

SENATE BILL No. 275

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-1.5-1-13.5; IC 23-2-5-3; IC 25-20.2; IC 25-34.1; IC 27-7-3-15.5; IC 32-21-14-2; IC 32-28-12.5.

Synopsis: Real estate brokers. Provides for the licensure of real estate brokers and managing real estate brokers. Eliminates the license for real estate salesperson and the certification for principal real estate brokers. Provides that licences issued under this article are issued for three years. (Currently licenses are issued for two years.) Revises continuing education requirements. Makes conforming changes.

Effective: July 1, 2012.

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January 4, 2012, read first time and referred to Committee on Public Policy.

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Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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SENATE BILL No. 275



A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-1.5-1-13.5 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13.5. "Real estate
 3 professional" means an individual who is licensed as
 4 (1) a real estate salesperson under IC 25-34.1-3-3.1; or
 5 (2) a real estate broker licensed under IC 25-34.1-3-4.1.
 6 SECTION 2. IC 23-2-5-3, AS AMENDED BY P.L.35-2010,
 7 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2012]: Sec. 3. (a) As used in this chapter, "loan broker
 9 license" means a license issued by the commissioner authorizing a
 10 person to engage in the loan brokerage business.
 11 (b) As used in this chapter, "licensee" means a person that is issued
 12 a license under this chapter.
 13 (c) As used in this chapter, "loan broker" means any person who, in
 14 return for any consideration from any source procures, attempts to
 15 procure, or assists in procuring, a residential mortgage loan from a
 16 third party or any other person, whether or not the person seeking the
 17 loan actually obtains the loan. "Loan broker" does not include:



- 1 (1) any supervised financial organization (as defined in
 2 IC 26-1-4-102.5), including a bank, savings bank, trust company,
 3 savings association, or credit union;
 4 (2) any other financial institution that is:
 5 (A) regulated by any agency of the United States or any state;
 6 and
 7 (B) regularly actively engaged in the business of making
 8 consumer loans that are not secured by real estate or taking
 9 assignment of consumer sales contracts that are not secured by
 10 real estate;
 11 (3) any insurance company;
 12 (4) any person arranging financing for the sale of the person's
 13 product; or
 14 (5) a creditor that is licensed under IC 24-4.4-2-402.
 15 (d) As used in this chapter, "loan brokerage business" means a
 16 person acting as a loan broker.
 17 (e) As used in this chapter, "mortgage loan origination activities"
 18 means performing any of the following activities for compensation or
 19 gain in connection with a residential mortgage loan:
 20 (1) Receiving or recording a borrower's or potential borrower's
 21 residential mortgage loan application information in any form for
 22 use in a credit decision by a creditor.
 23 (2) Offering to negotiate or negotiating terms of a residential
 24 mortgage loan.
 25 (f) As used in this chapter, "borrower's residential mortgage loan
 26 application information" means the address of the proposed residential
 27 real property to be mortgaged and borrower's essential personal and
 28 financial information necessary for an informed credit decision to be
 29 made on the borrower's mortgage loan application.
 30 (g) As used in this chapter, "mortgage loan originator" means an
 31 individual engaged in mortgage loan origination activities. The term
 32 does not include a person who:
 33 (1) performs purely administrative or clerical tasks on behalf of
 34 a mortgage loan originator or acts as a loan processor or
 35 underwriter;
 36 (2) performs only real estate brokerage activities and is licensed
 37 in accordance with IC 25-34.1 or the applicable laws of another
 38 state, unless the person is compensated by a creditor, a loan
 39 broker, a mortgage loan originator, or any agent of a creditor, a
 40 loan broker, or a mortgage loan originator; or
 41 (3) is involved only in extensions of credit relating to time share
 42 plans (as defined in 11 U.S.C. 101(53D)).

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1 (h) As used in this chapter, "mortgage loan originator license"
 2 means a license issued by the commissioner authorizing an individual
 3 to act as a mortgage loan originator on behalf of a loan broker licensee.

4 (i) As used in this chapter, "person" means an individual, a
 5 partnership, a trust, a corporation, a limited liability company, a limited
 6 liability partnership, a sole proprietorship, a joint venture, a joint stock
 7 company, or another group or entity, however organized.

