

## 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, 2012.

*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.*

#### 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- (2) any part of this article may not be considered to be impliedly repealed by subsequent legislation if such construction can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:

(a) a depository institution;

(b) subsidiaries that are:

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

(ii) regulated by a federal banking agency; or

(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.*

#### **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(7)(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.*

#### **IC 24-4.4-1-203**

## **Repealed**

*(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 sale amount does not exceed fifty-three thousand dollars (\$53,000) or another 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 Mortgage Licensing System and Registry" or "NMLSR" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.

(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.*