

June 9, 2010

**2010 Legislative Amendments to the Indiana Code Relating to Uniform Consumer Credit Code (the “Act” or the “UCCC”)**

Effective July 1, 2010 (except as otherwise indicated)

**Questions, Answers, and Administrative Interpretations:** This document contains a Q&A relating new provisions and amendment to the UCCC (IC 24-4.5 et seq.) which includes subordinate lien mortgages. Careful review of the entire Act is recommended. The new provisions of the UCCC can be found in Senate Bill 328 (“SB 328”) beginning at Section 36 (page 39) at the following link: <http://www.in.gov/dfi/SB0328.PDF>.

**1. How can a creditor preserve the right to collect a deficiency against a debtor in a short sale of a subordinate lien mortgage transaction?**

Answer – IC 24-4.5-2-209(4) has been amended to provide that payment accepted by a creditor, servicer, or creditor's agent in connection with a short sale constitutes payment in full satisfaction of the subordinate 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 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.

**2. Is a person who is the creditor in one or more consumer loans that are not mortgage transactions required to obtain from the Department a license under the UCCC?**

Answer – No.

- IC 24-4.5-3-502(3) provides that person shall acquire and retain a license under the UCCC in order to *regularly* engage in Indiana in the following actions with respect to consumer loans *that are not mortgage transactions*:
  - (a) The making of consumer loans.
  - (b) Taking assignments of consumer loans.
  - (c) Undertaking direct collection of payments from or enforcement of rights against debtors arising from consumer loans.

[Emphasis Added.]

- IC 24-4.5-1-301.5(39) provides in part that "regularly engaged" means a person who extends consumer credit more than twenty-five (25) times...in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

**3. If the creditor is a bank or other depository institutions, is it required to obtain a license to make consumer loans that are not mortgage transactions?**

Answer – No.

- IC 24-4.5-3-502(1) provides a person that is a:
  - (a) depository institution;
  - (b) subsidiary that is owned and controlled by a depository institution; or

(c) credit union service organization;  
may engage in the making of consumer loans that are not mortgage transactions without obtaining a license under the UCCC.

**4. May collection agencies take assignment of consumer loans or undertake the direct collection of consumer loans without a license?**

Answer - IC 24-4.5-3-502(2) provides that a collection agency licensed under IC 25-11-1 may engage in:

- (a) taking assignments of consumer loans in Indiana; and
- (b) undertaking direct collection of payments from or enforcement of rights in Indiana against debtors arising from consumer loans;

without obtaining a license under the UCCC.

**5. Is a person who is the creditor in one or more subordinate lien mortgage transactions in Indiana required to obtain from the Department a license under the Act?**

Answer – Yes. IC 24-4.5-3-502.1(1) provides:

- Unless a person ...has first obtained a license from the department, the person shall not regularly engage in Indiana as a creditor in subordinate lien mortgage transactions.
- "Regularly engaged" has been amended to mean a person who extends consumer credit ...at least one (1) time for a mortgage transaction secured by a dwelling in the preceding calendar year.
- Prior law defined “regularly engaged” as an extension of consumer credit “more than five (5) times for transactions secured by a dwelling in the preceding year.” IC 24-4.5-1-301(18).
- The *de minimis* exclusion has been eliminated in order for the subordinate lien provisions of the UCCC to comply with the federal Safe and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE).

**6. Is licensing as a creditor under IC 24-4.5-3-502.1 required for consumer credit sales that are subordinate lien mortgage transactions?**

Answer – Yes. IC 24-4.5-2-102 (relating to consumer credit sales) provides that the creditor in consumer credit sales secured by subordinate lien mortgage transactions must obtain a subordinate lien mortgage license from the department.

**7. Can a creditor with multiple legal entities obtain a single license?**

Answer – No. IC 24-4.5-3-502.1(4) provides that each legal entity that engages in Indiana as a creditor in subordinate lien mortgage transactions must obtain a license.

**8. Is a creditor organized under a single entity but with multiple branch locations required to obtain a license for each location?**

Answer – No. IC 24-4.5-3-502.1(4) provides that a separate license is not required for each branch of a legal entity licensed under the Act.

