE divorce, a judgment lien against one spouse will attach upon the filing of the divorce decree, even if the lien was created prior to marriage. The TBE terminates upon death on one and sole ownership vests in the surviving spouse. To memorialize this transfer of title, a "Survivorship Affidavit" is recorded reciting a description of the real estate, that the parties held title as tenants by the entirety by virtue of deed recorded [date, book, page], that [blank] died as evidenced by copy of death certificate attached, and that the parties were continuously married from the time they acquired title until said death. While not a statutory requirement, such an Affidavit is required in order to insure title.

B. In common

A deed's grantees who are not married to each other are presumed to be tenants in common unless the deed specifically recites they are joint tenants/survivorship tenants. If those parties subsequently married, they will remain tenants in common unless they execute a new deed as tenants by the entirety. As tenants in common, a judgment lien against one owner attaches to the property. Upon death of one, the estate passes via probate to the heirs or legatees of the decedent. A so-called "Affidavit of Heirship/Inheritance" should not be relied upon to memorialize the transfer of title occurring at death of a tenant in common.

C. Joint Tenants with Right of Survivorship

To create a tenancy where title holders are joint tenants with rights of survivorship, that phrase, or the abbreviation "JTWROS" must be specifically stated on the deed. As JTWROS, liens attach to the undivided interest of the other title holder. Upon the death of one, their interest passes to the survivors. A Survivorship Affidavit and Death Certificate is filed to memorialize the transfer of title that occurred at death.

D. Conveyance by divorce decree

Conveyance by divorce decree is permitted in Indiana. Custom dictates that the decree be recorded and that the decree requires the spouse relinquishing title to quitclaim his or her interest to the spouse who will hold the fee title. Once a divorce takes place and the decree serves to convert the couple from tenants by the entirety to tenants in common, their individual liens will attach.

III. Involuntary Liens

A. Real estate taxes

As in most states, taxes are billed a year in arrears in Indiana. All taxes are assessed March 1, however, payment of said assessment is not due until the following year. Payment of assessed taxes are split into halves on with one half due May 10 and the other half due November 10.

There are no mortgage taxes or transfer fees in Indiana.

B. Judgment liens

A judgment lien attaches to real estate owned by the debtor or acquired by the debtor after the judgment lien is perfected; however, such a judgment lien is automatically subordinated to the lien of a purchase money mortgage. A PMM is a mortgage whose proceeds are used to acquire the property. If the mortgage used to acquire the property is also being used to finance anything other than the acquisition (construction, rehab, remodeling, etc.) the mortgage will have partial priority to the extent of the purchase price only and the judgment lien will need to be subordinated or paid to insure first lien position.

C. Mechanics liens

Mechanic's liens must be filed 90 days after last work commenced for commercial and 60 days after last work commenced for residential transactions. They relate back to the time work was performed or materials were provided. If work is started or the mortgage is recorded before a Mechanic's Lien is filed, as long as the proceeds from the transaction go into funding the project, the mortgage retains priority. If the funds from the transaction only partially fund the project, the portion that doesn't, does not have priority.

a. Duration

A foreclosure of the mechanics lien must be filed within a year of filing the mechanics lien. Failure to do so results in loss of the mechanics lien.

b. "Go and Foreclose" letters

A lien holder or an owner of real estate subject to a mechanics lien can provide written notice to the lienholder to commence suit to foreclose their lien delivered by certified or registered mail at the address given in the mechanics lien. If the mechanics lien holder fails to commence a foreclosure within 30 days of receiving written notice to foreclose, the mechanics lien is released.

The party who sends the notice must record an affidavit which recites the following:

- The facts of the notice.
- That more than thirty (30) days have passed since the notice was received by the lienholder. (The registered/certified mail return receipt must be attached as an exhibit to the affidavit)
- That no action for foreclosure of the lien is pending.
- That no unsatisfied judgment has been rendered on the lien.

