

INDIANA BUILDER NEWS ONLINE

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IBA ramps up Home Energy Conservation Program

The Indiana Builders Association is making preparations to administer the home energy conservation program in 37 counties throughout Indiana.

IBA, in response to a RFP issued by the Indiana Housing and Community Development Authority (IHCDA), is awaiting the contract to begin the exciting task of weatherizing more than three thousand homes.

Indiana's State Plan is awaiting final confirmation by the Department of Energy in Washington.

Once the contract with IBA is complete, we will be able to launch activity in our 37 counties.

The counties identified in yellow on the map are included in IBA's area.

In anticipation of the ramp up of activity IBA is compiling a list of energy auditors and contractors. The success of the program is heavily dependent on high quality energy audits and high quality contractors.

For details on becoming a qualified auditor or contractor please visit:

- Auditor training information - <http://www.in.gov/ihcda/2523.htm>
- Contractor training information - <http://www.ivytech.edu/weatherization/>.

The IBA is compiling a list of members who have registered for auditor and/or contractor training. If you are participating in either of these training programs, e-mail your contact information to info@BuildIndiana.org.

Additional information on the Home Energy Conservation program is available on IBA's website at www.BuildIndiana.org.

Model home deduction

In response to IBA's successful lobbying efforts in the Indiana General Assembly this year, the Indiana Department of Local Government Finance has released a memorandum and form for builders to fill out to claim a property tax deduction for the 2008 payable 2009 tax year for a model/spec home.

See pages 14-20 for complete details and the application.

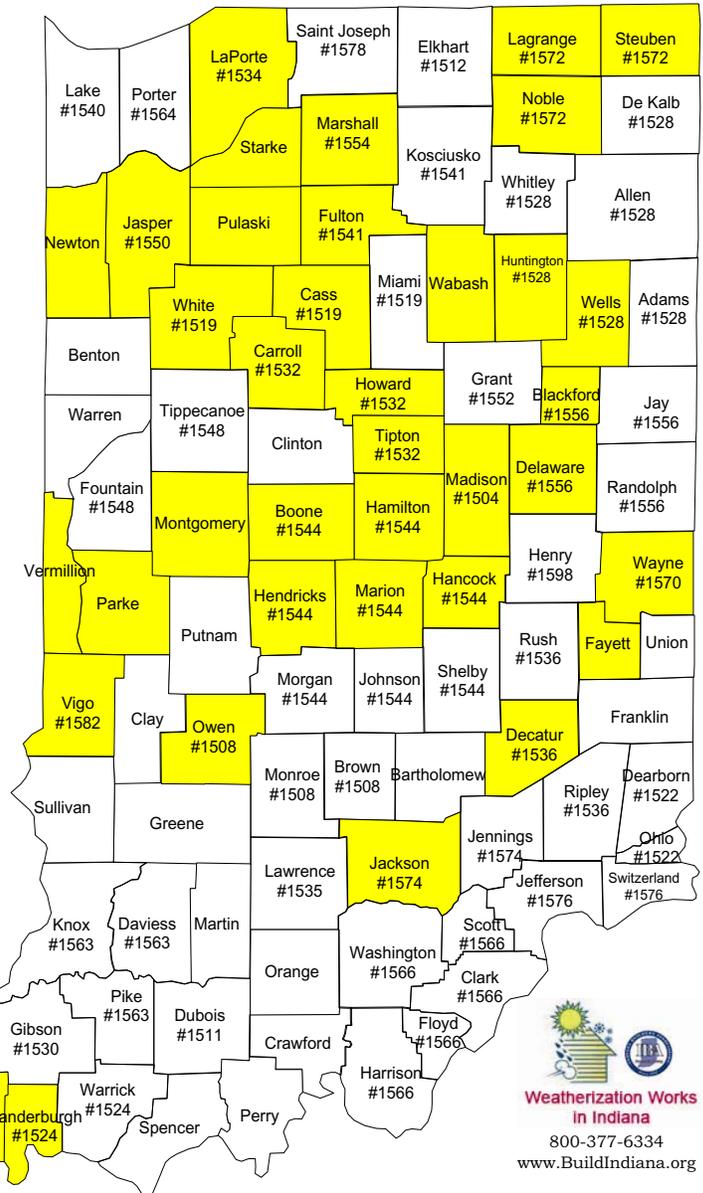
The memo is also available on-line at http://www.in.gov/dlgf/files/090528-Rushenberg_Memo_Model_Residence_Deduction_for_the_2008_Assessment_Date.pdf.

The form is also available on-line at http://www.in.gov/dlgf/files/State_Form_53947.pdf.

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IBA Energy Conservation Counties



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Now is the time to keep our guard and membership up

This past June the Indiana Builders Association's board of directors convened its quarterly meeting in Indianapolis. All committee meetings were conducted in a single day's session in an effort to save time and money. I have never been a big fan of the single day session because of the long travel time some directors have and the loss of quality networking time that is lost in the speed of the day. Thank you to all who attended this long day session to complete IBA's business. I hope to see all directors at our next meeting in August.

Several items of interest at the latest board of directors meeting were the address from **Indiana Secretary of State Todd Rokita**. As the 59th Secretary of State Rokita operates his office on a budget less than that of the 1987 Secretary of State's office. He has been a champion in revising Indiana voting laws and combating mortgage and investment fraud. Special thanks to the Secretary for his time spent with IBA directors and for his service to Indiana.

The Board also watched a video clip from **Congressman Mike Pence** to close our meeting. It was good to hear some encouraging words from Washington and the Congressman's continued support of Indiana builders.

Other business conducted on that day included passage of administering the IBA Home Energy Conservation Program, often referred to as the weatherization program.

IBA's Board approval of the **Auto Owners insurance discount program** will afford interested members a ten percent discount. I have been assured this discount will be offered in all 92 counties by independent Auto Owner's agents. Special thanks to **Jud Motsenbocker, CGR, CAPS** for his continuing work on the Insurance Task Force. I hope this will be the first of many programs to ease the pressure of the cost of insurance to IBA members. Staff and the senior officers have and will continue to shift responsibilities and programs to save money while trying to offer the best value for every dollar spent by IBA.

I need everyone to help with new member development. Keep asking folks to join our group and ALWAYS do business with members. When our membership grows its value also grows.