**9. What changes have been adopted in the application procedures for a subordinate lien mortgage lending license?**

Answer – Each creditor licensed under the Act and entity exempt from licensing under the Act that employs a licensed mortgage loan originator are now required to register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry (“NMLSR”). IC 24-4.5-3-502.1(2).

- The NMLSR is 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. IC 24-4.5-1-301.5(28).
- In order to reduce the points of contact that the director has to maintain for purposes of licensing creditors under the Act, 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. IC 24-4.5-3-503(5).
- In order to comply with the SAFE Act, each licensed mortgage loan originator of a subordinate lien mortgage transaction must be employed by, and associated with, a licensed creditor, or an entity exempt from licensing under the Act, in the NMLSR in order to originate loans. IC 24-4.5-3-502.1(2)

**10. What changes have been made to the standards the department may use to determine that the business will be operated honestly and fairly within the purposes of the Act?**

Answer – In addition to financial responsibility, character, and fitness, the department may also look at the professional training and experience of:

- the applicant and any significant affiliate of the applicant;
- 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
- 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 the Act.

**11. What evidence of compliance is now required to be submitted in connection with obtaining a subordinate lien mortgage lending license?**

Answer – Evidence of compliance for the following must include:

- criminal background checks, as described in IC 24-4.5-3-503.1, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for the individuals described in the preceding bullet point;
  - In order to reduce the points of contact that the FBI may have to maintain for purposes of performing these background checks, 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.
  - The following is a link providing information on obtaining criminal background check: <http://mortgage.nationwidelicingsystem.org/profreq/background/Pages/default.aspx>
- credit histories as described in IC 24-4.4-3-503.2 for the individuals described Item 10, above, ;
  - Individuals 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)).

- It should be noted that the director may consider one (1) or more of the following when determining if an individual has demonstrated financial responsibility:
    - Bankruptcies filed within the last ten (10) years.
    - Current outstanding judgments, except judgments solely as a result of medical expenses.
    - Current outstanding tax liens or other government liens or filings.
    - Foreclosures within the past three (3) years.
    - A pattern of serious delinquent accounts within the past three (3) years.
  - surety bond requirements as described in IC 24-4.5-3-503.3;
    - Each creditor licensed under the Act and entity exempt from licensing under the Act that employs a licensed mortgage loan originator are now specifically required by the Act to be covered by a surety bond.
      - Under prior law, a surety bond was required under a policy adopted by the department to establish financial responsibility of the creditor.
      - Under prior law, the amount of the surety required to be posted by all licensees was \$100,000.
      - In order to comply with the SAFE Act, the penal sum of the surety bond required of a creditor will be in an amount that reflects the dollar amount of mortgage transactions originated by the creditor as determined by the director. IC 24-4.5-3-503.3(4).
  - a review of licensure actions in Indiana and in other states; and
    - It should be noted that the director is authorized to report publicly adjudicated licensure actions against a licensee to the NMLSR. IC 24-4.5-3-503.4(4).
  - other background checks considered necessary by the director.
- IC 24-4.5-3-503(4)

**12. Is the information provided to the NMLSR available for public inspection?**

Answer – No, information stored in the NMLSR is subject to the confidentiality provisions of IC 5-14-3 and IC 28-1-2-30.  
IC 24-4.5-3-503.4(3)

**13. Where can complete information regarding making application for a subordinate lien mortgage license be obtained?**

Answer – Complete information about making application for a subordinate lien mortgage lending license can be found on the NMLSR resource center at:  
<http://mortgage.nationwidelicensingsystem.org/Pages/default.aspx>

**14. What are the requirements for renewal of a subordinate lien mortgage license?**

Answer – IC 24-4.5-3-506(1) provides that a license issued under the Act 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:
  - The creditor continues to meet the surety bond requirement under IC 24-4.5-3-503.3.
  - The creditor has filed the creditor's annual call report in a manner that satisfies IC 24-4.5-3-505(4).
  - The creditor has paid all required fees for renewal of the license.

