

## **IC 24-5-23.6**

### **Chapter 23.6. Five Star Mortgages**

#### **IC 24-5-23.6-1**

##### **"Creditor"**

Sec. 1. (a) As used in this chapter, "creditor" means:

(1) a person:

(A) that engages in Indiana in the extension of mortgages 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 whom the obligation arising from a mortgage is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract; or

(2) a person who brokers a mortgage, including a person who:

(A) directly or indirectly solicits, processes, places, or negotiates mortgages for others;

(B) offers to solicit, process, place, or negotiate mortgages for others; or

(C) closes mortgages that may be in the person's own name with funds provided by others and that are thereafter assigned to the person providing funding for the mortgages.

(b) The term does not include a person described in IC 24-9-2-6(b).

*As added by P.L.115-2010, SEC.20.*

#### **IC 24-5-23.6-2**

##### **"Debtor"**

Sec. 2. (a) As used in this chapter, "debtor", with respect to a mortgage, refers to the maker of the note secured by the mortgage.

(b) The term includes a prospective debtor with respect to a mortgage for which a closing has not occurred.

*As added by P.L.115-2010, SEC.20.*

#### **IC 24-5-23.6-3**

##### **"Department"**

Sec. 3. As used in this chapter, "department" refers to the department of financial institutions established by IC 28-11-1-1.

*As added by P.L.115-2010, SEC.20.*

#### **IC 24-5-23.6-4**

##### **"Dwelling"**

Sec. 4. As used in this chapter, "dwelling" means a residential structure that is located in Indiana and that contains one (1) to four (4) units, regardless of whether the structure is permanently attached to real property. The term includes an individual:

(1) condominium unit;

(2) cooperative unit;

(3) mobile home; or

(4) trailer;  
that is used as a residence.  
*As added by P.L.115-2010, SEC.20.*

#### **IC 24-5-23.6-5**

##### **"Five star mortgage lender"**

Sec. 5. As used in this chapter, "five star mortgage lender" means a creditor that:

- (1) offers at least one (1) mortgage product that qualifies as a five star mortgage under the program; and
- (2) has a current and accurate certification on file with the department, as described in section 9(a)(3) of this chapter.

*As added by P.L.115-2010, SEC.20.*

#### **IC 24-5-23.6-6**

##### **"Indiana customer"**

Sec. 6. As used in this chapter, "Indiana customer", with respect to a mortgage offered by a creditor, means an individual who:

- (1) is an Indiana resident at the time the mortgage is offered by the creditor; or
- (2) would become an Indiana resident after purchasing and occupying the dwelling that is the subject of the mortgage being offered.

*As added by P.L.115-2010, SEC.20.*

#### **IC 24-5-23.6-7**

##### **"Mortgage"**

Sec. 7. (a) As used in this chapter, "mortgage" means a sale or loan, or the refinancing or consolidation of a sale or loan, in which a first mortgage deed of (or another equivalent consensual security interest) that constitutes a first lien, is created or retained against land that is located in Indiana and upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(b) The term includes any of the following that meets the conditions set forth in subsection (a):

- (1) A home loan subject to IC 24-9.
- (2) A loan described in IC 24-9-1-1, to the extent allowed under federal law.
- (3) A first lien mortgage transaction (as defined in IC 24-4.4-1-301) subject to IC 24-4.4.

(c) The term does not include a land contract (as defined in IC 24-4.4-1-301(36)).

*As added by P.L.115-2010, SEC.20. Amended by P.L.89-2011, SEC.22.*

#### **IC 24-5-23.6-8**

##### **"Program"**

Sec. 8. As used in this chapter, "program" refers to the five star mortgage program established by section 9 of this chapter.

*As added by P.L.115-2010, SEC.20.*

**IC 24-5-23.6-9**

**Five star mortgage program established; guidelines; requirements; certifications; fees; investigations; enforcement**

Sec. 9. (a) The five star mortgage program is established. Not later than June 1, 2010, the department shall adopt guidelines to implement the program. The program established by this section, as implemented through the department's guidelines, must meet the following criteria:

(1) The program must be available on a voluntary basis to creditors that offer mortgages to Indiana customers after June 30, 2010.

(2) To participate in the program, a creditor must submit a certification, on a form prescribed by the department, attesting that the creditor qualifies as a five star mortgage lender.

(3) To qualify as a five star mortgage lender under the program, a creditor must certify, on the form described in subdivision (2), that the creditor meets the following conditions:

(A) The creditor offers or will offer to Indiana customers after June 30, 2010, at least one (1) mortgage product that qualifies as a five star mortgage under the program.

(B) The creditor does not have a record of any significant or recurring violation of:

(i) IC 24-5-23.5-7; or

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

as of the date of the creditor's certification. If the creditor is not certain whether it meets the criterion set forth in this clause, the creditor shall consult with the department before filing a certification to participate in the program.

(C) The creditor does not have a director or an executive officer who has been convicted of or pleaded guilty or nolo contendere to a felony involving fraud, deceit, or misrepresentation under the laws of Indiana or any other jurisdiction, as of the date of the creditor's certification. If the creditor is not certain whether it meets the criterion set forth in this clause, the creditor shall consult with the department before filing a certification to participate in the program.

(4) To qualify as a five star mortgage under the program, a mortgage must include the following terms and conditions:

(A) If the mortgage involves a purchase money transaction, the mortgage must require a down payment by the debtor, or a person acting on behalf of the debtor, of at least ten percent (10%) of the purchase price of the dwelling that is the subject of the mortgage. If the mortgage involves the refinancing of an existing mortgage, the customer must have equity of at least ten percent (10%) in the dwelling that is the subject of the mortgage.

