



January 21, 2015

SENATE BILL No. 408

DIGEST OF SB 408 (Updated January 15, 2015 11:53 am - DI 55)

Citations Affected: IC 25-34.1; IC 27-7; IC 32-28.

Synopsis: Real estate brokers and broker companies. Defines "broker company" as a partnership, limited liability company, corporation, or individual acting as a sole proprietorship that is licensed as a broker and, for consideration, undertakes or offers to undertake certain activities with respect to real estate. Provides that an individual, to obtain a broker license, must associate with a broker company (instead of with a managing broker). Provides that a partnership, a limited liability company, or a corporation, to obtain a broker license, must include a licensed broker who qualifies as a managing broker. Defines "managing broker" as an individual who is a broker and whom the real estate commission holds responsible for the actions of the licensees affiliated with the broker company. Provides that an individual, to become a managing broker, must have held an active broker's license for at least two years. Requires a person conducting a broker course to have a permit issued by the real estate commission. Defines "in-house agency relationship" as an agency relationship involving two or more clients who are represented by different licensees within the same broker company. Provides that, in an in-house agency relationship, an individual licensee affiliated with a broker company represents only the client with which the licensee is working. Requires a broker to complete at least eight hours of approved continuing education per year (instead of 12 hours) but requires a broker to complete at least 36 hours of approved continuing education per three year cycle. Makes corresponding changes in current law.

Effective: July 1, 2014 (retroactive); July 1, 2015.

Merritt, Houchin, Broden, Randolph

January 12, 2015, read first time and referred to Committee on Commerce & Technology.
January 20, 2015, amended, reported favorably — Do Pass.

SB 408—LS 7317/DI 55



January 21, 2015

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 408

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

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

- 1 SECTION 1. IC 25-34.1-1-2, AS AMENDED BY P.L.200-2013,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 2. As used in this article:
4 (1) "Person" means an individual, a partnership, a corporation, or
5 a limited liability company.
6 (2) "Commission" means the Indiana real estate commission.
7 (3) "Real estate" means any right, title, or interest in real property.
8 (4) "Broker" means a person who:
9 (A) for consideration, sells, buys, trades, exchanges, options,
10 leases, rents, manages, lists, or appraises real estate or
11 negotiates or offers to perform any of those acts; and
12 (B) is acting in association with and under the auspices of a
13 managing broker **and broker company**.
14 (5) "License" means a broker license issued under this article and

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- 1 which is not expired, suspended, or revoked.
 2 (6) "Licensee" means a person who holds a license issued under
 3 this article. The term does not include a person who holds a real
 4 estate appraiser license or certificate issued under the real estate
 5 appraiser licensure and certification program established under
 6 IC 25-34.1-3-8.
 7 (7) "Course approval" means approval of a broker course granted
 8 under this article which is not expired, suspended, or revoked.
 9 (8) "Licensing agency" means the Indiana professional licensing
 10 agency established by IC 25-1-5-3.
 11 (9) "Board" refers to the real estate appraiser licensure and
 12 certification board established under IC 25-34.1-8-1.
 13 (10) "Commercial real estate" means a parcel of real estate other
 14 than real estate containing one (1) to four (4) residential units.
 15 This term does not include single family residential units such as:
 16 (A) condominiums;
 17 (B) townhouses;
 18 (C) manufactured homes; or
 19 (D) homes in a subdivision;
 20 when sold, leased, or otherwise conveyed on a unit-by-unit basis,
 21 even if those units are part of a larger building or parcel of real
 22 estate containing more than four (4) residential units.
 23 (11) "Out-of-state commercial broker" includes a person, a
 24 partnership, an association, a limited liability company, a limited
 25 liability partnership, or a corporation that is licensed to do
 26 business as a broker in a jurisdiction other than Indiana.
 27 (12) "Out-of-state commercial salesperson" includes a person
 28 affiliated with an out-of-state commercial broker who is not
 29 licensed as a broker under this article.
 30 (13) "Managing broker" refers to ~~a~~ **an individual** broker whom
 31 the commission holds responsible for the actions of licensees who
 32 are affiliated with the ~~managing broker and who meets the~~
 33 ~~requirements of IC 25-34.1-4-0.5.~~ **company.**
 34 **(14) "Broker company" means a licensee that is a business**
 35 **engaged in the activities described in IC 25-34.1-3-2(a),**
 36 **whether as a sole proprietorship, a partnership, a limited**
 37 **liability company, or a corporation. In the case of a broker**
 38 **company that is a sole proprietorship, the individual broker**
 39 **who is the sole proprietor is the broker company and the**
 40 **managing broker for the broker company.**
 41 SECTION 2. IC 25-34.1-3-4.1, AS AMENDED BY P.L.127-2012,
 42 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



- 1 JULY 1, 2015]: Sec. 4.1. (a) To obtain a broker license, an individual
 2 must:
- 3 (1) be at least eighteen (18) years of age before applying for a
 4 license and must not have a conviction for:
 - 5 (A) an act that would constitute a ground for disciplinary
 6 sanction under IC 25-1-11;
 - 7 (B) a crime that has a direct bearing on the individual's ability
 8 to practice competently; or
 - 9 (C) a crime that indicates the individual has the propensity to
 10 endanger the public;
 - 11 (2) have a high school diploma or a general educational
 12 development (GED) diploma under IC 20-20-6 (before its repeal)
 13 or IC 22-4.1-18;
 - 14 (3) have successfully completed an approved broker course of
 15 study as prescribed in IC 25-34.1-5-5;
 - 16 (4) apply for a license by submitting the application fee
 17 prescribed by the commission and an application specifying:
 - 18 (A) the name, address, and age of the applicant;
 - 19 (B) the ~~name under broker company with~~ which the
 20 applicant intends to ~~conduct business~~ **associate**;
 - 21 (C) the address ~~where the business is to be conducted~~; **of the**
 22 **broker company**;
 - 23 (D) proof of compliance with subdivisions (2) and (3); and
 - 24 (E) any other information the commission requires;
 - 25 (5) pass a written examination prepared and administered by the
 26 commission or its duly appointed agent; and
 - 27 (6) within one (1) year after passing the commission examination,
 28 submit the license fee established by the commission under
 29 IC 25-1-8-2. If an individual applicant fails to file a timely license
 30 fee, the commission shall void the application and may not issue
 31 a license to that applicant unless that applicant again complies
 32 with the requirements of subdivisions (4) and (5) and this
 33 subdivision.
- 34 (b) To obtain a broker license, a partnership must:
- 35 (1) have as partners only individuals who are licensed brokers;
 - 36 (2) have at least one (1) partner who
 - 37 (A) ~~is a resident of Indiana~~; or
 - 38 (B) ~~is qualifies as a managing broker under IC 25-34.1-4-3(b)~~;
 39 **IC 25-34.1-4-0.5 and IC 25-34.1-4-3**;
 - 40 (3) cause each employee of the partnership who acts as a broker
 41 to be licensed; and
 - 42 (4) submit the license fee established by the commission under