- The creditor and individuals described in IC 24-4.5-3-503(2) continue to meet all the standards for licensing contained in IC 24-4.5-3-503.

**15. Under what circumstances can a director, officer or employee of a creditor be removed from office or employment?**

Answer – IC 24-4.5-6-119 provides:

- If the director determines that a director, an officer, or an employee of a creditor:
  - 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;
  - has committed fraudulent or unconscionable conduct; or
  - has been convicted of or has pleaded guilty or nolo contendere to a felony under the laws of Indiana or any other jurisdiction;

the director 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.

- The director's authority to remove a person from office or prohibit a person's participation in the business of the creditor is subject the following findings by the director:
  - The interests of the creditor's customers could be seriously prejudiced by reason of the violation or practice.
  - The violation, practice, or breach involves personal dishonesty on the part of the officer, director, or employee involved.
  - 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.

**16. Can a person with a felony criminal record serve as an executive officer, director or manager of a subordinate lien mortgage creditor?**

Answer – IC 24-4.5-6-119(c) provides:

- A person who has been convicted of or has pleaded guilty or nolo contendere to 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.
  - A creditor that willfully permits a person to serve the creditor in violation of IC 24-4.5-6-119(d) is subject to a civil penalty of five hundred dollars (\$500) for each day the violation continues.

**17. What obligation does a creditor have to report criminal or other disciplinary conduct by an executive officer, director or manager?**

Answer - IC 24-4.5-3-505(7) provides:

- A licensee must notify the department if the licensee or any executive officer, director or manager of the licensee has been convicted of or pled guilty or nolo contendere to a felony under the laws of Indiana or any other jurisdiction.
  - The licensee must file the notification not later than thirty (30) days after the date of the event described in this subsection.

- Under prior law, the licensee was required to notify the department if a key officer or director of the licensee was *under indictment for a felony involving fraud, deceit, or misrepresentation* under the laws of Indiana or any other jurisdiction; or 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 not later than thirty (30) days after the date of the event described above. [Emphasis added.]
- While notification for an indictment is no longer required, any felony conviction (which includes a plea of nolo contendere) requires notification of the department and consistent with item 16 the officer, director or manager in question may continue to serve only with the consent of the director.

**18. What examination rights does the department have if a creditor contracts with an outside vendor?**

Answer – IC 24-4.5-6-106 (7) provides:

- If a creditor contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the creditor and be subject to the department's routine examination procedures, the person that provides the service to the creditor shall, at the request of the director, submit to an examination by the department.
- If the director determines that an examination is necessary or desirable, the examination may be made at the expense of the person to be examined.
- If the person to be examined refuses to permit the examination to be made, the director may order any creditor that is licensed under the Act and that receives services from the person refusing the examination to:
  - (a) discontinue receiving one (1) or more services from the person; or
  - (b) otherwise cease conducting business with the person.

**19. What conduct constitutes a violation of the Act?**

Answer - IC 24-4.5-6-107.5 provides that it is a violation of the UCCC for a person or individual subject to the UCCC to:

- directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- engage in any unfair or deceptive practice toward any person;
- obtain property by fraud or misrepresentation;
- solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to the UCCC may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;
- solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- conduct any business covered by the UCCC without holding a valid license as required under the UCCC, or assist or aid and abet any person in the conduct of business under the UCCC without a valid license as required under the UCCC;
- fail to make disclosures as required by the UCCC or regulation adopted under the UCCC and any other applicable state or federal law regulation;
- fail to comply with the UCCC or rules adopted under the UCCC, or fail to comply with any other state or federal law, rule, or regulation, applicable to any business authorized or conducted under the UCCC;

- make, in any manner, any false or deceptive statement or representation, with regard to the rates, points, or other financing terms or conditions for a mortgage transaction, or engage in bait and switch advertising;
- negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the NMLSR or in connection with any investigation conducted by the director or another governmental agency;
- make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a mortgage transaction, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;
- collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by the UCCC;
- cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;
- fail to account truthfully for money belonging to a party to a mortgage transaction; or
- knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information subject to examination under the UCCC.