- (B) The mortgage must have a fixed rate of interest.
- (C) The mortgage must provide for an escrow account that:
  - (i) is established by the creditor, or a person acting on behalf of the creditor, for the benefit of the debtor;
  - (ii) is maintained by the creditor, or a person acting on behalf of the creditor, during the life of the mortgage; and
  - (iii) is used during the life of the mortgage to pay taxes and insurance owed with respect to the dwelling that is the subject of the mortgage.

However, this clause does not apply if, in the creditor's ordinary course of business, the creditor does not regularly establish and maintain, or contract for the establishment and maintenance of, escrow accounts for the payment of taxes and insurance, on behalf of the creditor's customers.

(D) The term of the mortgage may not exceed thirty (30) years.

(E) The mortgage may not include a prepayment penalty or fee.

(5) A creditor that qualifies as a five star mortgage lender and files a certification with the department under subdivision (3) shall provide a written statement, on a form and in the manner prescribed by the department, to any Indiana customer who:

(A) applies for a five star mortgage offered by the creditor; and

(B) does not qualify for the five star mortgage based on the creditor's underwriting standards for the five star mortgage.

The statement must set forth the reasons why the Indiana customer did not qualify for the five star mortgage.

(6) A creditor that qualifies as a five star mortgage lender and files a certification with the department may include that fact in any marketing material or solicitation directed at Indiana customers, subject to any conditions or limitations imposed by the department in the guidelines adopted under this section.

(7) If a creditor:

(A) holds itself out as a five star mortgage lender and:

(i) the creditor has not filed an accurate certification, including any renewal certification required by the department under subsection (b)(3), with the department under this chapter; or

(ii) the creditor has filed a certification or a renewal certification with the department under this chapter and subsequently ceases offering at least one (1) mortgage product that qualifies as a five star mortgage; or

(B) fails to comply with any program requirement;

the department, upon discovering the act described in clause (A) or (B), shall immediately provide written notice to the creditor that the creditor does not qualify for participation in the program, or no longer qualifies for participation in the program, as appropriate. The notice provided under this subdivision must inform the creditor of the reason or reasons the creditor does

not qualify for participation in the program, or no longer qualifies for participation in the program, as appropriate. Not later than seven (7) days after the date of the notice provided to the creditor under this subdivision, the department shall remove the creditor from the list of creditors published on the department's Internet web site under subsection (c), as appropriate, and shall post, on the same Internet web page on which the list described in subsection (c) is published, a link to the notice provided to the creditor under this subdivision.

(b) In addition to the program criteria required by subsection (a), the guidelines adopted by the department under this section may include the following:

(1) Provisions allowing a creditor that qualifies as a five star mortgage lender and files a certification with the department to include in the paperwork associated with a five star mortgage:

(A) a statement;

(B) a seal; or

(C) any other designation considered appropriate by the department;

indicating that the particular mortgage product is a five star mortgage.

(2) A requirement that a creditor that qualifies as a five star mortgage lender and files a certification with the department shall report the following information to the department on an annual basis, or any other basis determined appropriate by the department:

(A) The total number and types of residential mortgage products that were offered by the creditor to Indiana customers during the applicable reporting period, including any five star mortgages reported under clause (C).

(B) The total number of residential mortgages described in clause (A) that were closed by the creditor during the applicable reporting period, including any five star mortgages that were closed during the reporting period, as reported under clause (D).

(C) The number of mortgage products that:

(i) qualified as five star mortgages under the program; and

(ii) were offered by the creditor to Indiana customers;

during the applicable reporting period.

(D) The number of five star mortgages offered to Indiana customers that were closed by the creditor during the applicable reporting period.

(3) A requirement that a creditor that qualifies as a five star mortgage lender and files a certification with the department shall periodically submit to the department a renewal certification, on a form prescribed by the department, in conjunction with a report filed under subdivision (2), or at such other time as the department determines appropriate. In any renewal certification required under this subdivision, a creditor must attest that the creditor:

- (A) continued to meet the criteria necessary to qualify as a five star mortgage lender; and
  - (B) complied with all program requirements; during the applicable reporting period.
- (4) A fee fixed by the department under IC 28-11-3-5 for each certification and recertification submitted by a creditor under this chapter. However, any fee fixed by the department under this subdivision may not exceed the department's actual costs to:
- (A) process certifications and renewal certifications;
  - (B) publish the list described in subsection (c) on the department's Internet web site; and
  - (C) otherwise administer the program.
- (5) Any other program requirements, criteria, or incentives that the department determines necessary to implement and evaluate a program to encourage creditors to offer stable mortgage products to qualified Indiana customers.
- (c) The department shall publish on the department's Internet web site a list of all creditors that have a current and accurate:
- (1) certification under this chapter; or
  - (2) renewal certification under this chapter;
- on file with the department. The Indiana housing and community development authority and the securities division of the office of the secretary of state shall provide a link to the list described in this subsection on their respective Internet web sites.
- (d) The program guidelines established by the department under subsections (a) and (b) must be made available:
- (1) for public inspection and copying at the offices of the department under IC 5-14-3; and
  - (2) on the department's Internet web site.
- (e) The department shall investigate any credible complaint received by any means alleging that a creditor has committed a violation described in subsection (a)(7). If the creditor that is the subject of a complaint under this subsection is not subject to regulation by the department, the department shall forward the complaint to the appropriate state or federal regulatory agency.
- (f) Notwithstanding subsection (a), the department may adopt a different name for the program, other than the five star mortgage program, in adopting the guidelines to implement the program.
- As added by P.L.115-2010, SEC.20.*