

TITLE 750 DEPARTMENT OF FINANCIAL INSTITUTIONS

Emergency Rule

LSA Document #09-___(E)

DIGEST

Amends 750 IAC 9-1-1 concerning the terms “employee”, “mortgage loan originator” and “mortgage transaction” and adds the terms “loan brokerage business” and “residential real estate”; Amends 750 IAC 9-2-6 concerning provisions relating to manufactured housing retailers; Amends 750 IAC 9-3-1 concerning provisions relating to licensing of loan processors and underwriters who are independent contractors and deletes provisions concerning mortgage loan originators as sole proprietors. Effective _____, 2009.

750 IAC 9-1-1; 750 IAC 9-2-6; 750 IAC 9-3-1

SECTION 1. 750 IAC 9-1-1 IS AMENDED TO READ AS FOLLOWS:

750 IAC 9-1-1 Definitions

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4-1-301; IC 24-4.5-1-301

Sec. 1. The definitions in this rule apply throughout this article:

(1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

- (A) controls;
- (B) is controlled by; or
- (C) is under common control with;

the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as found in the parties' language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural products" includes:

- (A) agricultural;
- (B) horticultural;
- (C) viticultural;
- (D) dairy products;
- (E) livestock;
- (F) wildlife;
- (G) poultry;
- (H) bees;
- (I) forest products;
- (J) fish and shellfish;
- (K) any products raised or produced on farms; and
- (L) any products processed or manufactured from products raised or produced on farms.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products.

(5) "Civil court" means any court in Indiana having jurisdiction over civil cases.

(6) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

- (A) credit is granted by a person who engages as a seller in credit transactions of the same kind;
- (B) the buyer is a person other than an organization;
- (C) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
- (D) either the debt is payable in installments or a credit service charge is made; and
- (E) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars (\$50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

(7) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) "Creditor" has the meaning set forth in:

(A) IC 24-4.4-1-301, which is incorporated by reference, for first lien mortgage transactions; and

(B) IC 24-4.5-1-301, which is incorporated by reference, for mortgage transactions not secured by a first lien.

(9) "Department" refers to the department of financial institutions.

(10) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), which is incorporated by reference, and includes any credit union.

(11) "Director" refers to the director of the department of financial institutions or the director's designee.

(12) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

(A) condominium unit;

(B) cooperative unit;

(C) mobile home; or

(D) trailer;

that is used as a residence.

(13) "Employee" ~~has the meaning set forth in IC 22-2-2-3, which is incorporated by reference~~ means an individual who is paid wages or other compensation by an employer required under federal income tax law to file Form W-2 on behalf of such employee.

(14) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(15) "Immediate family member" means:

(A) spouse;

(B) child;

(C) sibling;

(D) parent;

(E) grandparent;

(F) grandchild;

(G) stepparents;

(H) stepchildren;

(I) stepsiblings; and

(J) adoptive relationships.

(16) "Individual" means a natural person.

(17) "Licensee" means a person licensed as a mortgage loan originator under this article.

(18) "Loan" includes:

(A) the creation of debt by:

(i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or

(ii) the extension of credit by a person who engages as a seller in credit transactions primarily secured by an interest in land;

(B) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and

(C) the forbearance of debt arising from a loan.

(19) "Loan brokerage business" means activities by which any person, in return for any consideration from any source procures, attempts to procure, or assists in procuring, a mortgage transaction from a third party or any other person, whether or not the person seeking the loan actually obtains the loan.

~~(19)~~**(20) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under IC 24-4.4 or IC 24-4.5. For purposes of this section, the term "clerical or support duties" may include, after the receipt of an application, the following:**

(A) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.

(B) The communication with a consumer to obtain the information necessary for the processing or

underwriting of a loan, to the extent that the communication does not include:

- (i) offering or negotiating loan rates or terms; or
- (ii) counseling consumers about mortgage transaction rates or terms.

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.

~~(20)~~**(21)** "Mortgage loan originator" means an individual who for compensation or gain, or in the expectation of compensation or gain, engages in taking a mortgage transaction application or offering or negotiating terms of a mortgage transaction **that is made either:** under IC 24-4.4 or IC 24-4.5; **or by an employee of a person licensed or exempt from licensing under IC 24-4.4 or IC 24-4.5 while engaging in the loan brokerage business.** The term does not include the following:

(A) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under IC 24-4.4 or IC 24-4.5.

(B) Unless the person or entity is compensated by:

- (i) a creditor;
- (ii) a loan broker;
- (iii) another mortgage loan originator; or
- (iv) any agent of the creditor, loan broker, or other mortgage loan originator described in ~~clauses~~ **items** (i) through (iii);

a person that performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(C) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D), which is incorporated by reference).

~~(21)~~**(22)** "Mortgage transaction" means a loan or consumer credit sale ~~in which~~ **that is or will be used by the debtor primarily for personal, family, or household purposes and is secured by** a mortgage, ~~or a land contract is created or retained against land upon which there is or is intended to be constructed a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes or other equivalent consensual security interest on a dwelling or residential real estate.~~

~~(22)~~**(23)** "Nationwide Mortgage Licensing System and Registry" or "NMLSR" means 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.

~~(23)~~**(24)** "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

~~(24)~~**(25)** "Organization" means a corporation, a government or government subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.

