

June 22, 2011

**2011 Legislative Amendments to the Indiana Code Relating to the First Lien Mortgage Act and
Manufactured Housing Dealers**

Effective upon Passage: April 28, 2011

1. Can manufactured housing retailers rely on the exemption from licensing for tablefunded transactions that is included in the First Lien Mortgage Act?

Answer - Last year the DFI provided a "Q&A" about the SAFE Legislation and Mortgage Loan Originator Licensing as they relate to Mobile Home Dealers, Home Improvement Contractors and Non-Profit Home Mortgage Creditors. In our Q&A we advised you that Indiana DFI SAFE does apply to manufactured housing retailers that are creditors on transactions secured by dwellings because credit sales secured by dwellings meet the definition of a "mortgage transaction." Further, the Mortgage Loan Originators ("MLOs") employed by these creditors must be licensed, and the creditors must also be licensed as first lien mortgage lenders and provide bonding for the MLOs. Both the MLO and the dealer/creditor would apply for the required licenses via the Nationwide Mortgage Licensing System (NMLS).

In the past year the DFI has received several inquiries as to whether manufactured housing dealers who provide financing come within the scope of the term "tablefunded." If so, they would not be considered creditors and would not be required to be licensed under the Act. The 2011 General Assembly clarified the tablefunding issue.

First of all, the definition found in IC 24-4.4-1-301(34) has been amended to provide that:

"Tablefunded" means a transaction in which:

- (a) a person closes a first lien mortgage transaction in the person's own name as a mortgagee with funds provided by one (1) or more other persons; and
- (b) the transaction is assigned, not later than one (1) business day after the funding of the transaction, to the mortgage creditor providing the funding.

The 2011 General Assembly also clarified a specific exemption from licensing by adding subsection (13) to IC 24-4.4-1-202 which provides that the Act does not apply to "[a] person in whose name a tablefunded transaction is closed, as described in section 301(34)(a) of this chapter."

Further, to clarify how the tablefunding exemption relates to the manufactured housing industry subsection (13) includes the following language:

However, the exemption provided by this subsection does not apply if:

- (a) the transaction:
 - (i) is secured by a dwelling that is a mobile home, a manufactured home, or a trailer; and
 - (ii) is *not* also secured by an interest in land; *and*
- (b) the person in whose name the transaction is closed, as described in section 301(34)(a) of this chapter, sells the dwelling to the debtor through a retail installment contract or other similar transaction. [Emphasis added.]

Therefore, the General Assembly has clarified that the tablefunding exemption does not apply in a transaction that is secured by a mobile home, manufactured home or trailer if there is no real estate also securing the transaction.

The DFI staff hopes that these amendments clarify the tablefunding exemption as it relates to manufactured housing. These provisions of the First Lien Mortgage Act relating to the tablefunding exemption can be found in House Enrolled Act 1528 at Section 3 (page 3) at the following link:

<http://www.in.gov/legislative/bills/2011/PDF/HE/HE1528.1.pdf>. If you have any questions, feel free to contact Mark Tarpey, Supervisor of Consumer Credit at the numbers listed above or by email at mtarpey@dfi.in.gov.

2. What changes have been made regarding the treatment of land contracts in both the First Lien Mortgage Act and the Uniform Consumer Credit Code?

Land contracts have been removed from the various definitions of “mortgage transactions” included in both the First Lien Mortgage Act and the Uniform Consumer Credit Code. In addition, the following definition of a land contract has been included in both acts (IC 24-4.4-1-301(36) and IC 24-4.5-1-301.5(44)):

"Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

The DFI has taken the position that if title is not transferred on a manufactured housing unit meeting the definition of a dwelling, the transaction is not subject to SAFE. However, the manufactured housing dealer/mobile home community operator should ensure that the lease or contractual agreement with the customer does meet the requirements of all other federal and state laws.

