IC 24-4.4

ARTICLE 4.4. FIRST LIEN MORTGAGE LENDING

IC 24-4.4-1

Chapter 1. General Provisions and Definitions

IC 24-4.4-1-101

Short title; rules concerning licensing system for creditors and mortgage loan originators

Sec. 101. (a) This article shall be known and may be cited as the First Lien Mortgage Lending Act.

(b) Notwithstanding any other provision of this article or IC 24-4.5, the department may adopt emergency rules under IC 4-22-2-37.1, to remain effective until codified in the Indiana Code, in order to provide for a system of licensing creditors and mortgage loan originators that meets the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (H.R. 3221 Title V) and the interpretations of that Act issued by the Secretary of Housing and Urban Development and the Consumer Financial Protection Bureau.

As added by P.L.145-2008, SEC.20. Amended by P.L.182-2009(ss), SEC.369; P.L.27-2012, SEC.2.

IC 24-4.4-1-102

Purposes; rules of construction

Sec. 102. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

(a) to permit and encourage the development of fair and economically sound first lien mortgage lending practices; and

(b) to conform the regulation of first lien mortgage lending practices to applicable state and federal laws, rules, regulations, policies, and guidance.

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted under this article.

(4) A reference to a federal law in this article is a reference to the law as in effect December 31, 2015.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.5; P.L.89-2011, SEC.1; P.L.27-2012, SEC.3; P.L.216-2013, SEC.1; P.L.137-2014, SEC.1; P.L.186-2015, SEC.6; P.L.73-2016, SEC.1.

IC 24-4.4-1-103

Unified coverage of subject matter; construction against implied repeal

Sec. 103. This article:

(1) is a general act intended as a unified coverage of its subject

matter; and

(2) any part of this article may not be considered to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-1-104

Severability

Sec. 104. The provisions of this article are severable, so that if:

(1) any provisions of this article; or

(2) the application of this article to any person or circumstances;

is held invalid, the invalidity does not affect other provisions or applications of this article that can be given effect without the invalid provision or application.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-1-201

Application; nonresident debtor

Sec. 201. (1) Except as provided in subsection (2), this article applies to a first lien mortgage transaction:

(a) that is secured by an interest in:

(i) a dwelling; or

(ii) residential real estate upon which a dwelling is constructed or intended to be constructed;

in Indiana; and

(b) the closing for which takes place after December 31, 2008.

(2) This article does not apply to a first lien mortgage transaction if:

(a) the debtor is not a resident of Indiana at the time the transaction is entered into; and

(b) the laws of the debtor's state of residence require that the transaction be made under the laws of the state of the debtor's residence.

As added by P.L.145-2008, SEC.20. Amended by P.L.1-2009, SEC.134; P.L.89-2011, SEC.2.

IC 24-4.4-1-202

Exempt transactions and persons

Sec. 202. (a) As used in this section, "balloon payment", with respect to a mortgage transaction, means any payment:

(1) that the creditor requires the debtor to make at any time during the term of the mortgage;

(2) that represents the entire amount of the outstanding balance with respect to the mortgage; and

(3) the entire amount of which is due as of a specified date or at the end of a specified period;

if the aggregate amount of the minimum periodic payments required

under the mortgage would not fully amortize the outstanding balance by the specified date or at the end of the specified period. The term does not include a payment required by a creditor under a due-on-sale clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by a creditor under a provision in the mortgage that permits the creditor to accelerate the debt upon the debtor's default or failure to abide by the material terms of the mortgage.

(b) This article does not apply to the following:

(1) Extensions of credit to government or governmental agencies or instrumentalities.

(2) A first lien mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.

(3) An extension of credit primarily for a business, a commercial, or an agricultural purpose.

(4) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage transaction made:

(a) in compliance with the requirements of; and

(b) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from;

the Indiana housing and community development authority established by IC 5-20-1-3.

(5) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage transaction made by an entity that exclusively uses funds provided by the United States Department of Housing and Urban Development under Title 1 of the federal Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq.).

(6) An extension of credit originated by the following:

(a) A depository institution. However, a federal savings bank may voluntarily register with the department for the purpose of sponsoring, under an exclusive written agreement, individuals who are licensed as mortgage loan originators under this article and 750 IAC 9-3, who perform mortgage loan origination activities as independent agents under the federal savings bank's direct supervision and control, who hold a current, valid insurance producer license under IC 27-1-15.6, and who sell, solicit, or negotiate insurance under an exclusive written agreement for a licensed insurance company that is a subsidiary of a company that also owns or controls the federal savings bank, if the federal savings bank does the following:

(i) Assumes responsibility for and reasonably supervises the activities of all licensed mortgage loan originators sponsored by the federal savings bank under this clause.

(ii) Registers with and maintains a valid unique identifier

issued by the NMLSR as required by IC 24-4.4-2-401(2), maintains a surety bond in accordance with IC 24-4.4-2-402.3, submits to the NMLSR reports of condition in accordance with IC 24-4.4-2-405(4) (subject to IC 24-4.4-2-402.4), and files financial statements with the department in accordance with IC 24-4.4-2-405(5).

(iii) Cooperates with the department, and provides access to records and documents, as required by the department in carrying out examinations of the activities of the licensed mortgage loan originators sponsored by the federal savings bank under this clause, as described in IC 24-4.4-2-405(1).

(iv) Agrees to comply with all law, rules, directives, and orders in connection with the activities of the licensed mortgage loan originators sponsored by the federal savings bank, as the director determines necessary to ensure compliance with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) and with Indiana law.

(b) Subsidiaries that are not licensed under this article and that are:

(i) owned and controlled by a depository institution; and

(ii) regulated by a federal banking agency.

(c) An institution regulated by the Farm Credit Administration.

(7) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a credit union service organization that is majority owned, directly or indirectly, by one (1) or more credit unions.

(8) A first lien mortgage transaction originated by a registered mortgage loan originator, when acting for an entity described in subsection (6). However, a privately insured state chartered credit union shall comply with the system of mortgage loan originator registration developed by the Federal Financial Institutions Examinations Council under Section 1507 of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE).

(9) An individual who offers or negotiates terms of a mortgage transaction with or on behalf of an immediate family member of the individual.

(10) An individual who offers or negotiates terms of a mortgage transaction secured by a dwelling that served as the individual's residence.

(11) Unless the attorney is compensated by:

(a) a lender;

(b) a mortgage broker;

(c) another mortgage loan originator; or

(d) any agent of the lender, mortgage broker, or other

mortgage loan originator described in clauses (a) through (c);

a licensed attorney who negotiates the terms of a mortgage transaction on behalf of a client as an ancillary matter to the attorney's representation of the client.

(12) The United States, any state or local government, or any agency or instrumentality of any governmental entity, including United States government sponsored enterprises.

(13) A person in whose name a tablefunded transaction is closed, as described in section 301(34)(a) of this chapter. However, the exemption provided by this subsection does not apply if:

(a) the transaction:

(i) is secured by a dwelling that is a mobile home, a manufactured home, or a trailer; and

(ii) is not also secured by an interest in land; and

(b) the person in whose name the transaction is closed, as described in section 301(34)(a) of this chapter, sells the dwelling to the debtor through a retail installment contract or other similar transaction.

(14) A bona fide nonprofit organization not operating in a commercial context, as determined by the director, if the following criteria are satisfied:

(a) Subject to clause (b), the organization originates only one (1) or both of the following types of mortgage transactions:

(i) Zero (0) interest first lien mortgage transactions.

(ii) Zero (0) interest subordinate lien mortgage transactions.

(b) The organization does not require, under the terms of the mortgage or otherwise, balloon payments with respect to the mortgage transactions described in clause (a).

(c) The organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(d) The organization's primary purpose is to serve the public by helping low income individuals and families build, repair, and purchase housing.

(e) The organization uses only:

(i) unpaid volunteers; or

(ii) employees whose compensation is not based on the number or size of any mortgage transactions that the employees originate;

to originate the mortgage transactions described in clause (a).

(f) The organization does not charge loan origination fees in connection with the mortgage transactions described in clause (a).

