

IC 24-5-15

Chapter 15. Credit Services Organizations

IC 24-5-15-1

"Buyer" defined

Sec. 1. As used in this chapter, "buyer" means an individual who is solicited to purchase or who purchases the services of a credit services organization.

As added by P.L.142-1990, SEC.1.

IC 24-5-15-2

"Credit services organization"

Sec. 2. (a) As used in this chapter, "credit services organization" means a person that, with respect to the extension of credit by another person, sells, provides, performs, or represents that the person can or will sell, provide, or perform, in return for the payment of money or other valuable consideration, any of the following services:

- (1) Improving a buyer's credit record, credit history, or credit rating.
- (2) Obtaining an extension of credit for a buyer.
- (3) Obtaining a delay or forbearance of a buyer's obligation under a mortgage.
- (4) Obtaining a lower interest rate for:
 - (A) a consumer loan; or
 - (B) a residential mortgage loan;to which the buyer is a debtor or a prospective debtor.
- (5) Providing debt settlement services on behalf of a buyer.
- (6) Providing advice or assistance to a buyer concerning the services described in subdivisions (1) through (5).

(b) The term "credit services organization" does not include any of the following:

- (1) A person authorized to make loans or extensions of credit under state or federal laws that is subject to regulation and supervision under state or federal laws, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the federal National Housing Act (12 U.S.C. 1701 et seq.).
- (2) A bank or savings association or a subsidiary of a bank or savings association that has deposits or accounts that are eligible for insurance by the Federal Deposit Insurance Corporation.
- (3) A credit union doing business in Indiana.
- (4) A nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.
- (5) A person licensed as a real estate broker under IC 25-34.1 if the person is acting within the course and scope of the person's license.

(6) A person admitted to the practice of law in Indiana if the person is acting within the course and scope of the person's practice as an attorney.

(7) A broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the course and scope of the broker-dealer's regulation.

(8) A consumer reporting agency (as defined in the Federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.)).

(9) A loan servicer acting on behalf of the holder of:

(A) a consumer loan; or

(B) a residential mortgage loan.

(10) A debt management company (as defined in IC 28-1-29-1(2)).

As added by P.L.142-1990, SEC.1. Amended by P.L.8-1991, SEC.7; P.L.79-1998, SEC.27; P.L.171-2006, SEC.1; P.L.114-2010, SEC.13.

IC 24-5-15-2.5

"Debt settlement services"

Sec. 2.5. As used in this chapter, "debt settlement services" means any of the following services that a person performs, offers to perform, or represents, either directly or by implication, that the person will perform with respect to a debt between a buyer and one (1) or more unsecured creditors or debt collectors:

(1) A renegotiation of the debt.

(2) A settlement of the debt.

(3) An alteration of the terms of payment or other terms of the debt, including a reduction in the balance, interest rate, or fees owed by the buyer to the creditor or debt collector.

As added by P.L.114-2010, SEC.14.

IC 24-5-15-3

"Extension of credit" defined

Sec. 3. As used in this chapter, "extension of credit" means the right to:

(1) defer payment of debt offered or granted primarily for personal, family, or household purposes;

(2) incur debt and defer payment of the debt offered or granted primarily for personal, family, or household purposes; or

(3) delay or avoid foreclosure on a buyer's residence.

As added by P.L.142-1990, SEC.1. Amended by P.L.171-2006, SEC.2.

IC 24-5-15-4

"Person" defined

Sec. 4. As used in this chapter, "person" means an individual, a corporation, a partnership, a joint venture, or any other entity.

As added by P.L.142-1990, SEC.1.

IC 24-5-15-5

Deceptive acts

Sec. 5. The following are deceptive acts:

(1) To charge or receive money or other valuable consideration before the complete performance of services that a credit services organization has agreed to perform for or on behalf of a consumer, unless the credit services organization has under section 8 of this chapter:

(A) obtained a surety bond issued by a surety company admitted to do business in Indiana; or

(B) established an irrevocable letter of credit.

(2) To charge or receive money or other valuable consideration to refer a buyer to a retail seller that will or may extend credit to the buyer if the extension of credit is made upon substantially the same terms as those available to the general public.

(3) To make or to advise a buyer to make a statement with respect to the buyer's creditworthiness, credit standing, or credit capacity that is:

(A) false or misleading; or

(B) that should be known by the exercise of reasonable care to be false or misleading;

to a consumer reporting agency or to a person that has extended credit to the buyer or to whom the buyer is applying for an extension of credit.

(4) To make or use a false or misleading representation in an offer to sell or a sale of the services of a credit services organization, including:

(A) guaranteeing to "erase bad credit" or using words to that effect unless the representation clearly discloses that this can be done only if a person's credit history is inaccurate or obsolete;

(B) guaranteeing an extension of credit regardless of the buyer's previous credit history unless the representation clearly discloses the eligibility requirements for obtaining the extension of credit; or

(C) requiring a buyer to waive a right protected by a state or federal law.

(5) To take a power of attorney from a buyer for any purpose other than inspecting documents as provided by law.