As we begin the second half of 2009, I would encourage all to get involved in local, state, and national leadership. Start thinking how you can help with the recovery effort. We are all feeling the pressure of this economy and the difficulties it brings to our business. NAHB tells us that the housing market is at or near the bottom and that the market over the long term is definitely on a growth path. If you are experiencing financing problems with your acquisition, development and construction loans, NAHB wants to hear your stories at www.nahb.org/adccasestudy. Falling prop-



President's Message

By Dennis Spidel,
GMB, CGB, CGR, CGP
Spidel Custom Homes and
The Lakeshore Design Center,
Angola
President,
Indiana Builders Association

erty values and appraisal problems are also high on NAHB's agenda.

I also would like to remind everyone to not let your guard down. Sales and revenues are down, we are all working with less staff and trying to offer the same service we did in the early and mid 2000's.

Our industry is under attack from all sides and we can't lose strength. I recently attended a baseball game at the new stadium in Fort Wayne, Indiana. We were met at the entrance by Sprinkler man and the National Association of Fire Sprinklers. Inside they were passing out bags with a coloring book and crayons. In it sprinkler man was saving children. Sprinkler man threw out the first pitch and addressed the crowd of 7,200 during the seventh inning stretch.

Our federal government is in the process of voting on an energy bill HR2454, known as cap and trade. I hope all of you answered the CALL TO ACTION and asked your congressmen to vote no on this bill. If it passes, it will mean all new buildings constructed must be 30 percent above 2006 IECC – and much more. This new tax on all energy consumers can only make things worse. Just when you think it couldn't get much worse, I am here to tell you it can get a lot worse if we do not pay attention.

NAHB and IBA are fighting the fight, but both need you to get involved. In most cases it does not cost you anything other than a little of your time. Last week Chief Operating Officer Cindy Bussell and I met with the Indiana Lumber and Builders Supply Association's board of directors in an effort to work more closely with their membership on common goals in our industry. I would like to work with them and other like groups to build strength in our numbers. On my last trip to Washington, DC my congressional representative Mark Souder told me he listens when the message comes to him day after day by the builders, lumber dealers, Realtors and other industry groups. We need to have a united message to deliver. Together we can continue to protect housing affordability.

Regards, Dennis



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Legislature passes new homeowner's association law

Written by: Jeffrey M. Bellamy, Esq.

On July 1, 2009, a new law went into effect changing how Homeowner's Associations operate. Signed into law on May 13, 2009, these new provisions will require all Homeowner's Association documents to be written and enforced in compliance with the new law. This will impact subdivisions under development that have not yet incorporated or otherwise adopted governing documents by July 1, 2009, and all new associations created thereafter. While many changes only apply to newly created associations, an existing association may elect to be covered by the new provisions by amending its governing documents. Other changes, though, will apply to all associations regardless of when created.



Bellamy

one year expiration date. The prior law required an HOA to foreclose on its lien within 30 days of being notified by the property owner to do so; the HOA now has one year from the date of that notice to initiate foreclosure.

Finally, the new law requires an HOA's Board or other governing body to address an item of business at a regularly scheduled meeting, or a special meeting if one is not scheduled, if the Board is petitioned by at least 10 percent of the members of the Association. This provision, though, duplicates require-

ments of the existing Non-Profit Corporation Law, but would also apply to organized, but unincorporated associations.

Provisions Applying to Associations Formed After July 1, 2009:

Several provisions of the new law relating to the operation of Associations only apply to new associations formed after July 1, 2009, or existing Associations that elect to opt into the law. Opting in requires either a majority vote of the members of the Association unless

HOA (see page 22)

Application of the New Law:

The first step to understanding these changes is to understand how the new law is applied. While the July 1, 2009 date is relevant, the act covers any organized entity, incorporated or not, that governs or otherwise manages individually owned residential real estate and dwellings. Thus, the act would cover a single family residential development but could also cover a shared party wall development if the structure and land is owned outright. By exclusion, this would not cover condominium developments due to the joint ownership nature of the condominium association's assets and the new law does not reference the existing Condominium Act.

Provisions that Apply to All Associations:

In 2007, at the request of mortgage and title company interests, a bill was passed by the General Assembly that essentially emasculated an Association's ability to enforce its lien rights for collection of delinquent assessments. While not fully restoring the potency of an association's ability to collect delinquent assessments, the new Act makes several improvements that make lien enforcement viable. The prior law caused HOA liens to expire after one year, thereby forcing associations to either lose their secured claims against the real estate lien, or to initiate foreclosure litigation sooner than it would prefer. The new bill creates some balance by prohibiting an HOA from foreclosing its lien within the first year of being filed, but allows the lien to remain in force for five years, rather than the previous

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Commission adopts new electrical code without arc-fault circuit interrupters and tamper-resistant receptacles

The Fire Prevention and Building Safety Commission recently adopted the 2008 National Electrical Code (NEC) as the Indiana Electrical Code, 2009 Edition as published and re-inserted the following requirements:

- 210.8(B)(5) All 125-volt single phase, 15- and 20-ampere receptacles within 6 feet of a sink require ground fault circuit interrupter (GFCI) protection;

- 406.8(B) All 15- and 20-ampere, 125- and 250-volt nonlocking receptacles installed in wet locations shall be listed weather-resistant type;

- 422.52 Electric drinking fountains shall be protected with GFCI protection.

The rule moves to the Attorney General's office, then to the Governor's office.

The Indiana Electrical Code, 2009 Edition is expected to be in effect in October 2009. Since the state removed the requirement for arc-fault circuit interrupters (AFCIs) and

Open meeting to offer amendments for ASHRAE 90.1 set for July 15

The state is moving forward with the adoption of ASHRAE 90.1 for Class 1 structures and will hold the second open meeting to offer amendments on July 15 from 9 am to 5 pm at 302 W. Washington St., Conference Center Room D, Indianapolis, IN 46204.

Following the hearings, the comments will be summarized by staff and presented at either the August 4 or September 1 Commission meeting.

Staff will request permission to publish a proposed rule, with any additional amendments that the Commission requests from those proposed at the open meetings.

After the proposed rule is published, there a public hearing will likely be scheduled in October.

The final proposed rule will likely be presented to the Commission at its November 3 meeting. If approved, it will be effective in early 2010.

The state currently uses the Indiana Energy Conservation Code, 1992 Edition.

To view a preliminary draft of the amendments, go to <http://www.in.gov/dhs/2375.htm>.

tamper-resistant (TR) receptacles due to their fiscal implications, IBA supported the proposed rules.

State Residential Code Review committee deletes fire sprinklers

At its recent meeting the state's Residential Code Review Committee deleted Section R313 Automatic Fire Sprinkler Systems from the 2009 IRC by a vote of 18-6.