(15) A bona fide nonprofit organization (as defined in section 301(37) of this chapter) if the following criteria are satisfied:

(a) For each calendar year that the organization seeks the exemption provided by this subdivision, the organization certifies, not later than December 31 of the preceding calendar year and on a form prescribed by the director and accompanied by such documentation as required by the director, that the organization is a bona fide nonprofit organization (as defined in section 301(37) of this chapter).
(b) The director determines that the organization originates only mortgage transactions that are favorable to the debtor. For purposes of this clause, a mortgage transaction is favorable to the debtor if the director determines that the terms of the mortgage transaction are consistent with terms of mortgage transactions made in a public or charitable context, rather than in a commercial context.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.6; P.L.89-2011, SEC.3; P.L.9-2011, SEC.1; P.L.6-2012, SEC.164; P.L.27-2012, SEC.4; P.L.13-2013, SEC.65; P.L.137-2014, SEC.2; P.L.103-2014, SEC.1.

IC 24-4.4-1-202.5

Persons also engaging in loan brokerage business; applicability of loan broker statutes; examination by department; cooperation with securities division

Sec. 202.5. (1) If a person licensed or required to be licensed under this article also engages in the loan brokerage business, the person's loan brokerage business is subject to the following sections of the Indiana Code and any rules adopted to implement these sections:

(a) IC 23-2-5-9.
(b) IC 23-2-5-9.1.
(c) IC 23-2-5-15.
(d) IC 23-2-5-16.
(e) IC 23-2-5-17.
(f) IC 23-2-5-18.
(g) IC 23-2-5-18.5.
(h) IC 23-2-5-20.
(i) IC 23-2-5-23, except for IC 23-2-5-23(2)(B).
(j) IC 23-2-5-24.

(2) Loan broker business transactions engaged in by persons licensed or required to be licensed under this article are subject to examination by the department and to the examination fees described in IC 24-4.4-2-402(8)(c). The department may cooperate with the securities division of the office of the secretary of state in the department's examination of loan broker business transactions and may use the securities division's examiners to conduct examinations.

As added by P.L.35-2010, SEC.7. Amended by P.L.186-2015, SEC.7.

IC 24-4.4-1-203

Repealed

(As added by P.L.145-2008, SEC.20. Repealed by P.L.35-2010, SEC.209.)

IC 24-4.4-1-204

Entities that also conduct loan broker business; regulatory cooperation with securities commissioner

Sec. 204. In the department's examination and regulatory activities related to licensees under this article, the department may cooperate with the Indiana securities commissioner in the regulation of entities that, in addition to conducting business regulated under this article, also conduct a loan brokerage business subject to IC 23-2-5.

As added by P.L.35-2010, SEC.8.

IC 24-4.4-1-301

Definitions

Sec. 301. In addition to definitions appearing in subsequent chapters of this article, the following definitions apply throughout this article:

(1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

(a) controls;

(b) is controlled by; or

(c) is under common control with;

the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as found in the parties' language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural products" includes agricultural products, horticultural products, viticultural products, dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, any products raised or produced on farms, and any products processed or manufactured from products raised or produced on farms.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products.

(5) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

(a) credit is granted by a person who engages as a seller in credit transactions of the same kind;

(b) the buyer is a person other than an organization;

(c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;

(d) either the debt is payable in installments or a credit service charge is made; and

(e) with respect to a sale of goods or services, either:

(i) the amount of credit extended, the written credit limit, or the initial advance does not exceed the exempt threshold amount, as adjusted in accordance with the annual adjustment of the exempt threshold amount, specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or

(ii) the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

(6) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(7) "Creditor" means a person:

(a) that regularly engages in the extension of first lien mortgage transactions that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

(b) to which the obligation is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

The term does not include a person described in subsection (34)(a) in a tablefunded transaction. A creditor may be an individual, a limited liability company, a sole proprietorship, a partnership, a trust, a joint venture, a corporation, an unincorporated organization, or other form of entity, however organized.

(8) "Department" refers to the members of the department of financial institutions.

(9) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(10) "Director" refers to the director of the department of financial institutions or the director's designee.

(11) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

(a) condominium unit;

(b) cooperative unit;

(c) mobile home; or

(d) trailer;

that is used as a residence.

(12) "Employee" means an individual who is paid wages or other compensation by an employer required under federal income tax law to file Form W-2 on behalf of the individual.

(13) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of

the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(14) "First lien mortgage transaction" means:

(a) a consumer loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(15) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(16) "Individual" means a natural person.

(17) "Licensee" means a person licensed as a creditor under this article.

(18) "Loan" includes:

(a) the creation of debt by:

(i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or

(ii) the extension of credit by a person who engages as a seller in credit transactions primarily secured by an interest in land;

(b) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and

(c) the forbearance of debt arising from a loan.

(19) "Loan brokerage business" means any activity in which a person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring, a mortgage transaction from a third party or any other person, whether or not the person seeking the mortgage transaction actually obtains the mortgage transaction.

(20) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under this article. For purposes of this subsection, the term "clerical or support duties" may include, after the receipt of an application, the following:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.

(b) The communication with a consumer to obtain the

information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:

(i) offering or negotiating loan rates or terms; or

(ii) counseling consumers about mortgage transaction rates or terms.

(21) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, regularly engages in taking a mortgage transaction application or in offering or negotiating the terms of a mortgage transaction that either is made under this article or under IC 24-4.5 or is made by an employee of a person licensed or exempt from licensing under this article or under IC 24-4.5, while the employee is engaging in the loan brokerage business. The term does not include the following:

(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under this article.

(b) Unless the person or entity is compensated by:

(i) a creditor;

(ii) a loan broker;

(iii) another mortgage loan originator; or

(iv) any agent of a creditor, a loan broker, or another mortgage loan originator described in items (i) through (iii);

a person or entity that performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

(22) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(23) "Mortgage transaction" means:

(a) a consumer loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(24) "Nationwide Multistate Licensing System and Registry" (or "Nationwide Mortgage Licensing System and Registry" or "NMLSR") means a multistate licensing system owned and operated by the State Regulatory Registry, LLC, or by any

successor or affiliated entity, for the licensing and registration of creditors, mortgage loan originators, and other persons in the mortgage or financial services industries. The term includes any other name or acronym that may be assigned to the system by the State Regulatory Registry, LLC, or by any successor or affiliated entity.

(25) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

(26) "Organization" means a corporation, a government or government subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.

(27) "Payable in installments", with respect to a debt or an obligation, means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(28) "Person" includes an individual or an organization.

(29) "Principal" of a mortgage transaction means the total of:

(a) the net amount paid to, receivable by, or paid or payable for the account of the debtor; and

(b) to the extent that payment is deferred, amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees if not included in clause (a).

(30) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).

(d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(e) Offering to engage in any activity, or act in any capacity, described in this subsection.

(31) "Registered mortgage loan originator" means any individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking

agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(b) is registered with, and maintains a unique identifier through, the NMLSR.

(32) "Residential real estate" means any real property that is located in Indiana and on which there is located or intended to be constructed a dwelling.

(33) "Revolving first lien mortgage transaction" means a first lien mortgage transaction in which:

(a) the creditor permits the debtor to obtain advances from time to time;

(b) the unpaid balances of principal, finance charges, and other appropriate charges are debited to an account; and

(c) the debtor has the privilege of paying the balances in installments.

(34) "Tablefunded" means a transaction in which:

(a) a person closes a first lien mortgage transaction in the person's own name as a mortgagee with funds provided by one (1) or more other persons; and

(b) the transaction is assigned, not later than one (1) business day after the funding of the transaction, to the mortgage creditor providing the funding.

(35) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

(36) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

(37) "Bona fide nonprofit organization" means an organization that does the following, as determined by the director, under criteria established by the director:

(a) Maintains tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

(b) Promotes affordable housing or provides home ownership education or similar services.

(c) Conducts the organization's activities in a manner that serves public or charitable purposes.

(d) Receives funding and revenue and charges fees in a manner that does not encourage the organization or the organization's employees to act other than in the best interests of the organization's clients.

