

IC 24-5.5-5

Chapter 5. Limitations on Foreclosure Consultants and Foreclosure Reconveyances

IC 24-5.5-5-1

Rebuttable presumptions; homeowner's ability to pay upon reconveyance

Sec. 1. For purposes of this chapter, there is a rebuttable presumption that:

- (1) a homeowner has a reasonable ability to pay for a subsequent reconveyance of real property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed sixty percent (60%) of the homeowner's monthly gross income; and
- (2) the foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets, liability, and income.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-5-2

Foreclosure consultants; prohibited acts

Sec. 2. In addition to any prohibitions that apply under IC 24-5-15-1 through IC 24-5-15-8, a foreclosure consultant may not:

- (1) enter into or attempt to enter into a foreclosure consultant contract with a homeowner unless the foreclosure consultant first provides the homeowner written notice of the homeowner's rights under this article;
- (2) demand or receive compensation until after the foreclosure consultant has fully performed all services the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform, unless the foreclosure consultant complies with the security requirements under IC 24-5-15-8;
- (3) demand or receive a fee, interest, or any other compensation that exceeds eight percent (8%) per year of the amount of any loan that the foreclosure consultant makes to the homeowner;
- (4) take a wage assignment, a lien of any type on real or personal property, or any other security to secure the payment of compensation;
- (5) receive consideration from a third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner;
- (6) acquire any interest, directly or indirectly, in residential real property in foreclosure from a homeowner with whom the foreclosure consultant has contracted;
- (7) except to inspect documents as provided by law, take any power of attorney from a homeowner for any purpose;

(8) execute any contract or agreement with a homeowner or receive money or other valuable consideration from a homeowner without providing the homeowner with the written statement required by IC 24-5-15-6; or

(9) fail to provide a homeowner with a written contract that includes the notice of cancellation required by IC 24-5-15-7.

As added by P.L.209-2007, SEC.2. Amended by P.L.231-2013, SEC.4.

IC 24-5.5-5-3

Foreclosure purchasers; prohibited acts

Sec. 3. A foreclosure purchaser may not enter into or attempt to enter into a foreclosure reconveyance agreement with a homeowner unless the:

(1) foreclosure purchaser verifies and demonstrates that the homeowner has or will have a reasonable ability to:

(A) pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of the foreclosure conveyance; or

(B) if the foreclosure conveyance provides for a lease with an option to repurchase the real property, make the lease payment and repurchase the real property within the period of the option to repurchase;

(2) foreclosure purchaser provides the homeowner written notice of the homeowner's rights under this article;

(3) foreclosure purchaser and the homeowner complete a formal settlement before any transfer of interest in the affected property; and

(4) foreclosure purchaser complies with the security requirements under IC 24-5-15-8.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-5-4

Foreclosure purchasers; duties to homeowners

Sec. 4. A foreclosure purchaser shall:

(1) ensure that title to real property has been reconveyed to the homeowner in a timely manner if the terms of a foreclosure reconveyance agreement require a reconveyance; or

(2) if the real property subject to a foreclosure reconveyance agreement is sold within eighteen (18) months after entering into the foreclosure reconveyance agreement, make payment to the homeowner not later than ninety (90) days after the resale of the real property in an amount equal to at least sixty-six percent (66%) of the net proceeds from the resale of the property.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-5-5

Foreclosure purchasers; unfair conduct; prohibited representations and acts

Sec. 5. A foreclosure purchaser may not:

- (1) enter into repurchase or lease terms as part of the foreclosure reconveyance that are unfair or commercially unreasonable or engage in any other unfair conduct;
- (2) represent, directly or indirectly, that the:
 - (A) foreclosure purchaser is acting:
 - (i) as an adviser or a consultant; or
 - (ii) in any other manner on behalf of the homeowner;
 - (B) foreclosure purchaser is assisting the homeowner to save the residence; or
 - (C) foreclosure purchaser is assisting the homeowner in preventing a foreclosure if the result of the transaction is that the homeowner will not complete a redemption of the property; or
- (3) until the homeowner's right to rescind or cancel the foreclosure reconveyance agreement has expired:
 - (A) record any document, including an instrument or conveyance, signed by the homeowner; or
 - (B) transfer to a third party or encumber, or purport to transfer to a third party or encumber, any interest in the residential real property in foreclosure.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-5-6

Foreclosure purchasers; accounting to homeowner after resale of property

Sec. 6. A foreclosure purchaser shall make a detailed accounting of the basis for the amount of payment made to a homeowner of real property resold within eighteen (18) months after entering into a foreclosure reconveyance agreement on a form prescribed by the attorney general.

As added by P.L.209-2007, SEC.2.

IC 24-5.5-5-7.2

Duty to retain records for three years

Sec. 7.2. A foreclosure consultant shall retain all records and documents, including the foreclosure consultant contract, related to services performed on behalf of a homeowner for at least three (3) years after the termination or conclusion of the foreclosure consultant contract entered into by the foreclosure consultant and the homeowner.

As added by P.L.52-2009, SEC.3; P.L.105-2009, SEC.6.

IC 24-5.5-5-8

Foreclosure consultant representations

Sec. 8. A foreclosure consultant may not represent to a homeowner that the foreclosure consultant is endorsed, sponsored, or affiliated with any governmental or government sponsored agency or program.

As added by P.L.231-2013, SEC.5.