Once the Committee completes its work on the code, the proposed rule begins the promulgation process.

The Committee's next meeting will be on July 9 from 10 am to 4 pm at the Sterrett Center located at 8950 Otis Ave, Lawrence, IN

Codes Corner

Carlie Hopper
Regulatory Affairs Director



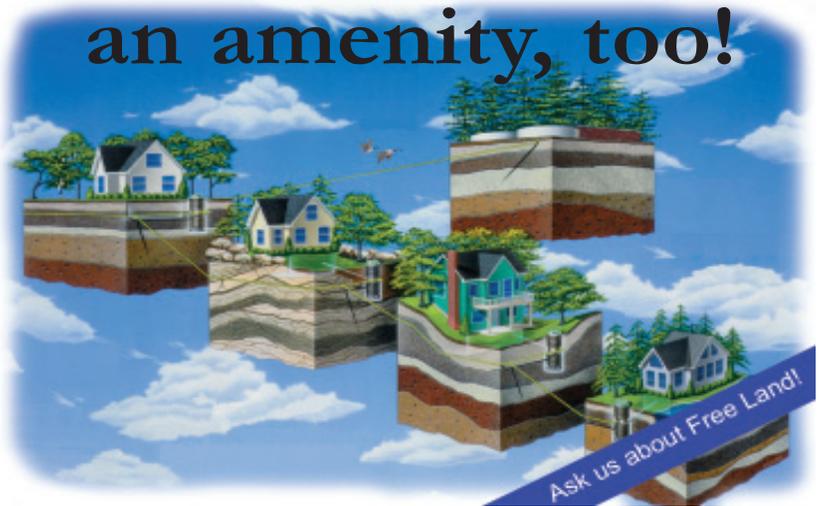
46216.

The meeting notice, minutes, and agenda are posted at <http://www.in.gov/dhs/2494.htm>.

Proposed code changes are posted at <http://www.in.gov/dhs/2495.htm>.

To propose a code change, complete and return the Proposed Code Change Form 41186R to the state of Indiana. The form can be downloaded from the code services section of the state's website at <http://www.in.gov/dhs/2375.htm> or contact Carlie@BuildIndiana.org for a Word template.

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IBA's 2nd Annual Go Green Conference

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David Kovich, GMB, CAPS, CGP, (left) conference facilitator thanks Chis Dorman from the Office of Energy Development for being the Title Sponsor of IBA's 2nd Annual Go Green Conference.



Nearly 100 professionals attended IBA's 2nd Annual Go Green conference to understand and use the National Green Building Standards. Presenting at the conference were David Kovich, GMB, CAPS, CGP, facilitator; Mark Jansen and Stephen Robinson, GMB, CGB, CGR, GMR, CAPS, CGP.

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Randy Crutchfield, CGP (right) with Vectren proudly accepts the sponsorship plaque from IBA's 2nd Annual Go Green facilitator David Kovich, GMB, CAPS, CGP.

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Public comments being accepted on new guidelines for the Energy Star program

The U.S Environmental Protection Agency is currently accepting public comments on new guidelines for the Energy Star program to take effect in 2011.

Changes to the program include additional mandatory measures needed for building science requirements on thermal flow, air flow and moisture flow; inclusion of high-efficiency equipment and products for performance path methods to ensure consistent bundle of technologies, new requirements for energy efficient lighting and appliances, as well as requirements for efficient water distribution systems and low-flow shower heads.

The new program also requires verifiers to complete additional new checklists dealing with framing, HVAC quality installation, indoor air quality, and water-managed construction.

EPA will accept comments on the new program until July 10th and should be directed to energystarhomes@energystar.gov.

For more information on the changes, please visit http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.nh_2011_comments#additional.

Movies on green

NAHB, in conjunction with a grant from Wells Fargo, recently unveiled two movies to help home builders and their consumers learn more about green building. Both videos are informative and can be ordered through NAHB for \$25. To view the consumer video, visit www.nahb.org/greenhome guide and the builder/remodeler video can be viewed at www.nahb.org/greenreport.

Remodelers

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ANSI approves National Green Building Standard™



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The National Green Building Standard™ for all residential construction work including single-family homes, apartments and condos, land development and remodeling and renovation was approved recently by the American National Standards Institute (ANSI).

“The approval signals a new era for the nation’s builders, remodelers and developers and also provides an extra measure of reassurance for home buyers,” said Joe Robson, a home builder in Tulsa, Okla., and Chairman of the National Association of Home Builders.

“The National Green Building Standard is now the first and only green building rating system approved by ANSI, making it the benchmark for green homes,” said Ron Jones, who chaired the consensus committee charged with developing the standard.

“The standard provides home builders and remodelers with a much more expansive third-

party rating system that they can use to achieve green certification under NAHBGreen and the National Green Building Certification Program,” said Mike Luzier, CEO of the NAHB Research Center.

The Research Center provides certification for NAHBGreen projects, which until now have only included single-family homes. “Consumers are looking for authentic, verifiable green building practices, and now they’ll find them with a true industry consensus standard for residential green building,” Luzier said.

The standard defines what green practices can be incorporated into residential development and construction and how home owners can operate and maintain green homes.

But the National Green Building Standard also provides for flexibility - allowing home builders and home buyers to make green choices based on climate and geography as

well as style preferences and budget.

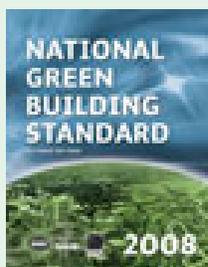
As part of the stringent process required by ANSI, NAHB and the International Code Council gathered a fully inclusive and representative consensus committee composed of a broad spectrum of builders, architects, product manufacturers, regulators and environmental experts.

The work of the consensus committee was administered by the NAHB Research Center, an ANSI Accredited Standards Developer.

The consensus committee deliberated the content of the standard for more than a year, held four public hearings and evaluated over 3,000 public comments in the development of the standard.

Members of the Indiana Builders Association who opt to have their homes certified through the NAHBGreen program may also receive certification from the Indiana Builders Association’s GreenBuildIndiana program.

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Those performing remediation now have something to lien on

Written by: *Matthew Voors, attorney with Frost Brown Todd, LLP.*

As those in the construction industry know, the Indiana Mechanic's Lien Statute ("Statute") was enacted to provide contractors, subcontractors, materialmen and laborers an avenue to secure payment for work they perform on a property. Usually, the work provided or materials supplied are identifiable because the contractor or material supplier can point to an improvement or repair on the property resulting from the work or materials. Unfortunately, not all work that may be performed on a property is so easily categorized. While the Statute provides a general guideline to determine whether the work is properly lienable, the application of the Statute to any given work is for the court to decide.