(e) Compensates the organization's employees in a manner that does not encourage employees to act other than in the best interests of the organization's clients.

(f) Provides to, or identifies for, debtors mortgage transactions with terms that are favorable to the debtor (as described in section 202(b)(15) of this chapter) and comparable to mortgage transactions and housing assistance

provided under government housing assistance programs.

(g) Maintains certification by the United States Department of Housing and Urban Development or employs counselors who are certified by the Indiana housing and community development authority.

(38) "Regularly engaged", with respect to a person who extends or originates first lien mortgage transactions, refers to a person who:

(a) extended or originated more than five (5) first lien mortgage transactions in the preceding calendar year; or

(b) extends or originates, or will extend or originate, more than five (5) first lien mortgage transactions in the current calendar year if the person did not extend or originate more than five (5) first lien mortgage transactions in the preceding calendar year.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.9; P.L.42-2011, SEC.48; P.L.89-2011, SEC.4; P.L.27-2012, SEC.5; P.L.216-2013, SEC.2; P.L.137-2014, SEC.3; P.L.73-2016, SEC.2.

IC 24-4.4-2
Chapter 2. Miscellaneous

IC 24-4.4-2-101
Short title

Sec. 101. This chapter shall be known and may be cited as the First Lien Mortgage Lending Act - Miscellaneous.
As added by P.L.145-2008, SEC.20.

IC 24-4.4-2-201
Duty to provide payoff amount; liability for failure to provide; prepayment penalty prohibited for adjustable rate mortgages; short sales; foreclosed property; no protection from deficiency judgment

Sec. 201. (1) A creditor or mortgage servicer shall provide, in writing, an accurate payoff amount for a first lien mortgage transaction to the debtor not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's written request for the accurate payoff amount. A payoff statement provided by a creditor or mortgage servicer under this subsection must show the date the statement was prepared and itemize the unpaid principal balance and each fee, charge, or other sum included within the payoff amount. A creditor or mortgage servicer who fails to provide an accurate payoff amount is liable for:

(a) one hundred dollars ($100) if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars ($100); or

(ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate payoff amount is provided;

if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer fails to comply with subdivision (a).

(2) This subsection applies to a first lien mortgage transaction, or the refinancing or consolidation of a first lien mortgage transaction, that:

(a) is closed after June 30, 2009; and

(b) has an interest rate that is subject to change at one (1) or more times during the term of the first lien mortgage

transaction.

A creditor in a transaction to which this subsection applies may not contract for and may not charge the debtor a prepayment fee or penalty.

(3) This subsection applies to a first lien mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than five (5) business days (excluding legal public holidays, Saturdays, and Sundays) after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days (excluding legal public holidays, Saturdays, and Sundays) after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed. Payment accepted by a creditor, servicer, or creditor's agent in connection with a short sale constitutes payment in full satisfaction of the first lien mortgage transaction unless the creditor, servicer, or creditor's agent obtains:

(a) the following statement: "The debtor remains liable for any amount still owed under the first lien mortgage transaction."; or

(b) a statement substantially similar to the statement set forth in subdivision (a);

acknowledged by the initials or signature of the debtor, on or before the date on which the short sale payment is accepted. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a first lien mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the first lien mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

(4) This section is not intended to provide the owner of real estate subject to the issuance of process under a judgment or decree of foreclosure any protection or defense against a deficiency judgment for purposes of the borrower protections from liability that must be disclosed under 12 CFR 1026.38(p)(3) on the form required by 12 CFR 1026.38 ("Closing Disclosures" form under the Amendments to

the 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) and the 2013 Loan Originator Rule Under the Truth in Lending Act (Regulation Z)).
As added by P.L.145-2008, SEC.20. Amended by P.L.52-2009, SEC.1; P.L.35-2010, SEC.10; P.L.89-2011, SEC.5; P.L.27-2012, SEC.6; P.L.54-2016, SEC.1; P.L.73-2016, SEC.3.

IC 24-4.4-2-202
Federal disclosure requirements; creditor's duty to comply; exempt transactions

Sec. 202. (1) The creditor shall comply with disclosure requirements applicable to first lien mortgage transactions in the federal Consumer Credit Protection Act (15 U.S.C. 1601 et seq.).

(2) For purposes of subsection (1), disclosures are not required if the transaction is exempt from the federal Consumer Credit Protection Act (15 U.S.C. 1601 et seq.).
As added by P.L.89-2011, SEC.6.

IC 24-4.4-2-301
Violation of state or federal law, regulation, or rule; enforcement

Sec. 301. (1) A violation of a state or federal law, regulation, or rule applicable to first lien mortgage transactions is a violation of this article.

(2) The department may enforce penalty provisions set forth in 15 U.S.C. 1640 for violations of disclosure requirements applicable to first lien mortgage transactions.
As added by P.L.145-2008, SEC.20.

IC 24-4.4-2-401
License required; registration with NMLSR; licensed mortgage loan originators; loan processor or underwriting activities; applications for licensure; director's authority to contract with NMLSR

Sec. 401. (1) Unless a person subject to this article has first obtained a license under this article from the department and annually maintains the license, the person shall not engage in Indiana as a creditor in first lien mortgage transactions. A separate license under this article is required for each legal entity that engages in Indiana as a creditor in first lien mortgage transactions. However, a separate license under this article is not required for each branch of a legal entity licensed under this article.

(2) Each:

(a) creditor licensed under this article; and

(b) entity exempt from licensing under this article that:

(i) employs a licensed mortgage loan originator; or

(ii) sponsors under an exclusive written agreement, as permitted by IC 24-4.4-1-202(b)(6)(a), a licensed mortgage

loan originator as an independent agent;

shall register with and maintain a valid unique identifier issued by the NMLSR. Each licensed mortgage loan originator must be employed by, or sponsored under an exclusive written agreement (as permitted by IC 24-4.4-1-202(b)(6)(a)) and as an independent agent, and associated with, a licensed creditor, or an entity exempt from licensing under this article, in the NMLSR in order to originate loans.

(3) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(4) Applicants for a license under this article must apply for the license in the form prescribed by the director. Each form:

(a) must contain content as set forth by rule, instruction, or procedure of the director; and

(b) may be changed or updated as necessary by the director to carry out the purposes of this article.

(5) To fulfill the purposes of this article, the director may establish relationships or contracts with the NMLSR or other entities designated by the NMLSR to:

(a) collect and maintain records; and

(b) process transaction fees or other fees related to licensees or other persons subject to this article.

(6) For the purpose of participating in the NMLSR, the director or the department may:

(a) waive or modify, in whole or in part, by rule or order, any of the requirements of this article; and

(b) establish new requirements as reasonably necessary to participate in the NMLSR.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.11; P.L.89-2011, SEC.7; P.L.103-2014, SEC.2.

IC 24-4.4-2-402

Applications for licenses; issuance; evidence of compliance; use of NMLSR; denial of application; right to hearing; fees; license not assignable or transferable

Sec. 402. (1) The department shall receive and act on all applications for licenses to engage in first lien mortgage transactions. Applications must be made as prescribed by the director. If, at any time, the information or record contained in:

(a) an application filed under this section; or

(b) a renewal application filed under section 403 of this chapter;

is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the department.

(2) A license may not be issued unless the department finds that the professional training and experience, financial responsibility, character, and fitness of:

(a) the applicant and any significant affiliate of the applicant;

(b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and

(c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(3) The director is entitled to request evidence of compliance with this section at:

(a) the time of application;

(b) the time of renewal of a license; or

(c) any other time considered necessary by the director.

(4) Evidence of compliance with this section must include:

(a) criminal background checks, as described in section 402.1 of this chapter, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);

(b) credit histories as described in section 402.2 of this chapter;

(c) surety bond requirements as described in section 402.3 of this chapter;

(d) a review of licensure actions in Indiana and in other states; and

(e) other background checks considered necessary by the director.

(5) For purposes of this section and in order to reduce the points of contact that the director has to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source as directed by the director.