- 1 IC 25-1-8-2 and an application setting forth the name and
 2 residence address of each partner and the information prescribed
 3 in subsection (a)(4).
 4 (c) To obtain a broker license, a corporation must:
 5 (1) have a licensed broker:
 6 (A) residing in Indiana who is either an officer of the
 7 corporation or, if no officer resides in Indiana, the highest
 8 ranking corporate employee in Indiana with authority to bind
 9 the corporation in real estate transactions; or
 10 (B) who ~~is~~ **qualifies as** a managing broker under
 11 ~~IC 25-34.1-4-3(b);~~ **IC 25-34.1-4-0.5 and IC 25-34.1-4-3;**
 12 (2) cause each employee of the corporation who acts as a broker
 13 to be licensed; and
 14 (3) submit the license fee established by the commission under
 15 IC 25-1-8-2, an application setting forth the name and residence
 16 address of each officer and the information prescribed in
 17 subsection (a)(4), a copy of the certificate of incorporation, and a
 18 certificate of good standing of the corporation issued by the
 19 secretary of state.
 20 (d) To obtain a broker license, a limited liability company must:
 21 (1) if a member-managed limited liability company:
 22 (A) have as members only individuals who are licensed
 23 brokers; and
 24 (B) have at least one (1) member who ~~is~~:
 25 (i) ~~a resident of Indiana;~~ or
 26 (ii) **qualifies as** a managing broker under ~~IC 25-34.1-4-3(b);~~
 27 **IC 25-34.1-4-0.5 and IC 25-34.1-4-3;**
 28 (2) if a manager-managed limited liability company, have a
 29 licensed broker
 30 (A) residing in Indiana who is either a manager of the
 31 company or, if no manager resides in Indiana, the highest
 32 ranking company officer or employee in Indiana with authority
 33 to bind the company in real estate transactions; or
 34 (B) who ~~is~~ **qualifies as** a managing broker under
 35 ~~IC 25-34.1-4-3(b);~~ **IC 25-34.1-4-0.5 and IC 25-34.1-4-3;**
 36 (3) cause each employee of the limited liability company who acts
 37 as a broker to be licensed; and
 38 (4) submit the license fee established by the commission under
 39 IC 25-1-8-2 and an application setting forth the information
 40 prescribed in subsection (a)(4), together with:
 41 (A) if a member-managed company, the name and residence
 42 address of each member; or



1 (B) if a manager-managed company, the name and residence
 2 address of each manager, or of each officer if the company has
 3 officers.

4 (e) Licenses granted to partnerships, corporations, and limited
 5 liability companies are issued, expire, are renewed, and are effective on
 6 the same terms as licenses granted to individual brokers, except as
 7 provided in subsection (h), and except that expiration or revocation of
 8 the license of:

9 (1) any partner in a partnership or all individuals in a corporation
 10 satisfying subsection (c)(1); or

11 (2) a member in a member-managed limited liability company or
 12 all individuals in a manager-managed limited liability company
 13 satisfying subsection (d)(2);

14 terminates the license of that partnership, corporation, or limited
 15 liability company.

16 (f) Upon the applicant's compliance with the requirements of
 17 subsection (a), (b), or (c), the commission shall issue the applicant a
 18 broker license and an identification card which certifies the issuance
 19 of the license and indicates the expiration date of the license. The
 20 license shall be displayed at the broker's place of business. For at least
 21 two (2) years after the issuance of a license, the **license must be**
 22 **assigned to individual cannot be** a managing broker. An individual
 23 who applies for a broker's license after June 30, 2014, must, during the
 24 first two (2) years after the license is issued, take and pass at least thirty
 25 (30) hours of postlicensing education focused on the practical matters
 26 of real estate transactions instead of the continuing education
 27 requirements under IC 25-34.1-9.

28 (g) Unless the license is renewed, a broker license expires, for
 29 individuals, on a date specified by the licensing agency under
 30 IC 25-1-6-4 and expires three (3) years after the initial expiration date.
 31 An applicant for renewal shall submit an application in the manner
 32 prescribed by the commission and pay the renewal fee established by
 33 the commission under IC 25-1-8-2 on or before the renewal date
 34 specified by the licensing agency. If the holder of a license does not
 35 renew the license by the date specified by the licensing agency, the
 36 license expires and becomes invalid without the commission taking any
 37 action.

38 (h) If the holder of a license under this section fails to renew the
 39 license on or before the date specified by the licensing agency, the
 40 license may be reinstated by the commission if the holder of the
 41 license, not later than three (3) years after the expiration of the license,
 42 meets the requirements of IC 25-1-8-6(c).



1 (i) If a license under this section has been expired for more than
 2 three (3) years, the license may be reinstated by the commission if the
 3 holder meets the requirements for reinstatement under IC 25-1-8-6(d).

4 (j) A partnership, corporation, or limited liability company may ~~not~~
 5 be **only** a broker **company**, except as authorized in IC 23-1.5. An
 6 individual broker who associates with a ~~managing~~ broker **company**
 7 shall immediately notify the commission:

8 (1) of the name and business address of the ~~managing~~ broker
 9 **company with which the individual broker is associating**; and

10 (2) of any changes of ~~managing the~~ broker **company with which**
 11 **the individual broker is associated** that may occur.

12 **Upon receiving notice under subdivision (1) or (2),** the commission
 13 shall ~~then~~ change the address of the **individual** broker on its records to
 14 that of the ~~managing~~ broker **company**.

15 SECTION 3. IC 25-34.1-4-0.5, AS ADDED BY P.L.127-2012,
 16 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2015]: Sec. 0.5. Except as provided in section 6 of this
 18 chapter, to become a managing broker, an individual must:

19 (1) hold ~~a~~ **an active** broker's license for at least two (2) years; and

20 (2) take and pass at least twenty-four (24) hours of broker
 21 management courses approved by the commission.

22 SECTION 4. IC 25-34.1-4-1, AS AMENDED BY P.L.127-2012,
 23 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2015]: Sec. 1. A **broker company and its** managing broker
 25 **is are** responsible under this article for the actions of any broker who
 26 is associated with the ~~managing~~ broker **company**. Any ~~managing~~
 27 broker ~~who~~ **company that** maintains two (2) or more separate offices
 28 for associated licensees shall notify the commission of the name and
 29 address of the broker who manages each office.

30 SECTION 5. IC 25-34.1-4-2, AS AMENDED BY P.L.127-2012,
 31 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2015]: Sec. 2. Except as provided in IC 23-1.5, a partnership
 33 broker, corporate broker, or limited liability company broker:

34 (1) may act only as a ~~managing~~ broker **company**; and

35 (2) shall designate to the commission a ~~licensed individual~~
 36 **managing** broker who is a ~~partner~~ or a corporate representative
 37 satisfying IC 25-34.1-3-4.1(c)(1) or a ~~member-managed limited~~
 38 ~~liability company member~~ or a ~~manager-managed limited liability~~
 39 ~~company representative~~ satisfying IC 25-34.1-3-4.1(d)(2); **meets**
 40 **the requirements for managing brokers set forth in**
 41 **IC 25-34.1-3-4.1** to be primarily responsible to the commission
 42 for its actions.



