

## 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**

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.

*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.*

#### **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 employs a licensed mortgage loan originator;

shall register with and maintain a valid unique identifier issued by the NMLSR. Each licensed mortgage loan originator must be employed by, 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.*

#### **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 Version a**

##### **Surety bond; penal sum to reflect amount of mortgages originated**

*Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.*

Sec. 402.3. (1) Each:

- (a) creditor; and
- (b) entity exempt from licensing under this article that employs a licensed mortgage loan originator;

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

(2) A surety bond must:

- (a) provide coverage for each creditor and each entity exempt from licensing under this article that employs a mortgage loan originator in an amount as prescribed in subsection (4); and
- (b) be in a form prescribed by the director.

(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.

(5) If an action is commenced on the surety bond of a creditor or an entity exempt from licensing under this article as described in subsection (1), the director may require the filing of a new bond.

(6) A creditor or an entity exempt from licensing under this article as described in subsection (1) shall file a new surety bond immediately upon recovery of any action on the surety bond required under this section.

*As added by P.L.35-2010, SEC.15.*

#### **IC 24-4.4-2-402.3 Version b**

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

*Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.*

Sec. 402.3. (1) Each:

- (a) creditor; and
- (b) person exempt from licensing under this article that employs a licensed mortgage loan originator;

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 mortgage loan originator;

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;

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 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.*

#### **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 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 4-21.5-3-5; 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.*

#### **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.

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

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 employs licensed mortgage loan originators;

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.*

#### **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.*