Upon receipt of such an affidavit, the Recorder shall:

- record the affidavit of service in the miscellaneous record book of the recorder's office; and
- certify on the face of the record any lien that is fully released.
- When the recorder records the affidavit and certifies the record under this subsection, the real estate described in the lien is released from the lien.

IC 32-28-3-10

c. Bonding off mechanics liens

During the pendency of an action to foreclose a mechanics lien, the owner or any person having an interest in the real estate may file a written "undertaking with surety" to be approved by the court.

The "undertaking with surety" must provide that the person filing it will pay any judgment that may be recovered in the action to foreclose the lien, including costs and attorney's fees allowed by the court, if the claim on which the judgment is founded is found by the court to have been a mechanics lien on the property at the time the foreclosure was filed.

If an undertaking is filed and approved by the court:

- the court shall enter an order releasing the property from the lien; and
- the property shall be discharged from the lien.

IC 32-28-3-10

D. Common law liens

In response to the militia movement, wherein people were trying to enforce liens against their neighbors, political figures, etc., Indiana enacted a “Common Law Lien Statute” which provides that such liens can be accepted for recording and provided a non-judicial means for an effected owner of real estate to clear such liens from title.

IC 32-28-13 et. seq.

IV. Mortgages

A. Expiration

In 2012, Indiana amended IC 32-28-4-1 to 32-28-4-3 to shorten the duration a mortgage enjoys as a lien. The general rule is that a mortgage which states a maturity date or contains a method by which the maturity date can be determined expires as a lien 10 years from said maturity date unless a foreclosure is pending.

If the mortgage does not contain a maturity date, the following rules apply:

- If the mortgage was created on or before July 1, 2012 as evidenced by its date of execution or if there is no date of execution, its date of recording, the mortgage is a lien for 20 years after the date of execution or recording as the case may be so long as there is no pending foreclosure.
- If the mortgage was created after July 1, 2012 as evidenced by its date of execution or if there is no date of execution, its date of recording, the mortgage is a lien for 10 years after the date of execution or recording as the case may be so long as there is no pending foreclosure.

IC 32-28-4-1, et. seq.

B. Foreclosure

Indiana foreclosures are judicial. A complaint for foreclosure is filed and summons must be served on all parties with an interest in the property in accordance with the Indiana Rules of Civil Procedure. Failure to serve a summons and complaint on a party with an interest in the real estate will result in that party's interest surviving the foreclosure.

The Lis Pendens date for a foreclosure is the date the Complaint is filed. All liens or interests, other than a lien for a sewer bill, that attach or acquired after this date take their interest subject to the outcome of the foreclosure. If the foreclosure is completed, these liens/interests are eliminated. Should the foreclosure be dismissed, the liens will attach and the interests preserved. Be especially mindful of this doctrine should you be asked to insure a short sale or a deed in lieu of foreclosure occurring during the pendency of a foreclosure.

The borrower may redeem the property at any time prior to the foreclosure sale by paying the plaintiff all sums owed on the debt and any other costs/fees. Please remember that if the property is affected by a Federal Tax Lien, the United States has a right of redemption for 120 days after the foreclosure is completed.

V. Tax Sales

Real estate that's been subjected to a property tax foreclosure is an extra-hazardous risk. As a general rule such titles will not be insured by the Company unless title has been quieted in a separate action after the tax foreclosure was completed.

VI. Manufactured Housing

Whenever real estate has “manufactured housing” located upon it, you may be requested to issue an ALTA 7 series endorsement to the lender providing coverage that the manufactured housing is considered part of the real estate.

Manufactured housing can be divided into two types:

- A. Mobile Homes** (also known as House Trailers) are essentially oversized campers. A trailer forms the foundation upon which the home is constructed and allows the home to be towed to the site. A mobile home has an automotive title just like a car, boat or a trailer and is considered personal property.
- B. Pre-fabricated Housing** (sectional) are constructed in one or more sections, placed upon a semi-trailer and transported to the site for final assembly and are considered part of the real estate once they are placed on a foundation/slab just like any other “stick built” home. An ALTA 7 series endorsement may be issued once the sectional is assembled on the land.