8 (j) As used in this chapter, "ultimate equitable owner" means a
 9 person who, directly or indirectly, owns or controls ten percent (10%)
 10 or more of the equity interest in a loan broker licensed or required to be
 11 licensed under this chapter, regardless of whether the person owns or
 12 controls the equity interest through one (1) or more other persons or
 13 one (1) or more proxies, powers of attorney, or variances.

14 (k) As used in this chapter, "principal manager" means an individual
 15 who:

16 (1) has at least three (3) years of experience:

17 (A) as a mortgage loan originator; or

18 (B) in financial services;

19 that is acceptable to the commissioner; and

20 (2) is principally responsible for the supervision and management
 21 of the employees and business affairs of a loan broker licensee.

22 (l) As used in this chapter, "principal manager license" means a
 23 license issued by the commissioner authorizing an individual to act as:

24 (1) a principal manager; and

25 (2) a mortgage loan originator;

26 on behalf of a loan broker licensee.

27 (m) As used in this chapter, "bona fide third party fee", with respect
 28 to a residential mortgage loan, includes any of the following:

29 (1) Fees for real estate appraisals. However, if the residential
 30 mortgage loan is governed by Title XI of the Financial Institutions
 31 Reform, Recovery, and Enforcement Act (12 U.S.C. 3331 through
 32 3352), the fee for an appraisal performed in connection with the
 33 loan is not a bona fide third party fee unless the appraisal is
 34 performed by a person that is licensed or certified under
 35 IC 25-34.1-3-8.

36 (2) Fees for title examination, abstract of title, title insurance,
 37 property surveys, or similar purposes.

38 (3) Notary and credit report fees.

39 (4) Fees for the services provided by a loan broker in procuring
 40 possible business for a creditor if the fees are paid by the creditor.

41 (n) As used in this chapter, "branch office" means any fixed physical
 42 location from which a loan broker licensee holds itself out as engaging

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1 in the loan brokerage business.

2 (o) As used in this chapter, "loan processor or underwriter" means
3 an individual who:

4 (1) is employed by a loan broker licensee and acts at the direction
5 of, and subject to the supervision of, the loan broker licensee or
6 a licensed principal manager employed by the loan broker
7 licensee; and

8 (2) performs solely clerical or support duties on behalf of the loan
9 broker licensee, including any of the following activities with
10 respect to a residential mortgage loan application received by the
11 loan broker licensee:

12 (A) The receipt, collection, distribution, and analysis of
13 information commonly used in the processing or underwriting
14 of a residential mortgage loan.

15 (B) Communicating with a borrower or potential borrower to
16 obtain the information necessary for the processing or
17 underwriting of a residential mortgage loan, to the extent that
18 the communication does not include:

19 (i) offering or negotiating loan rates or terms; or

20 (ii) counseling borrowers or potential borrowers about
21 residential mortgage loan rates or terms.

22 (p) As used in this chapter, "real estate brokerage activity" means
23 any activity that involves offering or providing real estate brokerage
24 services to the public, including any of the following:

25 (1) Acting as a real estate broker or salesperson for a buyer, seller,
26 lessor, or lessee of real property.

27 (2) Bringing together parties interested in the sale, lease, or
28 exchange of real property.

29 (3) Negotiating, on behalf of any party, any part of a contract
30 concerning the sale, lease, or exchange of real property, other than
31 in connection with obtaining or providing financing for the
32 transaction.

33 (4) Engaging in any activity for which the person performing the
34 activity is required to be licensed under IC 25-34.1 or the
35 applicable laws of another state.

36 (5) Offering to engage in any activity, or to act in any capacity
37 with respect to any activity, described in subdivisions (1) through
38 (4).

39 (q) As used in this chapter, "registered mortgage loan originator"
40 means a mortgage loan originator who:

41 (1) is an employee of:

42 (A) a depository institution;