Voors

In *Midwest Biohazard Services LLC v. Hugh H. Rodgers and The Hugh C. Rodgers Trust*, No. 41A05-0805-CV-290, the Indiana Court of Appeals addressed the issue of whether a contractor hired to dispose of biohazardous waste in a home was entitled to assert a mechanic's lien under the Statute. On October 5, 2001, Hugh C. Rodgers ("Rodgers Sr.") conveyed his home and property to The Hugh C. Rodgers Trust ("Trust"), but continued to live in the home. Sometime in 2007, Rodgers Sr. died at his home; however, his body was not discovered for several days. Between Rodgers Sr.'s death and the time his body was discovered, his body began to decompose, allowing fluids to escape from the body and soak through and penetrate the carpet and subfloor and down into the basement. The decomposition of the body also caused contaminants to be absorbed in materials throughout the home.

After Rodgers Sr.'s body was discovered, Hugh H. Rodgers ("Rodgers Jr.") contacted John Ward from Midwest Biohazard Services, LLC ("Midwest Biohazard") and asked for an estimate to remediate and dispose of biohazardous waste from the decomposition of Rodgers Sr.'s body. Midwest Biohazard prepared an estimate for services, including removal of carpet and pad in the affected areas of the home and cleaning and disinfecting the ceiling, walls, and floors throughout the home, including the basement. Midwest Biohazard submitted a quote to Rodgers Jr. to perform the work, estimating the remediation work would total \$13,500.

On September 21, 2007, Rodgers Jr. and

Midwest Biohazard entered into a contract for Midwest Biohazard to perform the work. A few days after Midwest Biohazard began performing decontamination services, Rodgers Jr. notified Midwest Biohazard that he would not pay for the work it performed. As a result of Rodgers Jr.'s failure to pay Midwest Biohazard for the services it performed, Midwest Biohazard filed a Notice of Intention to Hold Mechanic's Lien with the Johnson County Recorder's Office.

On December 19, 2007, Midwest Biohazard filed a Complaint to foreclose on its mechanic's lien. In response, Rodgers Jr. and the Trust filed a Motion to Dismiss, arguing that Midwest Biohazard was not entitled to assert a mechanic's lien for the work it performed on the home. On April 23, 2008, the trial court granted Rodgers Jr.'s Motion to Dismiss and dismissed Midwest Biohazard's claim to foreclose on its mechanic's lien. Midwest Biohazard appealed.

On appeal, the Indiana Court of Appeals agreed with Midwest Biohazard and determined that its mechanic's lien was valid. In reaching its decision, the Court of Appeals

looked at the Statute to determine whether the type of work Midwest Biohazard performed was the type of work entitled to protection under the Statute. Specifically, the Court observed that the Statute allows a contractor to assert a mechanic's lien on the property where the work was performed or material supplied up to the value of the work and/or materials.

The Court noted that while courts must strictly construe mechanic's liens when evaluating the scope of the lien and those entitled to claim a right to assert a mechanic's lien, the Statute must be liberally interpreted once the claimant meets this burden. The Court reasoned that such a policy is necessary to effectuate the intent of the Statute's underlying policy - to prevent an owner from enjoying the fruits of the labor and materials furnished by others without recompense.

Under this statutory framework, the Court of Appeals found that Midwest Biohazard was a contractor performing labor under the Statute and that it performed the type of work expressly contemplated by the Statute. The Court observed that while the word "repair"

Mechanic's Lien Statute (*see page 22*)

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IBA Board of Directors hold second quarter session



It was a great showing by members of the BA of Elkhart County as they took home the traveling trophy for the most new members recruited in 2009.



Several IBA members who completed their course work for the Certified Green Professional designation in the second quarter were recognized at the recent state Board meeting. Professional Designation Chairman Mike Bell, GMB, CGB, CGR, CGP, CAPS (right) congratulates the recipients.



IBA President Dennis Spidel, GMB, CGB, CGR, CGP (left), welcomes Indiana Secretary of State Todd Rokita to the recent state Board meeting.

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May, 2009
4,800 members



2009 Goal
5,800 members



Scott Zila, owner of Build Right Construction, a member of the BA of LaPorte County, proudly shows off his new truck painted with his company information as well as logos from the local, state, and national builders associations.

New Members

As of May 31, 2009

Local HBA **Y-T-D New Members**

Elkhart County	33
Southern Indiana	32
Porter County	25
Greater Indianapolis	24
Greater Terre Haute	19
St. Joseph Valley	17
Greater Lafayette	14
Northwest Indiana	11
Southwestern Indiana	10
Kosciusko-Fulton Co.'s	9
Howard County	9
Fort Wayne	6
Southeastern Indiana	6
Lawrence County	5
Monroe County	4
Madison County	4
North Central Indiana	4
Dubois County	3
East Central Indiana	3
LaPorte County	3
Wayne County	3
Marshall County	2
Gibson County	2
Northeast Indiana	1
Jasper County	1
River Valley	1
Grant County	1
Vincennes Area	0
Dearborn County	0
Jackson-Jennings	0
Henry County	0
At Large Members	0
Indiana	252

Retention Rate

As of May 31, 2009

Local HBA **Retention Rate**

Jasper County	97.1%
River Valley	95.0%
Vincennes Area	94.1%
Dubois County	93.9%
LaPorte County	93.5%
Monroe County	93.3%
North Central Indiana	92.9%
Howard County	91.9%
Kosciusko-Fulton Co.'s	91.4%
Fort Wayne	90.3%
St. Joseph Valley	89.9%
Greater Terre Haute	89.5%
Greater Lafayette	89.2%
Elkhart County	88.6%
Northeast Indiana	88.2%
Southwestern Indiana	87.3%
East Central Indiana	85.4%
Greater Indianapolis	84.9%
Henry County	84.2%
Madison County	82.6%
Southern Indiana	82.1%
Lawrence County	82.1%
Southeastern Indiana	81.8%
Wayne County	80.4%
Marshall County	79.5%
Porter County	77.1%
Northwest Indiana	76.1%
Jackson-Jennings	73.3%
Gibson County	68.4%
Dearborn County	64.1%
Grant County	61.5%
At Large Members	0.0%
Indiana	86.0%