1 SECTION 6. IC 25-34.1-4-3, AS AMENDED BY P.L.127-2012,
 2 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2015]: Sec. 3. (a) Except as provided in subsection (b), each
 4 individual who is a managing broker ~~or is designated by a partnership,~~
 5 ~~corporation, or a limited liability company pursuant to section 2 of this~~
 6 ~~chapter~~ shall be a resident of Indiana.

7 (b) A nonresident

8 ~~(1) individual broker; or~~

9 ~~(2) individual designated by a partnership, corporation, or limited~~
 10 ~~liability company under section 2 of this chapter;~~

11 may be a managing broker if ~~all~~ **none of** the licensees **affiliated**
 12 **associated** with the ~~broker, partnership, corporation, or limited liability~~
 13 **company managing broker's broker company** are ~~not~~ residents of
 14 Indiana.

15 SECTION 7. IC 25-34.1-4-4, AS AMENDED BY P.L.127-2012,
 16 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2015]: Sec. 4. Notwithstanding IC 23-1.5, the association of
 18 a broker with a ~~managing~~ broker **company**, as provided by this article,
 19 creates an independent contractor relationship unless otherwise
 20 specified by a written contract entered into by the ~~managing~~ broker
 21 **company** and the broker.

22 SECTION 8. IC 25-34.1-4-5, AS AMENDED BY P.L.127-2012,
 23 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2015]: Sec. 5. (a) Each ~~managing~~ broker **company**:

25 (1) shall keep in one (1) or more trust accounts (interest or
 26 noninterest bearing) all funds belonging to others that come into
 27 the possession of the ~~managing~~ broker **company** or of any broker
 28 whose license the ~~managing~~ broker **company** is holding; and

29 (2) shall clearly identify any account containing those funds as a
 30 trust account.

31 The trust accounts shall contain all earnest money deposits, funds held
 32 for closing escrows, sale proceeds not yet disbursed, and all other funds
 33 belonging to others.

34 (b) The ~~managing~~ broker **company** shall not use any trust account
 35 for the deposit of any personal funds or other business funds and shall
 36 keep a detailed record of the funds and any interest accrued in each
 37 trust account that identifies the amount of funds held for each
 38 beneficiary. Any interest earned shall be held for the beneficiary.

39 (c) Upon:

40 (1) the death of the sole proprietor, in the case of a sole
 41 proprietorship broker company; or

42 (2) the termination of a ~~managing~~ broker **company**; or



1 (3) the expiration, revocation, or suspension of ~~the managing~~
 2 ~~broker's~~ **a broker company's** license;
 3 the commission shall take custody of each trust account **of the broker**
 4 **company** and may appoint a successor trustee to protect and distribute
 5 the proceeds of that account.

6 SECTION 9. IC 25-34.1-4-6, AS AMENDED BY P.L.127-2012,
 7 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2015]: Sec. 6. (a) In the event of the death of an individual
 9 managing broker or the termination of a partnership managing broker
 10 by the death of a partner, a broker formerly associated with the
 11 managing broker may continue to carry out business contracted for
 12 before the death or termination of the managing broker, for a maximum
 13 period of ninety (90) days after the death or termination. During that
 14 period, the broker shall maintain a trust account as provided in section
 15 5 of this chapter. However, until associating with another managing
 16 broker, the broker may not undertake any new business.

17 (b) Upon associating with a new managing broker, the broker may
 18 conduct on behalf of the deceased or terminated managing broker only
 19 that business which is necessary to complete obligations assumed while
 20 associated with the managing broker. All other acts performed by the
 21 broker shall be performed in association with the new managing
 22 broker.

23 (c) Each broker formerly associated with the deceased or terminated
 24 managing broker becomes, upon the death or termination of the
 25 managing broker, a managing broker **by law** until the broker elects to
 26 act as a broker for another managing broker.

27 (d) This section applies only to matters of licensing and
 28 responsibility under this article and does not affect the transfer of the
 29 deceased managing broker's property interests as provided by IC 29 and
 30 other laws of succession.

31 SECTION 10. IC 25-34.1-5-1, AS AMENDED BY P.L.127-2012,
 32 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2015]: Sec. 1. No person shall conduct, solicit or accept
 34 student enrollment for a broker course as prescribed in this chapter
 35 without:

36 (1) the approval of the course by the commission; **and**

37 (2) the issuance of a permit under section 15 of this chapter.

38 SECTION 11. IC 25-34.1-5-7 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) The **following**
 40 **expire on December 31 of each calendar year:**

41 (1) The approval of ~~courses~~ **a course by the commission.**

42 (2) A permit issued under section 15 of this chapter. ~~expires on~~



1 ~~the thirty-first day of December of each calendar year.~~

2 **(b)** To obtain renewal of approval for the ensuing calendar year, the
3 school must submit to the commission by November 30 of the current
4 year:

5 (1) a letter requesting renewal;

6 (2) an annual report; and

7 (3) a bond in the amount of twenty percent (20%) of the previous
8 year's total tuition, but in no event less than ten thousand dollars
9 (\$10,000) or more than fifty thousand dollars (\$50,000).

10 SECTION 12. IC 25-34.1-5-9 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 9. The commission may
12 deny, suspend, or revoke:

13 **(1) the approval of any course; and**

14 **(2) the permit issued to a school under section 15 of this**
15 **chapter;**

16 if it determines the school failed to comply with the standards
17 established in this chapter and the commission's ~~regulations.~~ **rules.**

18 SECTION 13. IC 25-34.1-5-15, AS AMENDED BY P.L.2-2014,
19 SECTION 113, IS AMENDED TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2015]: Sec. 15. (a) Each real estate school
21 **approved under this chapter to conduct a prelicensing broker**
22 **course** must have a permit issued by the commission.

23 (b) A real estate school issued a permit under subsection (a) must
24 meet the following requirements:

25 (1) For online courses, an instructor that has been issued a permit
26 under this chapter must be available during normal business
27 hours.

28 (2) Course rosters must be provided to the commission each
29 month.

30 (3) The school must pay the permit fees established by the
31 commission under subsection (d).

32 (c) ~~The commission shall establish a permit period for real estate~~
33 ~~schools.~~ **To remain in effect,** a permit issued under this section must
34 be renewed ~~at the end of the period established~~ by the commission
35 **before its expiration under section 7(a) of this chapter.**

36 (d) The commission shall establish, by rule adopted under
37 IC 4-22-2, fees for permits under this section.

38 (e) A school must annually file with the commission a list of courses
39 offered by the school.