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- 1 (B) a subsidiary that is:
 2 (i) owned and controlled by a depository institution; and
 3 (ii) regulated by a federal financial institution regulatory
 4 agency (as defined in 12 U.S.C. 3350(6)); or
 5 (C) an institution regulated by the Farm Credit Administration;
 6 and
 7 (2) is registered with and maintains a unique identifier with the
 8 Nationwide Mortgage Licensing System and Registry.
- 9 (r) As used in this chapter, "residential mortgage loan" means a loan
 10 that is secured by a mortgage, deed of trust, or other consensual
 11 security interest on real estate in Indiana on which there is located or
 12 intended to be constructed a dwelling (as defined in the federal Truth
 13 in Lending Act (15 U.S.C. 1602(v)) that is or will be used primarily for
 14 personal, family, or household purposes.
- 15 (s) As used in this chapter, "personal information" includes any of
 16 the following:
 17 (1) An individual's first and last names or first initial and last
 18 name.
 19 (2) Any of the following data elements:
 20 (A) A Social Security number.
 21 (B) A driver's license number.
 22 (C) A state identification card number.
 23 (D) A credit card number.
 24 (E) A financial account number or debit card number in
 25 combination with a security code, password, or access code
 26 that would permit access to the person's account.
- 27 (3) With respect to an individual, any of the following:
 28 (A) Address.
 29 (B) Telephone number.
 30 (C) Information concerning the individual's:
 31 (i) income or other compensation;
 32 (ii) credit history;
 33 (iii) credit score;
 34 (iv) assets;
 35 (v) liabilities; or
 36 (vi) employment history.
- 37 (t) As used in this chapter, personal information is "encrypted" if the
 38 personal information:
 39 (1) has been transformed through the use of an algorithmic
 40 process into a form in which there is a low probability of
 41 assigning meaning without use of a confidential process or key;
 42 or

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- 1 (2) is secured by another method that renders the personal
 2 information unreadable or unusable.
- 3 (u) As used in this chapter, personal information is "redacted" if the
 4 personal information has been altered or truncated so that not more
 5 than the last four (4) digits of:
 6 (1) a Social Security number;
 7 (2) a driver's license number;
 8 (3) a state identification number; or
 9 (4) an account number;
 10 are accessible as part of the personal information.
- 11 (v) As used in this chapter, "depository institution" has the meaning
 12 set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and
 13 includes any credit union.
- 14 (w) As used in this chapter, "state licensed mortgage loan
 15 originator" means any individual who:
 16 (1) is a mortgage loan originator;
 17 (2) is not an employee of:
 18 (A) a depository institution;
 19 (B) a subsidiary that is:
 20 (i) owned and controlled by a depository institution; and
 21 (ii) regulated by a federal financial institution regulatory
 22 agency (as defined in 12 U.S.C. 3350(6)); or
 23 (C) an institution regulated by the Farm Credit Administration;
 24 (3) is licensed by a state or by the Secretary of the United States
 25 Department of Housing and Urban Development under Section
 26 1508 of the S.A.F.E. Mortgage Licensing Act of 2008 (Title V of
 27 P.L.110-289); and
 28 (4) is registered as a mortgage loan originator with, and maintains
 29 a unique identifier through, the Nationwide Mortgage Licensing
 30 System and Registry.
- 31 (x) As used in this chapter, "unique identifier" means a number or
 32 other identifier that:
 33 (1) permanently identifies a mortgage loan originator; and
 34 (2) is assigned by protocols established by the Nationwide
 35 Mortgage Licensing System and Registry and the federal financial
 36 institution regulatory agencies to facilitate:
 37 (A) the electronic tracking of mortgage loan originators; and
 38 (B) the uniform identification of, and public access to, the
 39 employment history of and the publicly adjudicated
 40 disciplinary and enforcement actions against mortgage loan
 41 originators.
- 42 SECTION 3. IC 25-20.2-1-1, AS AMENDED BY P.L.2-2008,

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1 SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2012]: Sec. 1. (a) This article applies to an individual who
3 conducts home inspections for compensation.

4 (b) This article does not apply to the following:

5 (1) An individual who is acting within the scope of the
6 individual's employment as:

7 (A) a code enforcement official for the state or a political
8 subdivision of the state; or

9 (B) a representative of a state or local housing agency or
10 authority acting under the authority of the United States
11 Department of Housing and Urban Development.

12 (2) An individual who is:

13 (A) either:

14 (i) registered as an architect under IC 25-4;

15 (ii) registered as a professional engineer under IC 25-31; or

16 (iii) licensed as a plumbing contractor or journeyman
17 plumber under IC 25-28.5; and

18 (B) acting within the scope of the individual's registration or
19 license.

20 (3) An individual who is licensed under IC 25-34.1 as a real estate
21 broker ~~broker-salesperson, or salesperson~~ and is acting within the
22 scope of the individual's license.