As added by P.L.142-1990, SEC.1. Amended by P.L.171-2006, SEC.3.

IC 24-5-15-6

Written statement provided by credit services organization

Sec. 6. Before executing a contract or agreement with a buyer or receiving money or other valuable consideration, a credit services organization must provide the buyer with a written statement that contains the following:

- (1) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services.
- (2) A statement explaining the buyer's right to proceed against the bond or surety account required under section 8 of this chapter.
- (3) The name and address of the:
 - (A) surety company that issued a bond; or
 - (B) depository and the trustee of a surety account and the account number of the surety account;required under section 8 of this chapter.
- (4) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency as provided under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).
- (5) A statement that the buyer's file is available for review:
 - (A) at no charge at the times and under the circumstances set forth in 15 U.S.C. 1681j; and
 - (B) for a minimal charge at any other time as provided by 15 U.S.C. 1681j(f).
- (6) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of an item contained in a file on the buyer maintained by a consumer reporting agency.
- (7) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency.
- (8) A complete and accurate statement indicating when consumer information becomes obsolete and when consumer reporting agencies are prevented from issuing reports containing obsolete information.
- (9) A complete and accurate statement of the availability of nonprofit credit counseling services.

As added by P.L.142-1990, SEC.1. Amended by P.L.114-2010, SEC.15.

IC 24-5-15-7

Contract between consumer and credit services organization; notice of cancellation form

Sec. 7. (a) Except as provided in subsection (d), a contract between a consumer and a credit services organization concerning the purchase of the services of the credit services organization must be in writing, be dated and signed by both the consumer and the credit services organization, and include all of the following:

- (1) A statement in at least 10 point boldface type in immediate proximity to the space reserved for the signature of the buyer that reads:

"You, the buyer, may cancel this contract at any time before midnight of the third business day after the date of the

transaction. See the attached notice of cancellation form for an explanation of this right."

(2) The terms and conditions of payment, including the total amount of all payments to be made by the buyer to the credit services organization or to another person.

(3) A complete and detailed description of the services to be performed and the results to be achieved by the credit services organization for or on behalf of the buyer, including all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit services organization expects to have modified and the estimated date by which each modification will occur.

(4) The principal business address of the credit services organization and the name and address of the credit services organization's agent in Indiana authorized to receive service of process.

(b) A contract shall be accompanied by two (2) copies of a form captioned "NOTICE OF CANCELLATION" attached to the contract and that contains the following statement in at least 10 point boldface type:

NOTICE OF CANCELLATION

You may cancel this contract, without any penalty or obligation, at any time before midnight of the third business day after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within ten days following receipt by the seller of your cancellation notice, or any other written notice, to

(name of seller)

(address of seller) _____ (place of business)

not later than midnight _____

(date)

"I hereby cancel this transaction". _____

(date)

(buyer's signature)

(c) A credit services organization shall give a copy of the completed contract and all other documents required by the credit services organization to the buyer at the time the contract and the documents are signed.

(d) If a contract is subject to this chapter and to IC 24-5.5, IC 24-5.5-4 applies to the contract.

As added by P.L.142-1990, SEC.1. Amended by P.L.209-2007, SEC.1.

IC 24-5-15-8

Surety bond or irrevocable letter of credit; filing with attorney general

Sec. 8. (a) Before doing business in Indiana, a credit services organization must:

- (1) obtain a surety bond in the amount of twenty-five thousand dollars (\$25,000), issued by a surety company authorized to do business in Indiana in favor of the state for the benefit of a person that is damaged by a violation of this chapter; and
- (2) file a copy of the surety bond obtained under subdivision (1) with the attorney general.

(b) The attorney general may waive the bonding requirement under subsection (a) and, instead of the bond, accept an irrevocable letter of credit for an equivalent amount issued in favor of the state for the benefit of a person that is damaged by a violation of this chapter. A credit services organization that obtains an irrevocable letter of credit under this subsection must file a copy of the irrevocable letter of credit with the attorney general before doing business in Indiana.

As added by P.L.142-1990, SEC.1. Amended by P.L.171-2006, SEC.4; P.L.114-2010, SEC.16.

IC 24-5-15-9

Damage claims; alternative actions

Sec. 9. A person that is damaged by a credit services organization's violation of this chapter may:

- (1) bring an action to recover the greater of two (2) times the amount of actual damages or one thousand dollars (\$1,000) and attorney's fees; and
- (2) bring an action against the bond or irrevocable letter of credit required under section 8 of this chapter to recover an amount equal to the person's actual damages.

As added by P.L.142-1990, SEC.1.

IC 24-5-15-10

Waiver of provisions

Sec. 10. A waiver of the provisions of this chapter by a buyer or credit services organization is void.

As added by P.L.142-1990, SEC.1.

IC 24-5-15-11

Violations; penalties; court jurisdiction

Sec. 11. A person who violates this chapter commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4 and is subject to the penalties and remedies available to the attorney general under IC 24-5-0.5. An action by the attorney general for violations of this chapter may be brought in the circuit or superior court of Marion County.

As added by P.L.142-1990, SEC.1.