40 SECTION 14. IC 25-34.1-9-11, AS AMENDED BY P.L.127-2012,
41 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2014 (RETROACTIVE)]: Sec. 11. (a) The approved



- 1 education requirement is as follows:
- 2 (1) At least ~~twelve (12)~~ **eight (8)** hours per year **and at least**
- 3 **thirty-six (36) hours per three (3) year renewal cycle** in any of
- 4 the following subjects, as determined by the commission:
- 5 (A) License and escrow law.
- 6 (B) Anti-trust law.
- 7 (C) Civil rights law.
- 8 (D) Agency law.
- 9 (E) Listing contracts and purchase agreements.
- 10 (F) Ethics and professionals standards.
- 11 (G) Settlement procedures.
- 12 (H) Appraising.
- 13 (I) Property management.
- 14 (J) Farm property management.
- 15 (K) Commercial brokerage and leasing.
- 16 (L) Financing.
- 17 (M) Residential brokerage.
- 18 (N) Land development.
- 19 (O) Legislative issues affecting the real estate practice.
- 20 (P) Other courses approved by the commission.
- 21 (b) An attorney in good standing licensed to practice law in Indiana
- 22 may satisfy the requirements of subsection (a) by completing the
- 23 number of hours required by subsection (a) in continuing legal
- 24 education courses in the subject matters listed in subsection (a).
- 25 (c) An individual who applies for a broker's license after June 30,
- 26 2014, must, during the first two (2) years after the license is issued,
- 27 take and pass at least thirty (30) hours of postlicensing education
- 28 focused on the practical matters of real estate transactions instead of
- 29 the continuing education requirements under this chapter.
- 30 (d) For license renewal, a managing broker must complete at least
- 31 ~~twelve (12)~~ **eight (8)** hours of continuing education each year **and at**
- 32 **least thirty-six (36) hours per three (3) year renewal cycle.** At least
- 33 four (4) hours of the continuing education **each year** must be dedicated
- 34 to the necessary business and management skills and legal knowledge
- 35 needed by a managing broker. The commission shall develop or
- 36 approve the continuing education courses for managing brokers.
- 37 SECTION 15. IC 25-34.1-10-6.5 IS AMENDED TO READ AS
- 38 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6.5. As used in this
- 39 chapter, "in-house agency relationship" means an agency relationship
- 40 involving two (2) or more clients who are represented by different
- 41 licensees within the same ~~real estate firm~~ **broker company.**
- 42 SECTION 16. IC 25-34.1-10-12.5, AS AMENDED BY



1 P.L.150-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2015]: Sec. 12.5. (a) An individual licensee
 3 affiliated with a **managing broker company** represents only the client
 4 with which the licensee is working in an in-house agency relationship.
 5 A client represented by an individual licensee affiliated with a
 6 **managing broker company** is represented only by that licensee to the
 7 exclusion of all other licensees. A managing broker does not represent
 8 any party in such transactions unless the managing broker has an
 9 agency relationship to personally represent a client.

10 (b) A licensee who personally represents both the seller and buyer
 11 or both the landlord and tenant in a real estate transaction is a limited
 12 agent and is required to comply with the provisions of this chapter
 13 governing limited agents.

14 (c) A licensee representing a client in an in-house agency
 15 relationship owes the client duties and obligations set forth in this
 16 chapter and shall not disclose material or confidential information
 17 obtained from the client to other licensees, except to the managing
 18 broker for the purpose of seeking advice or assistance for the client's
 19 benefit.

20 (d) A **broker company**, a managing broker, and any affiliated
 21 licensee shall take reasonable and necessary care to protect any
 22 material or confidential information disclosed by a client to the client's
 23 in-house agent.

24 (e) In all in-house agency relationships, a **broker company**, a
 25 managing broker, and an individual licensee possess only actual
 26 knowledge and information. There is no imputation of agency,
 27 knowledge, or information among or between clients, **the broker**
 28 **company**, the managing broker, and licensees. Information contained
 29 in records of prior transactions maintained by the ~~brokerage or agency~~
 30 **broker company** concerning any existing or previous adverse material
 31 facts or risks with respect to real property may not be imputed to a
 32 broker or affiliated licensee unless the broker or affiliated licensee had
 33 actual knowledge of any adverse material facts or risks with respect to
 34 the real property. A person may not bring a cause of action against a
 35 broker or licensee for failure to disclose adverse material facts or risks
 36 if the cause of action is based on imputed knowledge of the adverse
 37 material facts or risks.

38 SECTION 17. IC 25-34.1-10-13, AS AMENDED BY P.L.127-2012,
 39 SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2015]: Sec. 13. (a) A managing broker shall develop and
 41 enforce a **broker company** written office policy that identifies and
 42 describes the agency relationships that a licensee may have with a



1 seller, landlord, buyer, or tenant and that specifically permits or rejects
2 the practice of disclosed limited agency.

3 (b) At the beginning of an agency relationship, a licensee shall
4 disclose in writing the ~~managing broker's~~ **broker company's** written
5 office policy set forth in this section before the disclosure by the
6 potential seller, landlord, buyer, or tenant of any confidential
7 information specific to that potential seller, landlord, buyer, or tenant.

8 (c) Parties to a real estate transaction shall be advised whether
9 compensation will be shared with other ~~managing brokers~~ **broker**
10 **companies that** may represent other parties to the transaction whose
11 interests are different or even adverse.

12 (d) The payment of compensation does not create an agency
13 relationship between a licensee and a seller, landlord, buyer, or tenant.

14 SECTION 18. IC 27-7-3-15.5, AS AMENDED BY P.L.127-2012,
15 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2015]: Sec. 15.5. (a) This section applies to the following
17 transactions:

18 (1) A mortgage transaction (as defined in IC 24-9-3-7(a)) that:

19 (A) is:

20 (i) a first lien purchase money mortgage transaction; or

21 (ii) a refinancing transaction; and

22 (B) is closed by a closing agent after December 31, 2009.

23 (2) A real estate transaction (as defined in IC 24-9-3-7(b)) that:

24 (A) does not involve a mortgage transaction described in
25 subdivision (1); and

26 (B) is closed by a closing agent (as defined in
27 IC 6-1.1-12-43(a)(2)) after December 31, 2011.

28 (b) For purposes of this subsection, a person described in this
29 subsection is involved in a transaction to which this section applies if
30 the person participates in or assists with, or will participate in or assist
31 with, a transaction to which this section applies. The department shall
32 establish and maintain an electronic system for the collection and
33 storage of the following information, to the extent applicable,
34 concerning a transaction to which this section applies:

35 (1) In the case of a transaction described in subsection (a)(1), the
36 name and license number (under IC 23-2-5) of each loan
37 brokerage business involved in the transaction.