Membership Standings

As of May 31, 2009

Local HBA **Total Members**

Greater Indianapolis	869
Elkhart County	413
Fort Wayne	380
Southwestern Indiana	334
Northwest Indiana	300
Southern Indiana	288
Greater Terre Haute	250
St. Joseph Valley	230
Kosciusko-Fulton Co.'s	211
Porter County	210
Greater Lafayette	196
Dubois County	156
Howard County	134
Monroe County	129
Northeast Indiana	113
East Central Indiana	91
LaPorte County	75
Vincennes Area	64
Dearborn County	59
Wayne County	44
Lawrence County	37
Marshall County	37
Jasper County	34
Southeastern Indiana	24
Madison County	23
Jackson-Jennings	22
River Valley	20
North Central Indiana	17
Henry County	16
Gibson County	15
Grant County	9
At Large Members	0
Indiana	4800

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cshep48643@aol.com

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Once your membership is processed by your local builders association and submitted to the National Association of Home Builders and the Indiana Builders Association, your information will be forwarded to these companies. Call the number listed by each benefit for complete details. Must be redeemed by March 31, 2010 unless noted otherwise. Must be redeemed by new member or employee of new member company. Does not apply to reinstated members.

Is refinancing right for you?

Written by Associates Committee member Ted Ubelhor, V.P. Affiliate Head of Mortgage, Fifth Third Bank, Southern Indiana.

Over the past several months, lenders in conjunction with the U.S. government have implemented several different programs and policies - including the Homeowner Affordability and Stability Program - in attempt to jumpstart the economy.

With mortgage rates near record lows, refinancing your home could save you money, and with the Making Home Affordable Program, more homeowners are able to take advantage of these rates. While it might not seem like much, a one percentage point reduction in interest rate can make a huge difference in the amount you pay each month.

Refinancing a mortgage replaces the original mortgage with a brand new loan. There are many types of mortgages out there, including fixed-rate and adjustable-rate mortgages. A fixed-rate mortgage offers steady mortgage principal and interest payments for the length of the loan. An adjustable-rate mortgage, otherwise known as an ARM, is a mortgage with an interest rate that is linked to an economic index. The interest rate and your payments are periodically adjusted up or down as the index changes.

With a fixed-rate mortgage, you know exactly what your principal and interest payment will be for the life of the loan. So if you prefer

a steady, predictable principal and interest payment, this type of loan may be the one for you.

With an ARM, interest rates change at specific intervals, so the amount of your monthly principal and interest payment could increase or decrease. Often, ARM loans provide a lower initial rate compared to a fixed rate loan. You might consider an ARM if you want a lower

initial monthly payment and don't mind a variable interest rate.

Depending on your situation, refinancing under the Making Home Affordable Program or another refinancing program could be a smart move. It may provide you with:

- * Lower monthly payments due to a reduced interest rate.

- * Reduced interest rate risks by switching from an adjustable-rate mortgage to a fixed-rate mortgage loan.

- * Extra funds to consolidate debts or for other large purchases.

The refinancing process requires standard documentation (picture identification, W-2s for all borrowers, pay stubs, bank statements, etc.) and information about your first mortgage (homeowner's insurance declaration page, most recent mortgage statement or coupon book, copy of title policy, etc.). Your mortgage loan originator will go over the items



needed for your specific loan. The quicker you provide this information, the faster you will be able to finalize your loan and take advantage of today's low rates.

Even with today's low rates, refinancing is not the right solution for everyone. You will need to determine if refinancing is the right step for you based on your financial needs and goals. Your mortgage loan originator will be able to review your options and provide you with any cost-saving opportunities to help you decide if refinancing now is right for you.

ASSOCIATES

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STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE

INDIANA GOVERNMENT CENTER NORTH
100 NORTH SENATE AVENUE N1058(B)
INDIANAPOLIS, IN 46204
PHONE (317) 232-3777
FAX (317) 232-8779

TO: County Auditors, County Assessors, and County Treasurers

FROM: Timothy J. Rushenberg, Commissioner *TJR 5/28/09*

SUBJECT: Model Residence Deduction for the 2008 Assessment Date

DATE: May 28, 2009

Purpose

This memorandum supplements the January 20, 2009 memorandum entitled Deduction for Model Residences, and provides guidance to county auditors and assessors with respect to the model residence deduction for the 2008 assessment date. Effective May 13, 2009, PL 167 (HEA 1071-2009) added IC 6-1.1-12.6-2.1 to the Deduction for Model Residence chapter of the Indiana Code [IC 6-1.1-12.6]. The new section allows the qualified owner of a model residence a retroactive deduction in the amount of fifty percent (50%) of the assessed value of the model residence for the 2008 assessment date.

Application of the Section

IC 6-1.1-12.6-2.1 applies only to a model residence that was first assessed as a partially or fully completed structure on the March 1, 2008 assessment date, and which was still a model residence on January 1, 2009.

The 2008 Assessment Year Deduction

1. A deduction under IC 6-1.1-12.6-2.1 counts as a "deduction for an assessment date" for purposes of the limit of four assessment dates per model residence in IC 6-1.1-12.6-2.
2. To claim the deduction for the 2008 assessment date, a qualified property owner must file State Form 53947(5-09) with the county auditor not later than December 31, 2010.
3. The township assessor (if any) or the county assessor must verify the statements made on State Form 53947(5-09).
4. The county auditor must make the deductions and notify the county property tax assessment board of appeals (PTABOA) of all deductions approved under IC 6-1.1-12.6-2.1.
5. If the property taxes due for the 2008 assessment date have been paid, the person who paid the taxes is entitled to a refund of the amount that has been overpaid after applying the model residence deduction. A property owner is not required to apply for the refund. The county auditor must,

without an appropriation being required, issue a warrant to the property owner payable from the county general fund for the amount of the refund due the property owner.

6. In the June or December settlement and apportionment of taxes, or both, immediately following a refund made for the model residence deduction for the 2008 assessment year, the county auditor must deduct the amount refunded from the gross tax collections of the taxing units for which the refunded taxes were originally paid, and must pay the amount deducted into the general fund of the county. In any event, the county auditor must make the deduction not later than the December settlement and apportionment.

Applicable Emergency Rule

Effective May 15, 2009, the Department of Local Government Finance (Department) adopted Emergency Rule LSA Document #09-360(E) with respect to the model residence deduction for the 2008 assessment date. Taxpayers, assessing officials, auditors and treasurers must comply with the requirements of the Emergency Rule in the administration of the model residence deduction for the 2008 assessment date. The Emergency Rule may be found on the Department's web site at:

http://www.in.gov/dlgf/files/Model_Residence_Emergency_Rule.pdf or as copied below.