A mobile home (house trailer) loses its characteristic as personal property and becomes part of the real estate when it is permanently affixed to a slab or foundation. Removal of the trailer hitch and wheels should be considered an essential part of permanently affixing the trailer. Once permanently affixed, you may issue an ALTA 7 series endorsement.

While it is not required under Indiana law, some lenders may require the filing of an “Affidavit of Transfer to Real Estate (ATRE Form 51408) with the Indiana Bureau of Motor Vehicles (BMV) before they will make a loan on land improved with a mobile home even though it has been permanently attached to a slab/foundation and the hitch/wheels removed.

The BMV provides a form and checklist for said affidavit:

http://www.in.gov/bmv/files/ATRE_Packet.pdf

VII. Land Contracts

Judgments against the vendor perfected after the filing of the land contract do not attach so long as the vendee completes the contract and receive their deed. A vendee is essentially treated as the true owner from the time the land contract is filed.

Federal tax liens, abstracts of judgment in favor of the United States and other federal liens that attach in the same manner as a federal tax lien (anti-terrorism liens, for example) attach against the vendee’s interest and must be cleared.

VIII. Sales Disclosure Form

The county auditor (Tax Assessor) requires the filing of a Sales Disclosure Form (46021(R11/ 12-11) whenever most deeds and land contracts are recorded. This form may be made available online in some counties or may be required to be submitted via a vendor. Some transactions may be exempt from this filing requirement. Check with the auditor of the county as to the proper method of filing and exemption.

IX. Indiana Property Tax Benefits

The Indiana Property Tax Benefits (State Form 51781) must be delivered to a buyer or a refinancing owner in every residential transaction. The buyer/borrower must sign the form.

IC 6-1.1-12.43 requires a closing agent to document that the form has been delivered and the verification signed by the buyer/borrower. Failure to comply carries a \$25 penalty each time the closing agent fails to comply with the delivery and/or verification requirements.

The form must be printed on gold or yellow paper. A .pdf of the form may be downloaded at: <https://forms.in.gov/download.aspx?id=6015>

X. Trust Vesting

A conveyance to a trust rather than to the trustees of the trust is void. Fee simple title is still vested in the grantors of the deed to the trust, and a corrective deed to the trustees will be required.

XI. Small Estate Affidavits

The Indiana Probate Code provides for a "Small Estate Affidavit." These are often filed purporting to transfer the real estate, however, such affidavits by statute can only be used to transfer personal property (bank accounts, cars, etc.) and not real property. Probate will be required.

REGULATORY

I. Forms

At the time of this writing, Indiana is a "file and approve" state, meaning rates and forms are filed and approved for use by the Indiana Department of Insurance. They cannot be used until the IDOI approves them for use by each filing Underwriter Company. There can be no deviation from rates and filed forms cannot be modified.

II. Closing Protection Coverage or Letters ("CPL")

Closing protection coverage via a closing protection letter is mandatory on all residential transactions (see bulletin IN2013006), regardless of whether the party makes a request for this coverage or declines coverage. The covered parties are the buyer/borrower, lender and seller. There is a charge for issuing the CPL (\$25.00 per letter, per party). The CPL is considered insurance and the fee charge is considered insurance premium. Unlike other title insurance premium which is split between the Underwriter and Title Insurance Agent, the CPL fee is retained entirely by the Underwriter.

III. TIEFF (Title Insurance Enforcement Fee Fund)

Per Indiana Code 27-7-3.6A, a \$5.00 fee per policy must be charged and sent to the Title insurance Underwriter at the time the policy is purchased. Two dollars of this fee is retained by the Underwriter as an administrative fee, and \$3.00 is paid by the Underwriter to the IDOI, which is placed in the Title Insurance Enforcement Fee Fund. This fund, per IDOI bulletin 139, was established to offset the IDOI's administrative and employment costs as it relates to regulating title insurance.