38 (2) In the case of a transaction described in subsection (a)(1), the
39 name and license or registration number of any mortgage loan
40 originator who is:

41 (A) either licensed or registered under state or federal law as
42 a mortgage loan originator consistent with the Secure and Fair



- 1 Enforcement for Mortgage Licensing Act of 2008 (H.R. 3221
 2 Title V); and
 3 (B) involved in the transaction.
 4 (3) The name and license number (under IC 25-34.1) of each:
 5 (A) ~~managing~~ broker **company**; and
 6 (B) broker if any;
 7 involved in the transaction.
 8 (4) The following information:
 9 (A) The:
 10 (i) name of; and
 11 (ii) code assigned by the National Association of Insurance
 12 Commissioners (NAIC) to;
 13 each title insurance underwriter involved in the transaction.
 14 (B) The type of title insurance policy issued in connection with
 15 the transaction.
 16 (5) The name and license number (under IC 27-1-15.6) of each
 17 title insurance agency and agent involved in the transaction as a
 18 closing agent (as defined in IC 6-1.1-12-43(a)(2)).
 19 (6) The following information:
 20 (A) The name and:
 21 (i) license or certificate number (under IC 25-34.1-3-8) of
 22 each licensed or certified real estate appraiser; or
 23 (ii) license number (under IC 25-34.1) of each broker;
 24 who appraises the property that is the subject of the
 25 transaction.
 26 (B) The name and registration number (under
 27 IC 25-34.1-11-10) of any appraisal management company that
 28 performs appraisal management services (as defined in
 29 IC 25-34.1-11-3) in connection with the transaction.
 30 (7) In the case of a transaction described in subsection (a)(1), the
 31 name of the creditor and, if the creditor is required to be licensed
 32 under IC 24-4.4, the license number of the creditor.
 33 (8) In the case of a transaction described in subsection
 34 (a)(1)(A)(i) or (a)(2), the name of the seller of the property that is
 35 the subject of the transaction.
 36 (9) In the case of a transaction described in subsection
 37 (a)(1)(A)(i), the following information:
 38 (A) The name of the buyer of the property that is the subject of
 39 the transaction.
 40 (B) The purchase price of the property that is the subject of the
 41 transaction.
 42 (C) The loan amount of the mortgage transaction.



- 1 (10) In the case of a transaction described in subsection (a)(2), the
 2 following information:
 3 (A) The name of the buyer of the property that is the subject of
 4 the transaction.
 5 (B) The purchase price of the property that is the subject of the
 6 transaction.
- 7 (11) In the case of a transaction described in subsection
 8 (a)(1)(A)(ii), the following information:
 9 (A) The name of the borrower in the mortgage transaction.
 10 (B) The loan amount of the refinancing.
- 11 (12) The:
 12 (A) name; and
 13 (B) license number, certificate number, registration number,
 14 or other code, as appropriate;
 15 of any other person that is involved in a transaction to which this
 16 section applies, as the department may prescribe.
- 17 (c) The system established by the department under this section
 18 must include a form that:
 19 (1) is uniformly accessible in an electronic format to the closing
 20 agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and
 21 (2) allows the closing agent to do the following:
 22 (A) Input information identifying the property that is the
 23 subject of the transaction by lot or parcel number, street
 24 address, or some other means of identification that the
 25 department determines:
 26 (i) is sufficient to identify the property; and
 27 (ii) is determinable by the closing agent.
 28 (B) Subject to subsection (d) and to the extent determinable,
 29 input the applicable information described in subsection (b).
 30 (C) Respond to the following questions, if applicable:
 31 (i) "On what date did you receive the closing instructions
 32 from the creditor in the transaction?"
 33 (ii) "On what date did the transaction close?"
 34 (D) Submit the form electronically to a data base maintained
 35 by the department.
- 36 (d) Not later than the time of the closing, each person described in
 37 subsection (b), other than a person described in subsection (b)(8),
 38 (b)(9), (b)(10), or (b)(11), shall provide to the closing agent in the
 39 transaction the person's:
 40 (1) legal name; and
 41 (2) license number, certificate number, registration number, or
 42 NAIC code, as appropriate;



1 to allow the closing agent to comply with subsection (c)(2)(B). In the
 2 case of a transaction described in subsection (a)(1), the person
 3 described in subsection (b)(7) shall, with the cooperation of any person
 4 involved in the transaction and described in subsection (b)(6)(A) or
 5 (b)(6)(B), provide the information described in subsection (b)(6). In the
 6 case of a transaction described in subsection (a)(1)(A)(ii), the person
 7 described in subsection (b)(7) shall also provide the information
 8 described in subsection (b)(11). A person described in subsection
 9 (b)(3)(B) who is involved in the transaction may provide the
 10 information required by this subsection for a person described in
 11 subsection (b)(3)(A) that serves as the ~~managing~~ broker **company** for
 12 the person described in subsection (b)(3)(B). The closing agent shall
 13 determine the information described in subsection (b)(8), (b)(9), and
 14 (b)(10) from the HUD-1 settlement statement, or in the case of a
 15 transaction described in subsection (a)(2), from the contract or any
 16 other document executed by the parties in connection with the
 17 transaction.

18 (e) Except for a person described in subsection (b)(8), (b)(9),
 19 (b)(10), or (b)(11), a person described in subsection (b) who fails to
 20 comply with subsection (d) is subject to a civil penalty of one hundred
 21 dollars (\$100) for each closing with respect to which the person fails
 22 to comply with subsection (d). The penalty:

23 (1) may be enforced by the state agency that has administrative
 24 jurisdiction over the person in the same manner that the agency
 25 enforces the payment of fees or other penalties payable to the
 26 agency; and

27 (2) shall be paid into the home ownership education account
 28 established by IC 5-20-1-27.

29 (f) Subject to subsection (g), the department shall make the
 30 information stored in the data base described in subsection (c)(2)(D)
 31 accessible to:

32 (1) each entity described in IC 4-6-12-4; and

33 (2) the homeowner protection unit established under IC 4-6-12-2.

34 (g) The department, a closing agent who submits a form under
 35 subsection (c), each entity described in IC 4-6-12-4, and the
 36 homeowner protection unit established under IC 4-6-12-2 shall exercise
 37 all necessary caution to avoid disclosure of any information:

38 (1) concerning a person described in subsection (b), including the
 39 person's license, registration, or certificate number; and

40 (2) contained in the data base described in subsection (c)(2)(D);
 41 except to the extent required or authorized by state or federal law.

42 (h) The department may adopt rules under IC 4-22-2, including



1 emergency rules under IC 4-22-2-37.1, to implement this section. Rules
 2 adopted by the department under this subsection may establish
 3 procedures for the department to:

- 4 (1) establish;
- 5 (2) collect; and
- 6 (3) change as necessary;

7 an administrative fee to cover the department's expenses in establishing
 8 and maintaining the electronic system required by this section.

9 (i) If the department adopts a rule under IC 4-22-2 to establish an
 10 administrative fee to cover the department's expenses in establishing
 11 and maintaining the electronic system required by this section, as
 12 allowed under subsection (h), the department may:

- 13 (1) require the fee to be paid:
 - 14 (A) to the closing agent responsible for inputting the
 - 15 information and submitting the form described in subsection
 - 16 (c)(2); and
 - 17 (B) by the borrower, the seller, or the buyer in the transaction;
- 18 (2) allow the closing agent described in subdivision (1)(A) to
- 19 retain a part of the fee collected to cover the closing agent's costs
- 20 in inputting the information and submitting the form described in
- 21 subsection (c)(2); and
- 22 (3) require the closing agent to pay the remainder of the fee
- 23 collected to the department for deposit in the title insurance
- 24 enforcement fund established by IC 27-7-3.6-1, for the
- 25 department's use in establishing and maintaining the electronic
- 26 system required by this section.