23 (4) An individual who is licensed or certified under IC 25-34.1 as
24 a real estate appraiser and is acting within the scope of the
25 individual's license or certificate.

26 (5) An individual who holds a certificate of authority under
27 IC 27-1-27-2 as a public adjuster and is acting within the scope of
28 the individual's certificate.

29 (6) An individual who holds a permit, certificate, or license to:

30 (A) use and apply pesticides; or

31 (B) make diagnostic inspections and reports for wood
32 destroying pests;

33 under IC 15-16-5 and is acting within the scope of the individual's
34 certificate or license.

35 (7) An individual who holds a license from a political subdivision
36 as a tradesperson or home builder and is acting within the scope
37 of the individual's license.

38 SECTION 4. IC 25-20.2-3-2 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) The board is
40 composed of seven (7) members appointed by the governor as follows:

41 (1) Four (4) members, each of whom:

42 (A) is licensed in Indiana as a home inspector; and

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- 1 (B) has been actively engaged in performing home inspections
- 2 in Indiana for at least five (5) years immediately before the
- 3 member's appointment to the board.
- 4 (2) One (1) member who:
- 5 (A) is a home builder; and
- 6 (B) has been actively engaged in home building in Indiana for
- 7 at least five (5) years immediately before the member's
- 8 appointment to the board.
- 9 (3) One (1) member who:
- 10 (A) is a ~~licensed real estate salesperson under IC 25-34.1-3-3.1~~
- 11 ~~or a licensed real estate broker under IC 25-34.1-3-4.1;~~ and
- 12 (B) has been actively engaged in selling, trading, exchanging,
- 13 optioning, leasing, renting, managing, listing, or appraising
- 14 residential real estate in Indiana for at least five (5) years
- 15 immediately before the member's appointment to the board.
- 16 (4) One (1) member who represents the public at large and is not
- 17 associated with the home inspection, home building, or real estate
- 18 business other than as a consumer.
- 19 (b) The members of the board must be residents of Indiana.
- 20 SECTION 5. IC 25-34.1-1-1 IS AMENDED TO READ AS
- 21 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. This article shall be
- 22 known as the "Real Estate Broker ~~and Salesperson~~ Licensing Act."
- 23 SECTION 6. IC 25-34.1-1-2, AS AMENDED BY P.L.1-2006,
- 24 SECTION 479, IS AMENDED TO READ AS FOLLOWS
- 25 [EFFECTIVE JULY 1, 2012]: Sec. 2. As used in this article:
- 26 (1) "Person" means an individual, a partnership, a corporation, or
- 27 a limited liability company.
- 28 (2) "Commission" means the Indiana real estate commission.
- 29 (3) "Real estate" means any right, title, or interest in real property.
- 30 (4) "Broker" means a person who, for consideration, sells, buys,
- 31 trades, exchanges, options, leases, rents, manages, lists, or
- 32 appraises real estate or negotiates or offers to perform any of
- 33 those acts.
- 34 (5) ~~"Salesperson" means an individual, other than a broker, who,~~
- 35 ~~for consideration and in association with and under the auspices~~
- 36 ~~of a broker, sells, buys, trades, exchanges, options, leases, rents,~~
- 37 ~~manages, or lists real estate or negotiates or offers to perform any~~
- 38 ~~of those acts:~~
- 39 (6) ~~"Broker-salesperson" means an individual broker who is~~
- 40 ~~acting in association with and under the auspices of another~~
- 41 ~~broker.~~
- 42 (7) "Principal broker" means a broker who is not acting as a