(6) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(7) Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license in the manner provided in IC 4-21.5.

(8) The applicant shall pay the following fees at the time designated by the department:

(a) An initial license fee as established by the department under IC 28-11-3-5.

(b) An annual renewal fee as established by the department under IC 28-11-3-5.

(c) Examination fees as established by the department under IC 28-11-3-5.

(9) A fee as established by the department under IC 28-11-3-5 may be charged for each day a fee under subsection 8(b) or 8(c) is delinquent.

(10) Except in a transaction approved under section 406 of this chapter, a license issued under this section is not assignable or transferable.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.12; P.L.89-2011, SEC.8; P.L.27-2012, SEC.7.

IC 24-4.4-2-402.1

National criminal history background check; fingerprints; payment of fees or costs; use of NMLSR

Sec. 402.1. (1) When the director requests a national criminal history background check under section 402(4)(a) of this chapter for an individual described in section 402(2) of this chapter, the director shall require the individual to submit fingerprints to the department, state police department, or NMLSR, as directed, at the time evidence of compliance is requested under section 402(3) of this chapter. The individual to whom the request is made shall pay any fees or costs associated with processing and evaluating the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

(2) For purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any governmental agency.

As added by P.L.35-2010, SEC.13.

IC 24-4.4-2-402.2

Credit reports; payment of fees or costs; demonstrated financial responsibility; considerations

Sec. 402.2. (1) If the director requests a credit report for an individual described in section 402(2) of this chapter, the individual to whom the request is made shall pay any fees or costs associated with procuring the report.

(2) The individual must submit personal history and experience information in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR or the director to obtain an independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)).

(3) The director may consider one (1) or more of the following when determining if an individual has demonstrated financial responsibility:

(a) Bankruptcies filed within the last ten (10) years.

(b) Current outstanding judgments, except judgments solely as a result of medical expenses.

(c) Current outstanding tax liens or other government liens or filings.

(d) Foreclosures within the past three (3) years.

(e) A pattern of serious delinquent accounts within the past three (3) years.

As added by P.L.35-2010, SEC.14.

IC 24-4.4-2-402.3

Surety bond; requirements; amount; termination; liability; notices

Sec. 402.3. (1) Each:

(a) creditor; and

(b) person exempt from licensing under this article that:

(i) employs a licensed mortgage loan originator; or

(ii) sponsors under an exclusive written agreement, as permitted by IC 24-4.4-1-202(b)(6)(a), a licensed mortgage loan originator as an independent agent;

must be covered by a surety bond in accordance with this section.

(2) A surety bond must:

(a) provide coverage for:

(i) a creditor; or

(ii) a person exempt from licensing under this article that employs a licensed mortgage loan originator, or that sponsors under an exclusive written agreement (as permitted by IC 24-4.4-1-202(b)(6)(a)) a licensed mortgage loan originator as an independent agent;

in an amount as prescribed in subsection (4);

(b) be in a form prescribed by the director;

(c) be in effect:

(i) during the term of the creditor's license under this chapter; or

(ii) at any time during which the person exempt from licensing under this article employs a licensed mortgage loan originator or sponsors under an exclusive written agreement (as permitted by IC 24-4.4-1-202(b)(6)(a)) a licensed mortgage loan originator as an independent agent;

as applicable;

(d) remain in effect during the two (2) years after:

(i) the creditor ceases offering financial services to individuals in Indiana; or

(ii) the person exempt from licensing under this article ceases to employ a licensed mortgage loan originator, or ceases to sponsor under an exclusive written agreement (as

permitted by IC 24-4.4-1-202(b)(6)(a)) a licensed mortgage loan originator as an independent agent, or to offer financial services to individuals in Indiana, whichever is later;

as applicable;

(e) be payable to the department for the benefit of:

(i) the state; and

(ii) individuals who reside in Indiana when they agree to receive financial services from the creditor or the person exempt from licensing under this article, as applicable;

(f) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and

(g) have payment conditioned upon:

(i) the creditor's or any of the creditor's licensed mortgage loan originators'; or

(ii) the exempt person's or any of the exempt person's licensed mortgage loan originators';

noncompliance with or violation of this chapter, 750 IAC 9, or other federal or state laws or regulations applicable to mortgage lending.

(3) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this article.

(4) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of mortgage transactions originated as determined by the director. If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the creditor or exempt person for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.

(5) If for any reason a surety terminates a bond issued under this section, the creditor or the exempt person shall immediately notify the department and file a new surety bond in an amount determined by the director.

(6) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(7) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(8) Notices required under this section must be in writing and delivered by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized

carrier.

As added by P.L.35-2010, SEC.15. Amended by P.L.216-2013, SEC.3; P.L.137-2014, SEC.4; P.L.103-2014, SEC.3; P.L.5-2015, SEC.53.

IC 24-4.4-2-402.4

Use of NMLSR in department's licensing system; reporting of information to NMLSR; confidentiality; director's authority to enter agreements; waiver of privilege; processing fee; electronic records

Sec. 402.4. (1) Subject to subsection (6), the director shall designate the NMLSR to serve as the sole entity responsible for:

(a) processing applications and renewals for licenses under this article;

(b) issuing unique identifiers for licensees and entities exempt from licensing under this article that employ a licensed mortgage loan originator under this article; and

(c) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under this article.

(2) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director shall regularly report significant or recurring violations of this article to the NMLSR.

(3) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may report complaints received regarding licensees under this article to the NMLSR.

(4) The director may report publicly adjudicated licensure actions against a licensee to the NMLSR.

(5) The director shall establish a process in which licensees may challenge information reported to the NMLSR by the department.

(6) The director's authority to designate the NMLSR under subsection (1) is subject to the following:

(a) Information stored in the NMLSR is subject to the confidentiality provisions of IC 5-14-3 and IC 28-1-2-30. A person may not:

(i) obtain information from the NMLSR, unless the person is authorized to do so by statute;

(ii) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or

(iii) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(b) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under

IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the NMLSR;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this article.

(c) Disclosure of documents, materials, and information:

(i) to the director; or

(ii) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(d) Information provided to the NMLSR is subject to IC 4-1-11.

(e) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or proceeding; or

(iii) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

(f) Except as otherwise provided in the federal Housing and Economic Recovery Act of 2008 (Public Law 110-289, Section 1512), the requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(g) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies, as established by rule or order of the director.

(h) Information or material that is subject to a privilege or confidentiality under subdivision (f) is not subject to:

(i) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or

an agency of the federal government or the respective state; or

(ii) subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(i) Any provision of IC 5-14-3 that concerns the disclosure of:

(i) confidential supervisory information; or

(ii) any information or material described in subdivision (f);

and that is inconsistent with subdivision (f) is superseded by this section.

(j) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person described in section 402(2) of this chapter and that is included in the NMLSR for access by the public.

(k) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether an NMLSR processing fee is reasonable, the director shall:

(i) require review of; and

(ii) make available;

the audited financial statements of the NMLSR.

(7) Notwithstanding any other provision of law, any:

(a) application, renewal, or other form or document that:

(i) relates to licenses issued under this article; and

(ii) is made or produced in an electronic format;

(b) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of mortgage lenders, brokers, or loan originators; or

(c) electronic record filed through the NMLSR;

is considered a valid original document when reproduced in paper form by the department.

As added by P.L.35-2010, SEC.16. Amended by P.L.27-2012, SEC.8.

IC 24-4.4-2-403

License renewal; revocation or suspension of license not renewed; reinstatement or appeal; correcting amendments

Sec. 403. (1) A license issued under this article must be renewed through the NMLSR not later than December 31 of each calendar year. The minimum standards for license renewal for a creditor include the following:

(a) The creditor has continued to meet the surety bond requirement under section 402.3 of this chapter.

(b) The creditor has filed the creditor's call report in a manner

that satisfies section 405(4) of this chapter.

(c) The creditor has paid all required fees for renewal of the license.

(d) The creditor and individuals described in section 402(2) of this chapter have certified to the department that they continue to meet all the standards for licensing contained in section 402 of this chapter.