IV. Licensure

A title insurance agent or agency must be licensed as such by the Indiana Department of Insurance (IDOI) in order to conduct closings on Indiana property, whether or not the closing takes place on Indiana soil. The IDOI broadly defines closings as preparation of the settlement statement, disbursing funds, ensuring the proper execution and acknowledgment of transaction documents, and notarizing transaction documents.

V. CE

Title insurance agents must renew their licenses every 2 years, and during that 2-year period, must complete 7 hours of continuing education courses with at least 1 hour in ethics, underwriting, RESPA and escrow. The cost to renew a license is \$40 for residents and \$90 for non-residents.

VI. RREAL Database

RREAL IN is statutorily mandated by Indiana Code 27-7-3-15.5. It is an online database, found at www.in.gov/idoi/in_rreal/, that is used for the reporting, collection and storage of information concerning resident or non-resident entities or licensees that have participated in or assisted with transactions involving residential property located in the state of Indiana. The following transactions are reportable under this requirement:

- First Lien Purchase Money Mortgage
- Refinance
- Cash Transaction
- Land Contract
- Reverse Mortgage
- Home Equity
- Subordinate Mortgage
- Business Loan Secured by Residential Property
- Commercial Loan Secured by Residential Property

VII. Good Funds

Escrow funds in Indiana must be received by the title agent by irrevocable wire transfer from any party when the dollar amount is \$10,000 or more. Any funds received which total less than \$10,000 may be received by the title agent via the following methods:

- (1) U.S. currency.
- (2) Wired funds unconditionally held by and irrevocably credited to the escrow account of the closing agent.
- (3) Certified or cashier's checks that are drawn on an existing account at a:
 - (A) bank;
 - (B) savings and loan association;
 - (C) credit union; or
 - (D) savings bank;chartered under the laws of a state or the United States.
- (4) A check drawn on the trust account of a real estate broker licensed under IC 25-34.1, if the closing agent has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the account on which the check is drawn at the time of disbursement of funds from the closing agent's escrow account.
- (5) A personal check not to exceed five hundred dollars (\$500) per closing.
- (6) A check issued by the state, the United States, or a political subdivision of the state or the United States.
- (7) A check drawn on the escrow account of another closing agent, if the closing agent in the escrow transaction has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of funds from the escrow account of the closing agent in the escrow transaction.
- (8) A check issued by a farm credit service authorized under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)

Escrow funds in an amount less than \$500 may be accepted by personal check.

VIII. Miscellaneous

The Indiana Department of Insurance conducts periodic audits of title agents to check compliance with Indiana laws and regulations. Many agents have incurred substantial fines or had their license suspended/revoked for violations. Common violations include:

1. Agent acts within the scope of its license and all employees performing duties requiring an Indiana title insurance license are properly licensed;
2. Controlled/Affiliated Business is handled in accordance with statutes, rules and regulations;

3. Inducements are not provided, directly or indirectly, in consideration of a referral or title insurance business, escrow or other services provided by the agent;
4. Escrow accounts are used only to receive and disburse funds related to closings;
5. Agent's Title Insurance Enforcement Fund Fee (TIEFF) collection is in accordance with Indiana law;
6. Policies and premiums are reported and remitted on a timely basis;
7. RREAL IN compliance (RREAL IN is a database used in criminal investigations where certain real estate transactions must be entered by the "closing agent".);
8. Compliance with the filed rates of the Agent's underwriter(s) (Reissue rates are a focus);
9. The Agent and applicable employees have errors and omissions coverage, fidelity coverage and/or a surety bond as required by statute, rule or regulation;
10. Compliance with statutes, rules and regulations relative to recording and transfer fees;
11. Agent and their underwriter(s) have a written contract to issue the underwriter's policies;
12. Reports and disclosures, including commitment letter, are made in compliance with statute, rule and regulation;
13. The closing or settlement protection conforms to the terms of coverage and form of instrument as required by statute, rule and regulation;
14. All advertising and sales materials are in compliance with applicable statutes, rules and regulations.

Additionally, the State of Indiana conducts periodic audits to ensure Property Tax Benefit Form compliance.