27 SECTION 19. IC 32-28-12.5-0.5 IS ADDED TO THE INDIANA
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2015]: **Sec. 0.5. As used in this chapter,**
 30 **"broker company" has the meaning set forth in IC 25-34.1-1-2.**

31 SECTION 20. IC 32-28-12.5-2, AS AMENDED BY P.L.127-2012,
 32 SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2015]: Sec. 2. As used in this chapter, "fees or commissions"
 34 means compensation owed to a ~~managing~~ broker **company** for
 35 performing services requiring a license under IC 25-34.1-3-2.

36 SECTION 21. IC 32-28-12.5-5, AS AMENDED BY P.L.127-2012,
 37 SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2015]: Sec. 5. A ~~managing~~ broker **company** may have a lien
 39 upon commercial real estate, or any interest in commercial real estate,
 40 that is the subject of a purchase, a lease, or other conveyance to a buyer
 41 or tenant, in the amount that the ~~managing~~ broker **company** is due for
 42 licensed services, including brokerage fees, consulting fees, and



1 management fees due the **managing** broker **company** under a written
2 agreement, a contract, or another written instrument:

3 (1) signed by:

4 (A) the owner of an interest in the commercial real estate or by
5 the owner's authorized agent; or

6 (B) a prospective buyer or prospective tenant, or by the buyer's
7 or tenant's authorized agent; and

8 (2) entered into after June 30, 2006.

9 A lien under this chapter is available to the **managing** broker **company**
10 named in the written agreement, contract, or other written instrument
11 signed by the owner, buyer, or tenant, or their respective agents, and
12 not to an employee or independent contractor of the **managing** broker
13 **company**.

14 SECTION 22. IC 32-28-12.5-6, AS AMENDED BY P.L.127-2012,
15 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2015]: Sec. 6. (a) A lien under this chapter attaches to
17 commercial real estate or an interest in commercial real estate upon:

18 (1) the **managing** broker **company** being entitled to fees or
19 commissions under a written agreement, a contract, or another
20 instrument signed by the owner, buyer, or tenant of the
21 commercial real estate, or by an authorized agent of the owner,
22 buyer, or tenant; and

23 (2) except as provided in sections 8 and 9 of this chapter, the
24 **managing** broker **company** recording a notice of lien in the office
25 of the recorder of the county in which the commercial real estate
26 or an interest in the commercial real estate is located:

27 (A) before the recording of the deed for the actual conveyance
28 or transfer of the commercial real estate against which the
29 broker is claiming a lien, if the **managing** broker **company**
30 claims fees or commissions from the party conveying or
31 transferring an interest in the commercial real estate; or

32 (B) not later than ninety (90) days after the recording of the
33 deed or other instrument for the purchase or other conveyance
34 or transfer of the commercial real estate, if the **managing**
35 broker **company** claims fees or commissions from the party
36 receiving a conveyance or transfer of an interest in the
37 commercial real estate.

38 (b) A lien under this chapter attaches on the date of the recording of
39 the notice of the lien under subsection (a)(2) and does not relate back
40 to the date of the written agreement, contract, or other written
41 instrument described in subsection (a)(1).

42 SECTION 23. IC 32-28-12.5-7, AS AMENDED BY P.L.127-2012,



1 SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2015]: Sec. 7. (a) This section does not apply:

- 3 (1) to fees or commissions that arise from a lease, including fees
4 or commissions for a sale of the property, lease expansions, or
5 lease renewals;
6 (2) if a ~~managing broker's broker company's~~ fees or
7 commissions have been paid in full; or
8 (3) if a ~~managing broker company~~ waives the notice requirements
9 of this section in writing.

10 (b) Not later than ten (10) days before the planned closing of a
11 transaction involving the sale of commercial real estate, the owner shall
12 notify the following persons of the date of the closing, the time of the
13 closing, the address of the closing, and of the name of the closing
14 agent, title company, or title insurance agent:

- 15 (1) One (1) or more ~~managing brokers broker companies~~ to
16 whom the owner owes fees or commissions.
17 (2) The closing agent, title company, or title insurance agent
18 involved in the transaction.

19 Notice under this subsection shall be sent by registered or certified
20 mail, return receipt requested, or by another means of service
21 authorized by the Indiana trial rules that provides proof that the
22 addressee has received the notice.

23 (c) To exercise its rights under this chapter to file a lien after receipt
24 of the notice under subsection (b), the ~~managing broker company~~ must
25 notify the closing agent, title company, or title insurance agent at the
26 address in the notice of the amount of the fees or commissions owed
27 before the time of the closing stated in the notice.

28 (d) If the ~~managing broker company~~ does not attend the closing of
29 a transaction involving the sale of commercial real estate, the owner
30 shall certify in writing at the closing, under the penalties of perjury:

- 31 (1) that:
32 (A) the owner has notified the ~~managing broker company~~ in
33 accordance with subsection (b); and
34 (B) the ~~managing broker company~~ received the notice; or
35 (2) that the ~~managing broker company~~ has been paid in full.

36 SECTION 24. IC 32-28-12.5-8, AS AMENDED BY P.L.127-2012,
37 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2015]: Sec. 8. (a) This section applies to a transaction
39 involving the conveyance or transfer of commercial real estate in
40 which:

- 41 (1) payment to a ~~managing broker company~~ is due in
42 installments; and



- 1 (2) a part of the installment payments is due only after the
 2 conveyance or transfer of the commercial real estate involved in
 3 the transaction.
- 4 (b) Subject to subsection (c), the **managing broker company** may
 5 record a notice of lien for those payments described in subsection
 6 (a)(2) at any time after the transfer or conveyance, but not later than
 7 ninety (90) days after the date on which the payment is due. A notice
 8 of lien under this section is effective as a lien against the transferor's
 9 interest in the commercial real estate only to the extent consideration
 10 is still owed to the transferor by the transferee. However, the lien is
 11 effective against the transferee's interest in the commercial real estate
 12 without the limitation described in this subsection.
- 13 (c) A single claim for a lien recorded:
- 14 (1) before the transfer or conveyance of the commercial real
 15 estate; and
- 16 (2) with respect to all payments due in installments;
 17 is valid and enforceable with respect to payments due after the transfer
 18 or conveyance. However, as payments or partial payments of fees or
 19 commissions are received by the **managing broker company**, the
 20 **managing broker company** shall, by providing partial releases with
 21 respect to those payments, reduce the amount due the **managing broker**
 22 **company** under the notice of lien described in this subsection.
- 23 SECTION 25. IC 32-28-12.5-9, AS AMENDED BY P.L.127-2012,
 24 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2015]: Sec. 9. (a) Subject to subsection (b), in the case of a
 26 lease of commercial real estate, including a sublease or an assignment
 27 of a lease, the notice of a lien under this chapter must be recorded not
 28 later than ninety (90) days after the tenant takes possession of the
 29 leased premises. However, if:
- 30 (1) the transferor personally serves, on the **managing broker**
 31 **company** entitled to claim a lien, written notice of the intended
 32 execution of the lease; and
- 33 (2) the notice described in subdivision (1) is served not later than
 34 ten (10) days before the date of the intended execution of the
 35 lease;
- 36 the **managing broker's broker company's** notice of lien must be
 37 recorded before the date indicated in the notice described in
 38 subdivision (1) for the execution of the lease. The lien attaches on the
 39 recording of the notice of lien and does not relate back to the date of
 40 the written agreement, contract, or written instrument under which the
 41 **managing broker company** is entitled to fees or commissions.
- 42 (b) As used in this subsection, "future fees or commissions" refers