(e) The creditor has provided in the creditor's renewal application:

(i) any information describing material changes in the information contained in the creditor's original application for licensure, or in any previous application, including any previous renewal application; and

(ii) any other information the director requires in order to evaluate the renewal of the license issued under this article.

(2) A license issued by the department authorizing a person to engage in first lien mortgage transactions as a creditor under this article may be revoked or suspended by the department if the person fails to:

(a) file any renewal form required by the department; or

(b) pay any license renewal fee described under section 402 of this chapter;

not later than sixty (60) days after the due date.

(3) A person whose license is revoked or suspended under this section may do either of the following:

(a) Pay all delinquent fees and apply for reinstatement of the license.

(b) Appeal the revocation or suspension to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation or suspension, the license remains in force.

(4) If, at any time, the information or record contained in:

(a) an original application for licensure filed under section 402 of this chapter; or

(b) a renewal application filed under this section;

is or becomes inaccurate or incomplete in a material respect, the applicant shall promptly file a correcting amendment with the department.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.17; P.L.27-2012, SEC.9.

IC 24-4.4-2-404

Suspension or revocation of license as creditor; order to show cause; order of suspension or revocation; relinquishment of license; preexisting contracts; emergency order for revocation

Sec. 404. (1) The department may issue to a person licensed as a creditor to engage in first lien mortgage transactions an order to show

cause why the person's license should not be revoked or suspended for a period determined by the department.

(2) An order issued under subsection (1) must:

(a) include:

(i) a statement of the place, date, and time for a meeting with the department, which date may not be less than ten (10) days from the date of the order;

(ii) a description of the action contemplated by the department; and

(iii) a statement of the facts or conduct supporting the issuance of the order; and

(b) be accompanied by a notice stating that the licensee is entitled to:

(i) a reasonable opportunity to be heard; and

(ii) show the licensee's compliance with all lawful requirements for retention of the license;

at the meeting described in subdivision (a)(i).

(3) After the meeting described in subsection (2)(a)(i), the department may revoke or suspend the license if the department finds that:

(a) the licensee has repeatedly and willfully violated:

(i) this article or any applicable rule, order, or guidance document adopted or issued by the department; or

(ii) any other state or federal law, regulation, or rule applicable to first lien mortgage transactions;

(b) the licensee does not meet the licensing qualifications contained in section 402 of this chapter;

(c) the licensee obtained the license for the benefit of, or on behalf of, another person;

(d) the licensee knowingly or intentionally made material misrepresentations to, or concealed material information from, the department; or

(e) facts or conditions exist that, had they existed at the time the licensee applied for the license, would have been grounds for the department to deny the issuance of the license.

(4) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of:

(a) the revocation or suspension;

(b) if a suspension has been ordered, the duration of the suspension;

(c) the procedure for appealing the revocation or suspension under IC 4-21.5-3-6; and

(d) any other terms and conditions that apply to the revocation or suspension.

Not later than five (5) days after the entry of the order, the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license as a creditor to engage in first lien mortgage transactions may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this subsection does not affect the person's liability for acts previously committed and coming within the scope of this article.

(6) If the director determines it to be in the public interest, the director may pursue revocation of a license of a licensee that has relinquished the license under subsection (5).

(7) If a person's license is revoked, suspended, or relinquished, the revocation, suspension, or relinquishment does not impair or affect any obligation owed by any person under any preexisting lawful contract.

(8) If the director has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, the director may proceed with the revocation of a license through an emergency or another temporary order under IC 4-21.5-4.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.18; P.L.27-2012, SEC.10; P.L.186-2015, SEC.8.

IC 24-4.4-2-404.1

Violations by individuals; persons convicted of felonies; civil penalties; creditor's duty to notify department of discharge or termination

Sec. 404.1. (1) If the director determines that a director, an officer, or an employee of a creditor:

(a) has committed a violation of a statute, a rule, a final cease and desist order, any condition imposed in writing by the director in connection with the granting of any application or other request by the creditor, or any written agreement between the creditor and the director or the department;

(b) has committed fraudulent or unconscionable conduct; or

(c) has been convicted of a felony under the laws of Indiana or any other jurisdiction;

the director, subject to subsection (2), may issue and serve upon the officer, director, or employee a notice of the director's intent to issue an order removing the person from the person's office or employment, an order prohibiting any participation by the person in the conduct of the affairs of any creditor, or an order both removing the person and prohibiting the person's participation.

(2) A violation, practice, or breach specified in subsection (1) is subject to the authority of the director under subsection (1) if the director finds any of the following:

(a) The interests of the creditor's customers could be seriously prejudiced by reason of the violation or practice.

(b) The violation, practice, or breach involves personal dishonesty on the part of the officer, director, or employee involved.

(c) The violation, practice, or breach demonstrates a willful or continuing disregard by the officer, director, or employee for state and federal laws and regulations, and for the consumer protections contained in this article.

(3) A person who has been convicted of a felony under the laws of Indiana or any other jurisdiction may not serve as an officer, a director, or an employee of a creditor, or serve in any similar capacity, unless the person obtains the written consent of the director.

(4) A creditor that willfully permits a person to serve the creditor in violation of subsection (3) is subject to a civil penalty of five hundred dollars ($500) for each day the violation continues.

(5) A creditor shall give the department written notice of the resignation, discharge, or termination of an employee, independent contractor, or agent against whom allegations were made that accused the employee, independent contractor, or agent of:

(a) violating this article or other laws, regulations, rules, or industry standards of conduct applicable to first lien mortgage transactions; or

(b) fraud, dishonesty, theft, or the wrongful taking of property.

The creditor shall provide the department the notice required under this subsection not later than thirty (30) days after the effective date of the resignation, discharge, or termination.

As added by P.L.35-2010, SEC.19. Amended by P.L.27-2012, SEC.11.

IC 24-4.4-2-404.2

Director's notice of intent to issue order; contents; hearing; final order; suspension or prohibition pending final order; official record

Sec. 404.2. (1) A notice issued under this chapter must:

(a) be in writing;

(b) contain a statement of the facts constituting the alleged practice, violation, or breach;

(c) state the facts alleged in support of the violation, practice, or breach;

(d) state the director's intention to enter an order under section 404.4(1) of this chapter;

(e) be delivered to the board of directors of the creditor;

(f) be delivered to the officer, director, or employee concerned;

(g) specify the procedures that must be followed to initiate a hearing to contest the facts alleged; and

(h) if the director suspends or prohibits an officer, a director, or an employee of the creditor from participating in the affairs of the creditor, as described in subsection (5), include a statement of the suspension or prohibition.

(2) If a hearing is requested not later than ten (10) days after service of the written notice, the department shall hold a hearing

concerning the alleged practice, violation, or breach. The hearing shall be held not later than forty-five (45) days after receipt of the request. The department, based on the evidence presented at the hearing, shall enter a final order under section 404.4 of this chapter.

(3) If no hearing is requested within the time specified in subsection (2), the director may proceed to issue a final order under section 404.4 of this chapter on the basis of the facts set forth in the written notice.

(4) An officer, director, or employee who is removed from a position under a removal order that has become final may not participate in the conduct of the affairs of any licensee under this article without the approval of the director.

(5) The director may, for the protection of the creditor or the interests of its customers, suspend from office or prohibit from participation in the affairs of the creditor an officer, a director, or an employee of a creditor who is the subject of a written notice served by the director under section 404.1(1) of this chapter. A suspension or prohibition under this subsection becomes effective upon service of the notice under section 404.1(1) of this chapter. Unless stayed by a court in a proceeding authorized by subsection (6), the suspension or prohibition remains in effect pending completion of the proceedings related to the notice served under section 404.1(1) of this chapter and until the effective date of an order entered by the department under subsection (2) or the director under subsection (3). Copies of the notice shall also be served upon the creditor or affiliate of which the person is an officer, a director, or an employee.

(6) Not more than fifteen (15) days after an officer, a director, or an employee has been suspended from office or prohibited from participation in the conduct of the affairs of the creditor or affiliate under subsection (5), the officer, director, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings related to the written notice served under section 404.1(1) of this chapter, and the court may stay the suspension or prohibition.