Contact Information

Questions may be directed to Barry Wood, Assessment Director at (317) 232-3762 or bwood@dlgf.in.gov; or Cathy Wolter, Staff Attorney at (317) 233-4361 or cwolter@dlgf.in.gov.

Pertinent Part of HEA 1071-2009

HOUSE ENROLLED ACT No. 1071

AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

SOURCE: IC 6-1.1-12.6-2.1; (09)HE1071.1.1. -->

SECTION 1. IC 6-1.1-12.6-2.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:** **Sec. 2.1. (a) This section applies only to a model residence that is first assessed as:**

- (1) a partially completed structure; or**
- (2) a fully completed structure;**

for the assessment date in 2008 and was still a model residence on January 1, 2009.

(b) Except as provided in subsection (c) and sections 4, 5, and 6 of this chapter, and subject to sections 7 and 8 of this chapter, an owner of a model residence is entitled to a deduction from the assessed value of the model residence in the amount of fifty percent (50%) of the assessed value of the

model residence for the 2008 assessment date. A deduction under this section counts as a deduction for an assessment date for purposes of section 2 of this chapter.

(c) A property owner that qualifies for the deduction under this section must file a statement containing the information required by subsection (d) with the county auditor to claim the deduction for the 2008 assessment date in the manner prescribed in emergency rules, which shall be adopted by the department of local government finance under IC 4-22-2. The township assessor shall

verify each statement filed under this section, and the county auditor shall:

(1) make the deductions; and

~~(2) notify the county property tax assessment board of appeals of all deductions approved;~~

under this section. If the property taxes due for the 2008 assessment date have been paid, the person that paid the property taxes is entitled to a refund of the amount that has been overpaid after applying the deduction under this section. A property owner is not required to apply for a refund due under this section. The county auditor shall, without an appropriation being required, issue a warrant to the property owner payable from the county general fund for the amount of the refund due the property owner. In the June or December settlement and apportionment of taxes, or both, immediately following a refund made under this section the county auditor shall deduct the amount refunded from the gross tax collections of the taxing units for which the refunded taxes were originally paid and shall pay the amount so deducted into the general fund of the county. However, the county auditor shall make the deductions and payments required by this subsection not later than the December settlement and apportionment.

(d) The statement referred to in subsection (c) must be verified under penalties for perjury and must contain the following information:

(1) The assessed value of the real property for which the person is claiming the deduction.

(2) The full name and complete business address of the person claiming the deduction.

(3) The complete address and a brief description of the real property for which the person is claiming the deduction.

(4) The name of any other county in which the person has applied for a deduction under this section for that assessment date.

(5) The complete address and a brief description of any other real property for which the person has applied for a deduction under this section for the 2008 assessment date.

(e) This section expires January 1, 2011.

Emergency Rule LSA Document # 09-360(E)

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

Emergency Rule
LSA Document #09-360(E)

DIGEST

Temporarily adds provisions to provide the methodology for qualified owners of a model residence to claim the deduction for the 2008 assessment date by filing an application with auditor of the county where the property is located, and provides guidance to elected officials with respect to the deduction. Statutory authority: IC 4-22-2; IC 6-1.1-12.6-2.1. Effective May 15, 2009.

SECTION 1. (a) "Affiliated group" has the meaning set out in IC 6-1.1-12.6-0.5.

(b) "Allocation area" has the meaning set forth in IC 6-1.1-21.2-3.

(c) "Model residence" has the meaning set forth in IC 6-1.1-12.6-1.

SECTION 2. (a) The deduction from the assessed value of a model residence described in subsection (b) is applicable only to a model residence that is first assessed as a:

(1) partially completed structure; or

(2) fully completed structure;

for the assessment date in 2008 and which was still a model residence on January 1, 2009.

(b) A property owner who qualifies for the model residence deduction as set forth in IC 6-1.1-12.6 is entitled to a deduction from the assessed value of the model residence in the amount of fifty percent (50%) of the assessed value of the model residence for the 2008 assessment date.

SECTION 3. (a) A property owner who qualifies for the model residence deduction for the 2008 assessment date must file a claim for the deduction not later than December 31, 2010 with the county auditor on the form prescribed by the department of local government finance.

(b) The form must be verified under the penalties for perjury and contain all of the following information:

(1) The assessed values of the real property for which the person is claiming the model residence deduction.

(2) The full name and complete business address of the person claiming the model residence deduction.

(3) The complete address and a brief description of the real property for which the person is claiming the model residence deduction.

(4) The name of any other county in which the person has applied for a model residence deduction for the 2008 assessment date.

(5) The complete address and a brief description of any other real property for which the person has applied for a model residence deduction for the 2008 assessment date.

SECTION 4. The township assessor (if any) or the county assessor must verify the information contained in each form claiming the model residence deduction for the 2008 assessment date.

SECTION 5. (a) The county auditor must make the model residence deduction and notify the county property tax assessment board of appeals of all approved deductions for the 2008 assessment year.

(b) The county auditor with whom the claim is filed must immediately prepare and transmit a copy of the claim to the auditor of any other county if the property owner claims a model residence deduction in the other county for the 2008 assessment year.

(c) The county auditor receiving the copy of the claim described in subsection (b) must note on the copy whether the property owner has claimed a deduction for the 2008 assessment year for a model residence in that county. The county auditor must then return the copy of the statement to the auditor who sent the copy.

SECTION 6. (a) A property owner who is not an affiliated group may not receive the deduction for more than three (3) model residences in Indiana for the 2008 assessment date.

(b) Owners of model residences who are part of an affiliated group may not exceed an aggregate of three (3) model residence deductions for the 2008 assessment date.

SECTION 7. A property owner may not receive a model residence deduction for the 2008 assessment year for a model residence located in an allocation area as defined in IC 6-1.1-21.2-3.

SECTION 8. (a) A property owner that qualifies for a model residence deduction and also qualifies for a deduction under another statute with respect to the same model home for the 2008 assessment year may not receive a deduction under both statutes for the 2008 assessment year.

(b) A county auditor who receives claims for more than one deduction with respect to a model residence for the 2008 assessment year may approve only one (1) of the deductions. If the model residence owner is otherwise qualified, the county auditor must approve the deduction that results in the greater property tax saving for the owner of the model residence.