~~(25)~~**(26)** "Payable in installments", with respect to a debt or an obligation, means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

~~(26)~~**(27)** "Person" includes an individual or an organization.

~~(27)~~**(28)** "Principal" of a mortgage transaction means the total of:

- (A) the net amount paid to, receivable by, or paid or payable for the account of the debtor; and
- (B) to the extent that payment is deferred, amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees if not included in ~~subdivision~~ **clause** (A).

~~(28)~~**(29)** "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

- (A) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.
- (B) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.
- (C) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).

(D) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(E) Offering to engage in any activity, or act in any capacity, described in this section.

~~(29)~~**(30)** "Registered mortgage loan originator" means any individual who:

(A) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(B) is registered with, and maintains a unique identifier through, the NMLSR.

(31) "Residential real estate" means any real property located in Indiana, upon which is constructed or intended to be constructed a dwelling.

~~(30)~~**(32)** "Revolving mortgage transaction" means an arrangement between a creditor and a debtor in which:

(A) the creditor permits the debtor to obtain advances from time to time;

(B) the unpaid balances of principal, finance charges, and other appropriate charges are debited to an account; and

(C) the debtor has the privilege of paying the balances in installments.

~~(31)~~**(33)** "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

(Department of Financial Institutions; 750 IAC 9-1-1; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA)

SECTION 2. 750 IAC 9-2-6 IS AMENDED TO READ AS FOLLOWS:

750 IAC 9-2-6 Manufactured housing retailers

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 6. Unless the United States Department of Housing and Urban Development, through guidelines, rules, regulations, or interpretive letters, determines otherwise, this article does not apply to a manufactured housing retailer that sells a mobile, manufactured, or modular home if the manufactured housing retailer only assists a consumer in filling out a ~~loan~~ **credit** application and does not:

(1) offer or negotiate loan rates or terms;

(2) provide any counseling with the consumer about residential mortgage loan rates or terms; or

(3) receive any payment or fee from any company or individual for assisting the consumer. *(Department of Financial Institutions; 750 IAC 9-2-6, emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA)*

SECTION 3. 750 IAC 9-3-1 IS AMENDED TO READ AS FOLLOWS:

750 IAC 9-3-1 Licensing of mortgage loan originators

Authority: IC 24-4.4-1-101

Affected: IC 24-4.4; IC 24-4.5

Sec. 1. (a) Except as provided in 750 IAC 9-2-5(5) and subsections (b) ~~and (e)~~, after June 30, 2010, an individual may not engage in the business of a mortgage loan originator without obtaining a mortgage loan originator license issued by the department under this article and annually maintaining the license.

~~(b) An individual who conducts a mortgage loan originator business as a sole proprietor is required to obtain only a creditor's license under IC 24-4.4 or IC 24-4.5. However, the individual must meet the background, education, testing, bonding, and reporting requirements prescribed for a mortgage loan originator.~~

~~(eb)~~ Notwithstanding the licensing requirements under this section, an individual acting exclusively as a servicer engaging in loss mitigation efforts with respect to an existing mortgage transaction is not required to meet the education, testing, background, and licensing standards of this article until July 1, 2011, to the extent that this extension of time is not denied by any guideline, rule, regulation, or interpretive letter issued by the United States Department of Housing and Urban Development.

~~(ec)~~ Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the NMLSR. **Notwithstanding subsection (g)**, each licensed mortgage loan originator must be employed by, ~~and~~

~~associated with~~, either a licensed creditor or an entity exempt from licensing under IC 24-4.4 or IC 24-4.5, that is registered with the NMLSR, in order to originate loans.

(ed) Applicants for a license must apply for a license under this article in a form prescribed by the director.

Each form:

(1) must contain content as set forth by rule, instruction, or procedure of the director; and

(2) may be changed or updated as necessary by the director in order to carry out the purposes of this article.

(fe) 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:

(1) collect and maintain records; and

(2) process transaction fees or other fees related to licensees or other persons subject to this article.

(gf) For the purpose of participating in the NMLSR, the director may:

(1) waive or modify, in whole or in part, by order, policy, or guidance, any or all of the requirements of this article; and

(2) establish new requirements as reasonably necessary to participate in the NMLSR.

(g) A loan processor or underwriter who is not an employee of a person licensed or exempt from licensing under IC 24-4.4 or IC 24-4.5 may not engage in the activities of a loan processor or underwriter unless such person obtains and maintains both a license under this section, and a valid unique identifier issued by the NMLSR. (Department of Financial Institutions; 750 IAC 9-3-1; emergency rule filed Jul 23, 2009, 4:14 p.m.: 20090729-IR-750090577ERA)

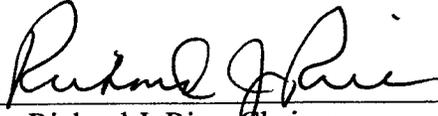
Rule Signature Page

Rule #: LSA Document #09- 917 (E)

Agency: Department of Financial Institutions

Subject: Emergency regulations re: Amendment to Licensing of Mortgage Lenders and Originators

ADOPTED:

By:  Date: November 12, 2009
Richard J. Rice, Chairman
Department of Financial Institutions

ACCEPTED FOR FILING:

By: _____
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