(7) The department shall maintain an official record of a proceeding under this chapter.

As added by P.L.35-2010, SEC.20.

IC 24-4.4-2-404.3

Consent agreement; notice of charges not required

Sec. 404.3. If the director enters into a consent to a final order under section 404.4 of this chapter with a creditor, a director, an officer, or an employee, the director is not required to issue and serve a notice of charges upon the creditor, director, or officer under section 404.1 of this chapter. A consent agreement may be negotiated and entered into before or after the issuance of a notice of charges. The director shall provide a copy of the consent order to the board of directors of the creditor.

As added by P.L.35-2010, SEC.21.

IC 24-4.4-2-404.4
Final order; remedies; consent presumed

Sec. 404.4. (1) If, after a hearing described in section 404.2(2) of this chapter, the department finds that the conditions specified in section 404.1 of this chapter have been established, the department may issue a final order. If a hearing is not requested within the time specified in section 404.2(2) of this chapter, the director may issue a final order on the basis of the facts set forth in the written notice served under section 404.1(1) of this chapter.

(2) Unless the director has entered into a consent agreement described in section 404.3 of this chapter, a final order must include separately stated findings of fact and conclusions of law for all aspects of the order.

(3) In a final order under this section, the department or the director, as appropriate, may order one (1) or more of the following with respect to an officer, a director, or an employee of a creditor:

(a) The removal of the officer, director, or employee from the person's office, position, or employment.

(b) A prohibition against any participation by the officer, director, or employee in the conduct of the affairs of any creditor.

(c) If the subject of the order is an officer or a director of a creditor, and subject to section 404.6 of this chapter, the imposition of a civil penalty not to exceed fifteen thousand dollars ($15,000) for each practice, violation, or act that:

(i) is described in section 404.1 of this chapter; and

(ii) is found to exist by the department or the director.

(4) A final order shall be issued in writing not later than ninety (90) days after conclusion of a hearing held under section 404.2(2) of this chapter, unless this period is waived or extended with the written consent of all parties or for good cause shown.

(5) If the officer, director, or employee does not appear individually or by an authorized representative at a hearing held under section 404.2(2) of this chapter, the officer, director, or employee is considered to have consented to the issuance of a final order.

(6) The remedies provided in this chapter are in addition to other remedies contained in this article.

As added by P.L.35-2010, SEC.22.

IC 24-4.4-2-404.5
Final order; effective date; authority of department or court to stay, modify, or vacate

Sec. 404.5. (1) A final order issued under this chapter is effective on the eleventh day after service of the order. However, a final order issued upon consent under section 404.3 of this chapter is effective

at the time specified in the order.

(2) A final order remains effective and enforceable as provided in the order.

(3) The department or a reviewing court may stay, modify, or vacate a final order.

As added by P.L.35-2010, SEC.23.

IC 24-4.4-2-404.6

Factors for determining amount of civil penalty; indemnification by creditor prohibited; deposit of civil penalties in financial institutions fund

Sec. 404.6. (1) The director or the department, as appropriate, shall consider the following factors in determining the amount of a civil penalty that should be assessed against a director or an officer in a final order issued under section 404.4(3)(c) of this chapter:

(a) The appropriateness of the civil penalty with respect to the financial resources and good faith of the individual charged.

(b) The gravity of the practice, violation, or act.

(c) The history of previous practices, violations, or acts.

(d) The economic benefit derived by the individual from the practice, violation, or act.

(e) Other factors that justice requires.

(2) A creditor may not indemnify a director or an officer for a civil penalty imposed in a final order under section 404.4(3)(c) of this chapter.

(3) Civil penalties shall be deposited in the financial institutions fund established by IC 28-11-2-9.

As added by P.L.35-2010, SEC.24.

IC 24-4.4-2-404.7

Authority of director to enforce orders, agreements, or conditions in court

Sec. 404.7. The director may enforce any of the following by applying for appropriate relief to a court having jurisdiction:

(a) An order issued under this chapter.

(b) A written agreement entered into by the department or the director and any director, officer, or employee of a creditor.

(c) Any condition imposed in writing by the department or the director on any director, officer, or employee of a creditor.

As added by P.L.35-2010, SEC.25.

IC 24-4.4-2-405

Record keeping; use of unique identifier on forms and documents; use of examination and regulatory software; reports of condition to NMLSR; financial statements; notice to department of certain events or changes

Sec. 405. (1) Every licensee shall maintain records in a manner that will enable the department to determine whether the licensee is

complying with this article. The record keeping system of a licensee is sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever the records are located. Records concerning any first lien mortgage transaction shall be retained for two (2) years after the making of the final entry relating to the transaction, but in the case of a revolving first lien mortgage transaction, the two (2) years required under this subsection is measured from the date of each entry relating to the transaction. A federal savings bank that voluntarily registers with the department under IC 24-4.4-1-202(b)(6)(a) for the purpose of sponsoring, under an exclusive written agreement, licensed mortgage loan originators as independent agents shall:

(a) cooperate with the department; and

(b) provide access to records and documents;

as required by the department in carrying out examinations of the activities of the licensed mortgage loan originators sponsored by the federal savings bank.

(2) The unique identifier of any person originating a mortgage transaction must be clearly shown on all mortgage transaction application forms and any other documents as required by the director.

(3) Every licensee shall use automated examination and regulatory software designated by the director, including third party software. Use of the software consistent with guidance and policies issued by the director is not a violation of IC 28-1-2-30.

(4) Each:

(a) creditor licensed by the department under this article; and

(b) entity that is exempt from licensing under this article and that:

(i) employs one (1) or more licensed mortgage loan originators; or

(ii) sponsors under an exclusive written agreement, as permitted by IC 24-4.4-1-202(b)(6)(a), one (1) or more licensed mortgage originators as independent agents;

shall submit to the NMLSR reports of condition, which must be in a form and must contain information as required by the NMLSR.

(5) Each:

(a) creditor licensed by the department under this article; and

(b) entity exempt from licensing under this article that:

(i) employs one (1) or more licensed mortgage loan originators; or

(ii) sponsors under an exclusive written agreement, as permitted by IC 24-4.4-1-202(b)(6)(a), one (1) or more licensed mortgage loan originators as independent agents;

shall file with the department additional financial statements relating

to all first lien mortgage transactions originated by the licensed creditor or the exempt entity as required by the department, but not more frequently than annually, in the form prescribed by the department.

(6) A licensed creditor shall file notification with the department if the licensee:

(a) has a change in name, address, or any of its principals;

(b) opens a new branch, closes an existing branch, or relocates an existing branch;

(c) files for bankruptcy or reorganization; or

(d) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensed creditor's activities;

not later than thirty (30) days after the date of the event described in this subsection.

(7) A licensee shall file notification with the department if the licensee or any director, executive officer, or manager of the licensee has been convicted of a felony under the laws of Indiana or any other jurisdiction. The licensee shall file the notification required by this subsection not later than thirty (30) days after the date of the event described in this subsection.

(8) A licensee shall file notification with the department if the licensee or any director, executive officer, or manager of the licensee has had the person's authority to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry revoked or suspended by Indiana or by any other state, federal, or foreign governmental agency or self regulatory organization. The licensee shall file the notification required by this subsection not later than thirty (30) days after the date of the event described in this subsection.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.26; P.L.27-2012, SEC.12; P.L.103-2014, SEC.4.

IC 24-4.4-2-406

Change in control of creditor; application to department; timeframe for department's decision; conditions for approval; creditor's duty to report transfer of securities; director's discretion to require new license

Sec. 406. (1) As used in this section, "control" means possession of the power directly or indirectly to:

(a) direct or cause the direction of the management or policies of a creditor, whether through the beneficial ownership of voting securities, by contract, or otherwise; or

(b) vote at least twenty-five percent (25%) of the voting securities of a creditor, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.