1 to fees or commissions:

2 (1) other than those fees or commissions due to a **managing**

3 broker **company** upon the execution of a lease under subsection

4 (a); or

5 (2) due to the **managing** broker **company** upon the exercise of an

6 option to:

7 (A) expand the leased premises;

8 (B) renew or extend a lease; or

9 (C) purchase the commercial real estate;

10 under a written agreement, a contract, or another written instrument

11 signed by the owner or tenant of the commercial real estate. The

12 **managing** broker **company** may record a memorandum of lien at any

13 time after execution of the lease or other written agreement, contract,

14 or written instrument that contains rights to future fees or commissions.

15 The **managing** broker **company** shall record a notice of lien no later

16 than ninety (90) days after the occurrence of a condition for which

17 future fees or commissions are claimed, but may not file a notice of lien

18 against an owner's property if the tenant is the sole party liable for

19 payment of the future fees or commissions. Except as provided in

20 section 11(a) or 13(b) of this chapter, an action to foreclose a lien to

21 collect future fees or commissions must be commenced not later than

22 one (1) year after the recording of the notice of the lien. A

23 memorandum of lien recorded under this chapter must meet the

24 requirements of section 12(1)(A), 12(1)(B), 12(1)(C), 12(1)(E), 12(2),

25 12(3), and 12(4) of this chapter. A memorandum of lien shall not

26 constitute a lien against the real estate but shall provide notice of the

27 right to future fees or commissions.

28 (c) If:

29 (1) commercial real estate is sold or otherwise conveyed before

30 the date on which future fees or commissions are due; and

31 (2) the **managing** broker **company** has recorded a valid

32 memorandum of lien or notice of lien before the sale or other

33 conveyance of the commercial real estate;

34 the purchaser or transferee is considered to have notice of and takes

35 title to the commercial real estate subject to the right to future fees or

36 commissions and, if applicable, notice of lien. However, if a **managing**

37 broker **company** claiming future fees or commissions fails to record a

38 memorandum of lien or notice of lien for the future fees or

39 commissions before the recording of a deed conveying legal title to the

40 commercial real estate to the purchaser or transferee, the **managing**

41 broker **company** may not claim a lien on the commercial real estate.

42 This subsection does not limit or otherwise affect claims or defenses a



1 **managing broker company** or owner or any other party may have in
2 law or equity.

3 SECTION 26. IC 32-28-12.5-10, AS AMENDED BY P.L. 127-2012,
4 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2015]: Sec. 10. A **managing broker company** shall, not later
6 than ten (10) days after recording a notice of lien under this chapter,
7 personally serve or mail, by registered or certified mail, a copy of the
8 notice of lien to the owner of record of the commercial real estate, or
9 to the agent of the owner of record, at the address of the owner stated
10 in the written agreement, contract, or other written instrument on which
11 the claim for the lien is based. If the address of the owner or the
12 owner's agent is not stated, the **managing broker company** shall
13 personally serve or mail, by registered or certified mail, a copy of the
14 notice of the lien to the address where real estate taxes are sent for the
15 commercial real estate on which the claim of lien is based. Mailing of
16 the copy of the notice of lien is effective when deposited in the United
17 States mail with postage prepaid. Personal service of the notice of the
18 lien is effective upon receipt by the owner or the agent of the owner of
19 record. A **managing broker's broker company's** lien is unenforceable
20 if mailing or service of the copy of notice of lien does not occur at the
21 time and in the manner required by this section.

22 SECTION 27. IC 32-28-12.5-11, AS AMENDED BY P.L. 127-2012,
23 SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2015]: Sec. 11. (a) The **managing broker company** claiming
25 the lien shall, not later than one (1) year after recording the notice of
26 the lien, commence proceedings to foreclose the lien. However, for
27 future fees or commissions payable over a period in excess of one (1)
28 year from the occurrence of a condition for which such future fees or
29 commissions are claimed, the commencement of the suit must be
30 within one (1) year of the latest date for which future fees or
31 commissions are due. A **managing broker's broker company's** failure
32 to commence proceedings within the time prescribed by this subsection
33 extinguishes the lien and a subsequent notice of lien may not be given
34 for the same claim, nor may that claim be asserted in any other
35 proceedings under this chapter.

36 (b) A **managing broker company** claiming a lien based upon an
37 option or other right to purchase or lease commercial real estate shall,
38 not later than one (1) year after recording the notice of the lien,
39 commence proceedings to foreclose the lien. A **managing broker's**
40 **broker company's** failure to commence proceedings within the time
41 prescribed by this subsection extinguishes the lien and a subsequent
42 notice of lien may not be given for the same claim, nor may that claim



1 be asserted in any other proceedings under this chapter.

2 (c) The foreclosure of a lien recorded under this chapter shall be
3 conducted under the same rules and same procedures applicable to the
4 foreclosure of mortgages upon real estate. A complaint under this
5 section must contain:

- 6 (1) a brief statement of the written agreement, contract, or other
7 written instrument that is the basis for the lien;
8 (2) the date when the written agreement, contract, or other written
9 instrument was made;
10 (3) a description of the services performed by the ~~managing~~
11 broker **company**;
12 (4) the amount due and unpaid for the services described in
13 subdivision (3);
14 (5) a description of the commercial real estate subject to the
15 notice of lien; and
16 (6) other facts reasonably necessary to describe the rights of the
17 parties.

18 SECTION 28. IC 32-28-12.5-12, AS AMENDED BY P.L. 127-2012,
19 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2015]: Sec. 12. A notice of lien recorded under this chapter
21 must:

- 22 (1) state:
23 (A) the name of the claimant;
24 (B) the name of the owner of the commercial real estate upon
25 which the lien is claimed;
26 (C) a legal description of the commercial real estate upon
27 which the lien is claimed;
28 (D) the amount for which the lien is claimed; and
29 (E) the license number of the ~~managing broker's~~ **broker**
30 **company's** license under IC 25-34.1;
31 (2) contain a statement that the information contained in the
32 notice is true and accurate to the knowledge of the signatory;
33 (3) be signed by the managing broker **responsible for the actions**
34 **of the broker company** or by a person authorized to sign on
35 behalf of the managing broker; and
36 (4) be verified.