SECTION 9. If ownership of the model residence changed during the 2008 assessment year:

- (1) the new owner that continued to use the property as a model residence may claim the model residence deduction for the 2008 assessment date ;**
- (2) the deduction only applies for the 2008 assessment date; and**
- (3) there can be only one model residence deduction per model residence for the 2008 assessment date.**

SECTION 10. (a) If the property taxes due for the 2008 assessment date have been paid, the person that paid the property taxes is entitled to a refund of the amount that has been overpaid after applying the model residence deduction.

(b) A property owner is not required to apply for a refund due as a result of the model residence deduction for the 2008 assessment year.

(c) The county auditor must, without appropriation being required, issue a warrant to the property owner payable from the county general fund for the amount of the refund due the property owner.

SECTION 11. (a) In the June or December settlement and apportionment of taxes, or both, immediately following a refund made for the model residence deduction for the 2008 assessment date, the county auditor must deduct the amount refunded from the gross tax collections of the taxing units for which the refunded taxes were originally paid and must pay the amount so deducted into the general fund of the county.

(b) The county auditor must make the deductions and payments required by subsection (a) not later than the December settlement and apportionment.



APPLICATION FOR MODEL RESIDENCE DEDUCTION FOR 2008 ASSESSMENT DATE

State Form 53947 (5-09)

Prescribed by the Department of Local Government Finance pursuant to IC 6-1.1-12.6-2.1

YEAR
File Mark

- INSTRUCTIONS:** 1. To be filed in person or by mail with the County Auditor of the county where the property is located.
 FILING DATE: Must be filed by December 31, 2010.
 2. See reverse side for additional instructions and qualifications.

APPLICANT INFORMATION

Name of applicant	Telephone number ()
Business address (number and street, city, state, and ZIP code)	

PROPERTY INFORMATION

Address of model residence (number and street, city, state, and ZIP code)		
Legal description	Key number	Assessed value of structure
As of March 1, 2008, was the property: <input type="checkbox"/> Partially completed <input type="checkbox"/> Fully completed	Was structure still a model residence on January 1, 2009? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Is the property located in an allocation area as defined by IC 6-1.1-21.2-3? <input type="checkbox"/> Yes <input type="checkbox"/> No	Are there other deductions applied to this property? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes", please list:	
Have you filed for this deduction on other properties located in Indiana, either alone or as a member of an affiliated group? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes", please list below.		

PROPERTY ADDRESS (number and street, city, state, and ZIP code)	KEY NUMBER / LEGAL DESCRIPTION OF PROPERTY	COUNTY

CERTIFICATION

I / We certify under penalty of perjury that the above and foregoing information is true and correct and that the applicant was, to the best of our knowledge, eligible for the deduction as of December 31, 20 ____.

Signature of applicant	Date (month, day, year)
Signature of authorized representative	Date (month, day, year)

ASSESSING OFFICIAL USE ONLY

Address of property (number and street, city, state, and ZIP code)	Key number / legal description of property	Is property eligible for deduction? <input type="checkbox"/> Yes <input type="checkbox"/> No
Assessed value of structure	Assessed value of land	Total assessed value
Signature of assessing official		Date (month, day, year)

RECEIPT FOR APPLICATION FOR MODEL RESIDENCE DEDUCTION

Name of applicant	Date filed (month, day, year)
Key number / legal description	
Signature of county auditor	Date signed (month, day, year)

INSTRUCTIONS AND QUALIFICATIONS

GENERAL INSTRUCTIONS

1. Applications must be filed during the periods specified. Once the application is in effect, the application must be refiled annually.
2. This application may be filed in person or by mail. If mailed, the mailing must be postmarked before the last day of filing.
3. Any person who willfully makes a false statement of the facts in applying for this deduction is guilty of the crime of perjury and on the conviction thereof will be punished in the manner provided by law.

BENEFITS AND ELIGIBILITY

"Model residence" means real property that consists of a single family residence, single family townhouse, or single family condominium unit that has never been occupied as a principal residence, and is used for display or demonstration to prospective buyers or lessees for purposes of potential acquisition or lease of a similar type of residence, townhouse, or condominium unit on the same property or other property.

Eligible applicants are entitled to a deduction from the assessed value of the residence in the amount of 50% of the assessed value of the model residence for:

- *Not more than one assessment date for which the model residence is assessed as a partially completed structure;*
- *The assessment date for which the model residence is first assessed as a fully completed structure; and*
- *The two (2) assessment dates that immediately follow the first assessment date.*

LIMITATIONS

1. A property owner may not receive the deduction for more than three (3) model residences in Indiana for a particular assessment date. Owners of model residences who are part of an affiliated group (as defined by 50 IAC 25-2-2) may not exceed an aggregate of three (3) model residence deductions for a particular assessment date.
2. The owner's regular office space is not considered a model residence for purposes of the deduction. However, use of a garage or other space in a model residence to store or display promotional materials or meet with prospective buyers or lessees will not disqualify the model residence from the deduction.
3. A property owner may not receive a model residence deduction for a model residence located in an allocation area as defined in IC 6-1.1-21.2-3.
4. A property owner that qualifies for a model residence deduction and also qualifies for a deduction under another statute with respect to the same model home for a particular assessment year may not receive a deduction under both statutes for that year. In the event that a model home owner applies and is determined to be eligible for more than one deduction, the auditor shall apply the deduction that results in the greater property tax saving for the owner of the model residence.
5. A person who owns a model residence and claims the deduction must provide the county auditor with a notice that informs the auditor of a transfer of ownership of the model residence. This notice shall indicate whether the new owner is eligible to receive the model residence deduction and must be submitted to the county auditor at the same time that a sales disclosure form is filed under IC 6-1.1-5.5.
6. The deduction allowed for a model residence is terminated if the model is sold after the assessment date of a particular year but before January 1, of the following year to a person who does not continue to use the property as a model residence.