(2) An organization or an individual acting directly, indirectly, or

through or in concert with one (1) or more other organizations or individuals may not acquire control of any creditor unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

(3) The period for approval under subsection (2) may be extended:

(a) in the discretion of the director for an additional thirty (30) days; and

(b) not more than two (2) additional times for not more than forty-five (45) days each time if:

(i) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (4);

(ii) the director determines that any material information submitted is substantially inaccurate; or

(iii) the director has been unable to complete the investigation of the organization, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the organization, individual, or individuals.

(4) The department shall issue a notice approving the application only after it is satisfied that both of the following apply:

(a) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the creditor in a legal and proper manner.

(b) The interests of the owners and creditors of the creditor and the interests of the public generally will not be jeopardized by the proposed change in control.

(5) The director may determine, in the director's discretion, that subsection (2) does not apply to a transaction if the director determines that the direct or beneficial ownership of the creditor will not change as a result of the transaction.

(6) The president or other chief executive officer of a creditor shall report to the director any transfer or sale of securities of the creditor that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the creditor. The report required by this subsection must be made not later than ten (10) days after the transfer of the securities on the books of the creditor.

(7) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual,

or individuals who propose to acquire control of a creditor licensed under this article to apply for a new license under section 401 of this chapter, instead of acquiring control of the licensee under this section.
As added by P.L.89-2011, SEC.9. Amended by P.L.6-2012, SEC.165.

IC 24-4.4-2-501
Creditor's duty to comply with closing requirements
Sec. 501. A creditor in a first lien mortgage transaction shall comply with IC 6-1.1-12-43, to the extent applicable.
As added by P.L.145-2008, SEC.20.

IC 24-4.4-2-502
Debtor's right to rescind; accruing interest prohibited during rescission period; disbursement of proceeds
Sec. 502. (1) A violation by a creditor in a first lien mortgage transaction of Section 125 of the Federal Consumer Credit Protection Act (15 U.S.C. 1635) (concerning a debtor's right to rescind a transaction) constitutes a violation of this article. A creditor may not accrue interest during the period when a first lien mortgage transaction may be rescinded under Section 125 of the Federal Consumer Credit Protection Act (15 U.S.C. 1635).
(2) A creditor must make available for disbursement the proceeds of a transaction subject to subsection (1) on the later of:
(a) the date the creditor is reasonably satisfied that the debtor has not rescinded the transaction; or
(b) the first business day after the expiration of the rescission period under subsection (1).
As added by P.L.145-2008, SEC.20. Amended by P.L.1-2009, SEC.135.

IC 24-4.4-2-503
Reverse mortgages; pamphlet; counseling required for debtor
Sec. 503. A creditor in a first lien mortgage transaction that:
(1) qualifies as a home equity conversion mortgage under the Federal Housing Administration's program; or
(2) otherwise constitutes a reverse mortgage;
shall provide the debtor with a pamphlet that is approved by the department and that describes the availability of reverse mortgage counseling services provided by housing counselors approved by the Secretary of the United States Department of Housing and Urban Development, as provided in 24 CFR 206.41(a). The debtor must receive the counseling described in this section and present the creditor with the certificate described in 24 CFR 206.41(c) before the creditor may make a first lien mortgage transaction described in this section to the debtor.
As added by P.L.35-2010, SEC.27.

IC 24-4.4-3
Chapter 3. Administration

IC 24-4.4-3-101
Short title
Sec. 101. This chapter shall be known and may be cited as the First Lien Mortgage Lending Act - Administration.
As added by P.L.145-2008, SEC.20.

IC 24-4.4-3-102
Application
Sec. 102. This chapter applies to a person that engages as a creditor in first lien mortgage transactions in Indiana. The authority of this chapter remains in effect, whether a licensee, individual, or person subject to this article acts or claims to act under any licensing or registration law of Indiana or claims to act without such authority.
As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.28.

IC 24-4.4-3-103
Powers of department; no liability for conforming act or omission
Sec. 103. (1) In addition to other powers granted by this article, the department within the limitations provided by law may:
(a) receive and act on complaints, take action designed to obtain voluntary compliance with this article, or commence proceedings on the department's own initiative;
(b) counsel persons and groups on their rights and duties under this article;
(c) establish programs for the education of consumers with respect to credit practices and problems;
(d) make studies appropriate to effectuate the purposes and policies of this article and make the results available to the public;
(e) adopt, amend, and repeal rules, orders, policies, and forms to carry out the provisions of this article;
(f) maintain more than one (1) office within Indiana; and
(g) appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the department in court.
(2) Liability may not be imposed under this article for an act done or omitted in conformity with a rule, written notice, written opinion, written interpretation, or written directive of the department notwithstanding the fact that after the act is done or omitted the rule, written notice, written opinion, written interpretation, or written directive may be:
(a) amended or repealed; or
(b) determined by judicial or other authority to be invalid;

for any reason.
As added by P.L.145-2008, SEC.20.

IC 24-4.4-3-104
Department's examination and investigatory authority; record retention; director's authority to control access to records; court order compelling compliance; confidentiality; costs; vendors

Sec. 104. (1) In administering this article and in order to determine whether the provisions of this article are being complied with by persons engaging in acts subject to this article, the department may examine the records of persons and may make investigations of persons as may be necessary to determine compliance. Records subject to examination under this section include the following:

(a) Training, operating, and policy manuals.

(b) Minutes of:

(i) management meetings; and

(ii) other meetings.

(c) Financial records, credit files, and data bases.

(d) Other records that the department determines are necessary to perform its investigation or examination.

The department may also administer oaths or affirmations, subpoena witnesses, and compel the attendance of witnesses, including officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of licensees, and other individuals or persons subject to this article. The department may also adduce evidence and require the production of any matter that is relevant to an investigation. The department shall determine the sufficiency of the records maintained and whether the person has made the required information reasonably available. The records concerning any transaction subject to this article shall be retained for two (2) years after the making of the final entry relating to the first lien mortgage transaction, but in the case of a revolving first lien mortgage transaction the two (2) year period is measured from the date of each entry.

(2) The department's examination and investigatory authority under this article includes the following:

(a) The authority to require a creditor to refund overcharges resulting from the creditor's noncompliance with the terms of a first lien mortgage transaction.

(b) The authority to require a creditor to comply with the penalty provisions set forth in IC 24-4.4-2-201.

(c) The authority to investigate complaints filed with the department by debtors.

(3) The department shall be given free access to the records wherever the records are located. In making any examination or investigation authorized by this article, the director may control access to any documents and records of the licensee or person under

examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where the documents are usually kept. During the period of control, a licensee or person may not remove or attempt to remove any of the documents and records except under a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensee or person have been, or are, at risk of being altered or destroyed for purposes of concealing a violation of this article, the licensee or person shall have access to the documents or records as necessary to conduct the licensee's or person's ordinary business affairs. If the person's records are located outside Indiana, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or the department's representative to examine the records where they are maintained. The department may designate comparable officials of the state in which the records are located to inspect the records on behalf of the department.

(4) Upon a person's failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice by the department to all affected persons, the department may apply to any civil court with jurisdiction for an order compelling compliance.

(5) The department shall not make public:

(a) the name or identity of a person whose acts or conduct the department investigates under this section; or

(b) the facts discovered in the investigation.

However, this subsection does not apply to civil actions or enforcement proceedings under this article.

(6) To discover violations of this article or to secure information necessary for the enforcement of this article, the department may investigate any:

(a) licensee; or

(b) person that the department suspects to be operating:

(i) without a license, when a license is required under this article; or

(ii) otherwise in violation of this article.

The department has all investigatory and enforcement authority under this article that the department has under IC 28-11 with respect to financial institutions. If the department conducts an investigation under this section, the licensee or other person investigated shall pay all reasonably incurred costs of the investigation in accordance with the fee schedule adopted under IC 28-11-3-5. Any costs required to be paid under this section shall be paid not later than sixty (60) days after the person being assessed the costs receives a notice from the department of the costs assessed. The department may impose a fee, in an amount fixed by the department under IC 28-11-3-5, for each day the assessed costs are not paid, beginning on the first day after

the sixty (60) day period described in this subsection.