37 SECTION 29. IC 32-28-12.5-13, AS AMENDED BY P.L. 127-2012,
38 SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2015]: Sec. 13. (a) If:

- 40 (1) a memorandum of lien or notice of lien has been recorded
41 with the office of the recorder of the appropriate county; and
42 (2) a condition occurs that would preclude the ~~managing~~ broker



1 **company** from receiving fees or commissions under the terms of
 2 the written agreement, contract, or other written instrument upon
 3 which the lien is based;

4 the **managing** broker **company** shall provide to the owner of record of
 5 the commercial real estate, not later than ten (10) days after written
 6 demand by the owner of record, a written release or satisfaction of the
 7 memorandum of lien or notice of lien.

8 (b) Upon written demand:

9 (1) served by the owner, buyer, or tenant described in section 5 of
 10 this chapter, or the authorized agent of the owner, buyer, or tenant
 11 described in section 5 of this chapter, on the **managing** broker
 12 **company** claiming a lien under this chapter; and

13 (2) requiring the **managing** broker **company** to:

14 (A) bring a suit to enforce the lien; or

15 (B) file an answer in a pending suit;

16 the **managing** broker **company** shall bring a suit or file an answer not
 17 later than thirty (30) days after service of the demand. If the **managing**
 18 broker **company** does not bring a suit or file an answer within the time
 19 prescribed by this subsection, the lien is extinguished. The service of
 20 a written demand under this subsection may be made by registered or
 21 certified mail, return receipt requested, or by personal service.

22 (c) If:

23 (1) a memorandum of lien or notice of lien under this chapter has
 24 been filed with the office of the recorder and the fees or
 25 commissions upon which the lien is based have been paid to the
 26 **managing** broker **company** claiming the lien; or

27 (2) the **managing** broker **company** fails to institute a suit to
 28 enforce the lien within the time prescribed by this chapter;

29 the **managing** broker **company** shall, not later than five (5) days after
 30 receipt of a written demand from the owner, buyer, or tenant described
 31 in section 5 of this chapter for a release or an acknowledgment of
 32 satisfaction of the memorandum or lien, acknowledge satisfaction or
 33 release of the memorandum or lien in writing.

34 SECTION 30. IC 32-28-12.5-14, AS AMENDED BY P.L.127-2012,
 35 SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2015]: Sec. 14. If the **managing** broker **company** and the party
 37 from whom fees or commissions are claimed under this chapter agree
 38 to alternative dispute resolution, any claim under this chapter must be
 39 heard and resolved in the forum agreed to by the parties. The court
 40 before which a lien foreclosure proceeding is brought under this
 41 chapter retains jurisdiction to enter judgment on the award or other
 42 result made or reached under alternative dispute resolution proceedings



1 with respect to all parties to the foreclosure. The **managing broker's**
 2 **broker company's** notice of lien remains of record and the foreclosure
 3 proceeding shall be stayed during the pendency of the alternative
 4 dispute resolution proceedings.

5 SECTION 31. IC 32-28-12.5-16, AS AMENDED BY P.L.127-2012,
 6 SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2015]: Sec. 16. Except for a waiver or release of a
 8 memorandum or lien provided in consideration of payment of the fees
 9 or commissions claimed by a **managing broker company** under this
 10 chapter, or except as otherwise provided in section 13 of this chapter,
 11 any waiver of a **managing broker's broker company's** right to a lien on
 12 commercial property under this chapter is void.

13 SECTION 32. IC 32-28-12.5-18, AS AMENDED BY P.L.127-2012,
 14 SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2015]: Sec. 18. If:

16 (1) a claim for a lien under this chapter has been filed with the
 17 office of the recorder of the county in which commercial real
 18 estate or any interest in commercial real estate is located; and

19 (2) an escrow account is established among:

20 (A) the one (1) or more parties allegedly responsible for
 21 payment of the fees or commissions on which the lien is based;

22 (B) the **managing broker company** that filed the lien; and

23 (C) an independent third party as escrowee;

24 from the proceeds of the conveyance, or from any other source of
 25 funds, in an amount that is at least one hundred ten percent
 26 (110%) of the amount of the lien claimed under this chapter;

27 the lien against the real estate is extinguished and becomes a lien on
 28 the funds contained in the escrow account. The establishment of an
 29 escrow account described in this section does not constitute cause for
 30 any party to refuse to close the transaction.

31 SECTION 33. IC 32-28-12.5-19, AS AMENDED BY P.L.127-2012,
 32 SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2015]: Sec. 19. (a) If any party, including a **managing broker**
 34 **company**, buyer, or buyer's mortgagee suffers a pecuniary loss as the
 35 result of an owner's violation of the notice or certification provisions
 36 described in section 7 of this chapter, the party may bring a civil action
 37 against the owner for the following:

38 (1) Actual damages.

39 (2) The costs of the action.

40 (3) Reasonable attorney's fees.

41 However, if the party establishes that the owner's violation of the notice
 42 or certification provisions was fraudulent, a court may award the party



1 damages that do not exceed three (3) times actual damages.
2 (b) It is a defense to an action brought under this section that the
3 most recent address provided by the ~~managing~~ broker **company** to the
4 owner in the agreement, contract, or other written instrument, including
5 a written instrument described in section 5 of this chapter, was
6 incorrect, and as a result of the incorrect address, the principal broker
7 did not receive the owner's notice described in section 7(b) of this
8 chapter, and as a result the ~~managing~~ broker **company** failed to provide
9 the notice as required in section 7(c) of this chapter.
10 **SECTION 34. An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Technology, to which was referred Senate Bill No. 408, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 6, delete lines 15 through 32.

Page 7, delete lines 33 through 41.

Page 8, delete lines 33 through 42.

Page 9, delete lines 1 through 19, begin a new paragraph and insert:

"SECTION 9. IC 25-34.1-4-6, AS AMENDED BY P.L.127-2012, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) In the event of the death of an individual managing broker or the termination of a partnership managing broker by the death of a partner, a broker formerly associated with the managing broker may continue to carry out business contracted for before the death or termination of the managing broker, for a maximum period of ninety (90) days after the death or termination. During that period, the broker shall maintain a trust account as provided in section 5 of this chapter. However, until associating with another managing broker, the broker may not undertake any new business.

(b) Upon associating with a new managing broker, the broker may conduct on behalf of the deceased or terminated managing broker only that business which is necessary to complete obligations assumed while associated with the managing broker. All other acts performed by the broker shall be performed in association with the new managing broker.

(c) Each broker formerly associated with the deceased or terminated managing broker becomes, upon the death or termination of the managing broker, a managing broker **by law** until the broker elects to act as a broker for another managing broker.

(d) This section applies only to matters of licensing and responsibility under this article and does not affect the transfer of the deceased managing broker's property interests as provided by IC 29 and other laws of succession."

Page 10, line 31, delete "2015]" and insert "2014 (RETROACTIVE)]".

Page 10, line 34, after "year" insert "**renewal**".



Page 11, line 21, after "year" insert "**renewal**".

Page 11, line 22, after "education" insert "**each year**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 408 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 9, Nays 0.

