

Insights

July Hoosier Banker: Compliance Connection with Partner Brett Ashton

July 6, 2016

By: Brett J. Ashton

As seen in the July issue of the Indiana Banker Association's Hoosier Banker.

Question No. 1: Our bank recently foreclosed on a consumer mortgage, and before vacating the property the borrower removed all of the copper piping and cabinets from the home. When we approached the local prosecutor's office to press charges against this individual, we were told that there was nothing the prosecutor could do. Does Indiana law provide any remedy?

Answer: Yes. While historically Indiana law did not provide a specific remedy to protect banks from damage that may occur prior to a borrower vacating the foreclosed property, the Indiana General Assembly recently enacted a new law¹ to provide some protection against what has become an increasingly common occurrence. Ind. Code § 35-43-4-9(c) provides, in part: "A person who knowingly or intentionally damages, permanently removes an object from, or defaces real property in foreclosure commits foreclosure mischief, a Class B misdemeanor." A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than 180 days; in addition, he or she may be fined not more than \$1,000.² This protection only applies to real property for which a foreclosure action has been filed or joined by a person having a security interest that is used to secure a mortgage, land contract or similar agreement, but does not apply to a mechanics lien, tax lien or a lien filed by a homeowners association, unless the property on which the lien is filed is also subject to a foreclosure action based on a mortgage, land contract or other similar agreement.

Question No. 2: Does the new law apply to damage a borrower may do to the property outside the structure of the home? For example what if the borrower does not damage the house, but destroys the landscaping?

Answer: Yes. Ind. Code 35-43-4-9(b)(1) defines the damage, permanent removal of an object or defacing of real property to include damage, removal or defacing of the landscaping, in addition to the following:

- Fixtures;
- Heating ventilation or airconditioning systems;
- Wiring;
- Pipes, fittings or any part of the plumbing system;

- Part of the building structure, including parts of the roof or building foundation;
- Windows;
- Floors, ceilings or walls; and
- Unattached structure, carport, fence or swimming pool.

If the borrower causes more than \$750 in damage, up to \$50,000, the severity of the criminal act is elevated to a Class A misdemeanor, punishable by imprisonment of not more than one year and a fine of not more than \$5,000.³ If the damages exceed 50,000, the crime is considered a Level 6 felony, punishable by up to two and one-half years' imprisonment; additionally, the person may be fined not more than \$10,000.⁴ If your bank experiences a loss as a result of a borrower's intentional damage to a property in foreclosure, you should contact local law enforcement authorities and/or the prosecutor's office.

¹Senate Enrolled Act 183 was passed by the 2016 General Assembly at the request of the Indiana Bankers Association, and became law on July 1, 2016.

²Ind. Code § 35-50-3-3

³Ind. Code § 35-50-3-2

⁴Ind. Code § 35-50-2-7