(7) If a creditor contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the creditor and be subject to the department's routine examination procedures, the person that provides the service to the creditor shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any creditor that is licensed under this article and that receives services from the person refusing the examination to:

(a) discontinue receiving one (1) or more services from the person; or

(b) otherwise cease conducting business with the person.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.29; P.L.216-2013, SEC.4; P.L.186-2015, SEC.9.

IC 24-4.4-3-104.5
Powers of director

Sec. 104.5. To carry out the purposes of this section, the director may:

(a) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(b) enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing:

(i) resources;

(ii) standardized or uniform methods or procedures; and

(iii) documents, records, information, or evidence obtained under this section;

(c) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate a licensee, an individual, or a person subject to this article;

(d) accept and rely on examination or investigation reports made by other government officials within or outside Indiana; and

(e) accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this article in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director.

As added by P.L.35-2010, SEC.30.

IC 24-4.4-3-104.6
Prohibited acts

Sec. 104.6. It is a violation of this article for a person or individual subject to this article to:

(a) directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(b) engage in any unfair or deceptive practice toward any person;

(c) obtain property by fraud or misrepresentation;

(d) solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this article may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(e) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(f) conduct any business covered by this article without holding a valid license as required under this article, or assist or aid and abet any person in the conduct of business under this article without a valid license as required under this article;

(g) fail to make disclosures as required by this article or regulation adopted under this article and any other applicable state or federal law regulation;

(h) fail to comply with this article or rules adopted under this article, or fail to comply with any other state or federal law, rule, or regulation, applicable to any business authorized or conducted under this article;

(i) make, in any manner, any false or deceptive statement or representation, with regard to the rates, points, or other financing terms or conditions for a mortgage transaction, or engage in bait and switch advertising;

(j) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the NMLSR or in connection with any investigation conducted by the director or another governmental agency;

(k) make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a mortgage transaction, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(l) collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee

prohibited by this article;

(m) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(n) fail to account truthfully for money belonging to a party to a mortgage transaction; or

(o) knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information subject to examination under this article.

As added by P.L.35-2010, SEC.31.

IC 24-4.4-3-105

Applicability of laws governing administrative orders and rules; venue; emergency rulemaking authority

Sec. 105. Except as otherwise provided, IC 4-21.5-3 governs any action taken by the department under this chapter or IC 24-4.4-2-401 through IC 24-4.4-2-405. IC 4-22-2 applies to the adoption of rules by the department under this article. All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 shall be held in Marion County. However, if the department determines that an emergency exists, the department may adopt any rules authorized by this article under IC 4-22-2-37.1.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.32.

IC 24-4.4-3-106

Cease and desist orders; judicial review or enforcement proceedings; record; appeal; unconscionable or fraudulent conduct subject to injunction

Sec. 106. (1) After notice and hearing, the department may order a creditor or a person acting on behalf of the creditor to cease and desist from engaging in violations of this article. In any civil court with jurisdiction:

(a) a respondent aggrieved by an order of the department may obtain judicial review of the order; and

(b) the department may obtain an order of the court for the enforcement of the department's order.

A proceeding for review or enforcement under this subsection shall be initiated by the filing of a petition in the court. Copies of the petition shall be served upon all parties of record.

(2) Not later than thirty (30) days after service of a petition for review upon the department under subsection (1), or within such further time as the court may allow, the department shall transmit to the court the original or a certified copy of the entire record upon which the order that is the subject of the review is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After conducting a hearing on the matter, the court may:

(a) reverse or modify the order if the findings of fact of the department are clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record;
(b) grant any temporary relief or restraining order the court considers just; and
(c) enter an order:
(i) enforcing;
(ii) modifying;
(iii) enforcing as modified; or
(iv) setting aside;
in whole or in part, the order of the department; or
(d) enter an order remanding the case to the department for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the department in the interest of justice for the purpose of:
(a) adducing additional specified and material evidence; and
(b) seeking a finding upon such evidence;
upon good cause shown for the failure to previously adduce this evidence before the department.

(4) The jurisdiction of the court is exclusive and the court's final judgment or decree is subject to review on appeal in the same manner and form and with the same effect as in appeals from a final judgment or decree. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated not later than thirty (30) days after a copy of the order of the department is received. If a proceeding is not initiated within the time set forth in this subsection, the department may obtain a decree of a civil court with jurisdiction for enforcement of the department's order upon a showing that:
(a) the order was issued in compliance with this section;
(b) a proceeding for review was not initiated within the thirty (30) day period prescribed by this subsection; and
(c) the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by a respondent, the department may not issue an order under this section but may bring a civil action for an injunction under section 111 of this chapter.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.33.

IC 24-4.4-3-107
Assurance of discontinuance of conduct; failure to comply

Sec. 107. If it is claimed that a person has engaged in conduct subject to an order by:

(a) the department under section 106(1) of this chapter; or
(b) a court under sections 108 through 110 of this chapter;
the department may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with the terms of the assurance, the assurance is evidence that before the assurance was issued the person engaged in the conduct described in the assurance.
As added by P.L.145-2008, SEC.20.

IC 24-4.4-3-108
Civil action by department to restrain violation
Sec. 108. The department may bring a civil action to restrain a person from violating this article or other state or federal law, rule, or regulation and for other appropriate relief.
As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.34.

IC 24-4.4-3-109
Civil action by department to enjoin deceptive act
Sec. 109. (1) As used in this section, "deceptive act" means an act or a practice in which a person knowingly or intentionally:
(a) makes a material misrepresentation concerning; or
(b) conceals material information regarding the terms or conditions of;
a first lien mortgage transaction.
(2) For purposes of this section, "knowingly" means having actual knowledge at the time of the transaction.
(3) The department may bring a civil action to enjoin a deceptive act performed in connection with a first lien mortgage transaction.
As added by P.L.145-2008, SEC.20.

IC 24-4.4-3-110
Department's application to court for temporary relief or restraining order
Sec. 110. With respect to an action brought under:
(a) section 108 of this chapter to enjoin violations of this article; or
(b) section 109 of this chapter to enjoin deceptive acts;
the department may apply to the court for appropriate temporary relief against a respondent, pending final determination of the proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in the conduct sought to be restrained, the court may grant any temporary relief or restraining order the court considers appropriate.
As added by P.L.145-2008, SEC.20.

IC 24-4.4-3-111

Civil action by department for willful violation; imposition of civil penalty by department; restitution

Sec. 111. (1) The department may bring a civil action against a creditor or a person acting on behalf of the creditor to recover a civil penalty for willfully violating this article. If the court finds that the defendant has engaged in a course of repeated and willful violations of this article, the court may assess a civil penalty of not more than five thousand dollars ($5,000). A civil penalty may not be imposed under this subsection:

(a) for violations of this article occurring more than two (2) years before the action is brought; or

(b) for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

(2) If the department determines, after notice and an opportunity to be heard, that a person has violated this article, the department may, in addition to or instead of all other remedies available under this section, impose upon the person a civil penalty not greater than ten thousand dollars ($10,000) per violation.

(3) If the department determines, after notice and opportunity to be heard, that a person has willfully violated this article, the department may, in addition to or instead of all other remedies available under this section, order restitution against the person subject to this article for a violation of this article.

As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.35.

IC 24-4.4-3-112

Repealed

(As added by P.L.145-2008, SEC.20. Repealed by P.L.35-2010, SEC.209.)

IC 24-4.4-3-113

Rights of debtors not affected

Sec. 113. The grant of powers to the department under this article does not affect remedies available to debtors under this article or under other principles of law or equity.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-3-114

Actions brought by department; venue

Sec. 114. The department may bring an action or a proceeding in a court in a county:

(1) in which an act on which the action or proceeding is based occurred;

(2) in which the respondent resides or transacts business; or

(3) in which the action or proceeding is otherwise authorized by rule or venue laws.

As added by P.L.145-2008, SEC.20.

IC 24-4.4-3-115
"Civil court"

Sec. 115. As used in this article, "civil court" means any court in Indiana having jurisdiction of civil cases.

As added by P.L.145-2008, SEC.20.