Association to Build a Better Indiana Goals and Contributions

(As of June 25, 2009)

2009	2009 Actual	2009 Goal	Members	Chairperson	Local Association	2008
100%	2160	2160	108	Cheryl Blair	East Central Indiana	100%
100%	2540	2540	127	Fred Kreigh, GMB, CGB	Northeast Indiana	100%
46%	720	1560	78	Larry Mosier, CGP	LaPorte County	113%
8%	660	8060	403	B. Sodo, GMB, CGB	Northwest Indiana	58%
0%		1840	92	Mark Rosenberger	Dearborn County	100%
0%		3320	166	Tom Schroering	Dubois County	106%
0%		8660	433	Doug Miller, CGB, CGP, CAPS, GMB	Elkhart County	103%
0%		8420	421	Orrin Sessions	Fort Wayne	103%
0%		480	24	Jerry Elpers	Gibson County	0%
0%		340	17	Greg Bowers	Grant County	0%
0%		380	19	Stephen Robinson, GMB, CGB, CGR, CAPS, GMR, CGP	Henry County	0%
0%		2880	144	Lynn Harrison	Howard County	113%
0%		21620	1081	Curtis Rector	Greater Indianapolis	73%
0%		640	32	Brian Brock	Jackson-Jennings Counties	0%
0%		780	39	Eric Maple	Jasper County	0%
0%		4280	214	Doug Harvey, CGB, CGR, CAPS	Kosciusko-Fulton Counties	103%
0%		4140	207	Pat Foley	Greater Lafayette	61%
0%		700	35	Joseph Jennings	Lawrence County	101%
0%		500	25	Jim Stuart	Madison County	0%
0%		920	46	Jason Large	Marshall County	100%
0%		2580	129	Tracee Lutes	Monroe County	100%
0%		380	19	Joey Martin, CGA, CGP, CAPS	North Central Indiana	100%
0%		5100	255	Ben Houser	Porter County	102%
0%		400	20	Bill Webster	River Valley	0%
0%		4580	229	David Eckrich, Jr	St. Joseph Valley	106%
0%		300	15	Kenny Pfeiffer	Southeastern Indiana	0%
0%		6660	333	Kenneth Smith	Southern Indiana	36%
0%		7740	387	Carl Shepherd	Southwestern Indiana	81%
0%		5560	278	Rick Jenkins	Greater Terre Haute	2%
0%		1340	67	Ross Motgomery	Vincennes Area	47%
0%		1180	59	Joe Elstro	Wayne County	0%
6%	6,080	110,040	5,502		Indiana	74%

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HOA (from page 3)

the existing governing documents require a greater than majority vote to amend those documents. It is unclear from the language of the law if an existing association that opts in retains the ability to opt out later. As such, an existing association should tread cautiously down the path of opting into the new law as the law does not state if they can opt out later.

A new association is required to maintain a current roster of all members of the HOA, including the member's mailing addresses, legal description of a member's property, and electronic mail addresses or fax numbers of its members. Electronic mail addresses and fax numbers may be kept only by the consent of the member. This roster must be made available to any member upon request and can be used only for Association related business. However, maintaining member privacy once the roster is distributed is not discussed in the statute.

The law requires that an HOA must prepare an annual budget to be approved by a quorum of the members. Either the proposed budget or a notice that the proposed budget is available must be sent to the members. In the absence of a quorum, an Association's Board may approve an interim budget not to exceed 110 percent of the last approved budget, but, only if the Associations governing document permit such an interim budget. If the governing documents do not permit an increased interim budget, then the last approved budget can be used as an interim budget until a quorum approves a budget. Further, if a proposed budget results in a change in member assessments, that change must be specifically noted in the budget notice.

Regarding entering new contracts or special assessment for projects, an association is not permitted to enter into any contract, regardless of the budget process, that increases a member's assessments by more than \$500 per year without first holding two meetings regarding the contract and the contract must be approved by at least two-thirds of the members of the association, regardless of the quorum provisions contained in the governing documents. Likewise, an association may not borrow more than \$5,000 or 10 percent of the last approved budget, whichever is greater, unless the debt is approved by a majority of the members.

An association may not suspend the voting rights of any members for non-payment of assessments unless the governing documents provide for such suspension and the member's assessments are delinquent for more than six months. By exclusion, this provision does not

prohibit denying a member access to common amenities, such as association owned pools or parks, if a member's assessments are delinquent.

Finally, the act states that "the governing documents must include grievance resolution procedures that apply to all members of the homeowner's association and the board." No further guidance is given to what an acceptable grievance resolution procedure is and in what context such a procedure must be employed. By contrast, the General Assembly used the term 'grievance resolution procedure' rather than the more legally meaningful 'alternative dispute resolution' which would encompass the realm of mediation and arbitration. Given the vagueness of the language employed and until further clarified by either the Assembly or a Court, a grievance resolution procedure could be crafted that simply gives an individual owner the opportunity to petition the Association's Board on an issue or complaint without going so far as to engage the special meeting provisions required upon a 10 percent member petition, referenced above.

Penalties for Non-Compliance:

The new act does not contain any stated penalties for non-compliance. As such, the likely results of non-compliance would be to make the relevant portion, or possibly an entire set, of governing documents unenforceable in Court. A well drafted set of governing documents should contemplate 'saving' the remainder of the document if one provision is faulty, but if poorly prepared, an entire set of documents could be disregarded by a Court due to an error. Further, if an association refuses to comply with certain sections of the Act, such as holding special meetings or entering contracts without proper approval if it is required, then those contracts could be declared invalid, an injunction could be entered, or a member may be able to bring a civil tort action against the association for any number of remedies - with some having monetary consequences such as general damages, punitive damages, or attorneys' fees.

Conclusion:

Without addressing the necessity of the new law, compliance with it should not be overlooked. That can be done with some thoughtful review and simple diligence. Some Builders and Developers can be guilty of discounting the importance of their governing documents by recycling forms drafted 20 years ago or using documents obtained from colleagues or competitors that were not even drafted with them in mind. As a residential developer or

builder, to comply with the new law, you should review thoroughly your governing documents with your attorney and make required changes. If you are a management company or a builder managing a development until it is turned over to the owners, you must make operational changes on budgeting, covenant enforcement and borrowing, among other things, under the requirements of the new act. Put forward the time and resources needed to review and improve your documents and procedures to be compliant with the law and avoid future customer complaints.

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Mechanic's Lien Statue

(from page 9)

was not defined in the Statute, it has been defined by Webster's Dictionary as "to restore to a sound healthy state." The Court held that under this definition, Midwest Biohazard clearly falls within the scope of the Statute's protection, as Midwest Biohazard was restoring the home to its original condition. The Court of Appeals also noted that such an outcome was consistent with the intent of the Statute in that the work Midwest Biohazard performed no doubt increased the value of the home because a buyer would be willing to pay more for a house that was free from biohazard contaminants than for the same home in a contaminated state.

While those contractors involved in remediation services may not be the type one usually thinks of when asserting a mechanic's lien, the Court of Appeals' decision in Midwest Biohazard clearly identifies them as among those entitled to protection. It is important to note that while the facts of the case relate to residential construction, its application could extend to other types of projects. Based on the Court's reasoning, the Statute's protection could extend not only to those performing remediation (such as mold and radon) in residential homes, but also to those performing remediation (such as hazardous material and soil and groundwater contamination) in large commercial projects.

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