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1 ~~broker-salesperson.~~
2 ~~(8)~~ (5) "License" means a broker or salesperson license issued
3 under this article and which is not expired, suspended, or revoked.
4 ~~(9)~~ (6) "Licensee" means a person who holds a license issued
5 under this article. The term does not include a person who holds
6 a real estate appraiser license or certificate issued under the real
7 estate appraiser licensure and certification program established
8 under IC 25-34.1-3-8.
9 ~~(10)~~ (7) "Course approval" means approval of a broker or
10 salesperson course granted under this article which is not expired,
11 suspended, or revoked.
12 ~~(11)~~ (8) "Licensing agency" means the Indiana professional
13 licensing agency established by IC 25-1-5-3.
14 ~~(12)~~ (9) "Board" refers to the real estate appraiser licensure and
15 certification board established under IC 25-34.1-8-1.
16 ~~(13)~~ (10) "Commercial real estate" means a parcel of real estate
17 other than real estate containing one (1) to four (4) residential
18 units. This term does not include single family residential units
19 such as:
20 (A) condominiums;
21 (B) townhouses;
22 (C) manufactured homes; or
23 (D) homes in a subdivision;
24 when sold, leased, or otherwise conveyed on a unit-by-unit basis,
25 even if those units are part of a larger building or parcel of real
26 estate containing more than four (4) residential units.
27 ~~(14)~~ (11) "Out-of-state commercial broker" includes a person, a
28 partnership, an association, a limited liability company, a limited
29 liability partnership, or a corporation that is licensed to do
30 business as a broker in a jurisdiction other than Indiana.
31 ~~(15)~~ (12) "Out-of-state commercial salesperson" includes a person
32 affiliated with an out-of-state commercial broker who is not
33 licensed as a salesperson under this article.
34 (13) "Managing broker" refers to a broker licensed under
35 IC 25-34.1-9-4.2.
36 SECTION 7. IC 25-34.1-1-4 IS ADDED TO THE INDIANA CODE
37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
38 1, 2012]: **Sec. 4. Beginning July 1, 2014, licenses issued under this
39 article are for a term of three (3) years.**
40 SECTION 8. IC 25-34.1-2-5, AS AMENDED BY P.L.177-2009,
41 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2012]: Sec. 5. The commission may:

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- 1 (1) administer and enforce the provisions of this article;
- 2 (2) adopt rules in accordance with IC 4-22-2 and prescribe forms
- 3 for licenses, applications, ~~principal broker certifications~~, and
- 4 other documents which are necessary or appropriate for the
- 5 administration and enforcement of this article;
- 6 (3) issue, deny, suspend, and revoke licenses in accordance with
- 7 this article, which licenses shall remain the property of the
- 8 commission;
- 9 (4) subject to IC 25-1-7, investigate complaints concerning
- 10 licensees or persons the commission has reason to believe should
- 11 be licensees, including complaints respecting failure to comply
- 12 with this article or the rules, and, when appropriate, take action
- 13 pursuant to IC 25-34.1-6;
- 14 (5) bring actions, in the name of the state of Indiana, in an
- 15 appropriate circuit court in order to enforce compliance with this
- 16 article or the rules;
- 17 (6) inspect the records of a licensee in accordance with rules and
- 18 standards prescribed by the commission;
- 19 (7) conduct, or designate a member or other representative to
- 20 conduct, public hearings on any matter for which a hearing is
- 21 required under this article and exercise all powers granted in
- 22 IC 4-21.5;
- 23 (8) adopt a seal containing the words "Indiana Real Estate
- 24 Commission" and, through its executive director, certify copies
- 25 and authenticate all acts of the commission;
- 26 (9) utilize counsel, consultants, and other persons who are
- 27 necessary or appropriate to administer and enforce this article and
- 28 the rules;
- 29 (10) enter into contracts and authorize expenditures that are
- 30 necessary or appropriate, subject to IC 25-1-6, to administer and
- 31 enforce this article and the rules;
- 32 (11) maintain the commission's office, files, records, and property
- 33 in the city of Indianapolis;
- 34 (12) grant, deny, suspend, and revoke approval of examinations
- 35 and courses of study as provided in IC 25-34.1-5;
- 36 (13) provide for the filing and approval of surety bonds which are
- 37 required by IC 25-34.1-5;
- 38 (14) adopt rules in accordance with IC 4-22-2 necessary for the
- 39 administration of the investigative fund established under
- 40 IC 25-34.1-8-7.5;
- 41 (15) annually adopt emergency rules under IC 4-22-2-37.1 to
- 42 adopt any or all parts of Uniform Standards of Professional

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1 Appraisal Practice (USPAP), including the comments to the
 2 USPAP, as published by the Appraisal Standards Board of the
 3 Appraisal Foundation, under the authority of Title XI of the
 4 Financial Institutions Reform, Recovery, and Enforcement Act
 5 (12 U.S.C. 3331-3351); and
 6 (16) exercise other specific powers conferred upon the
 7 commission by this article.

8 SECTION 9. IC 25-34.1-2-7, AS ADDED BY P.L.57-2007,
 9 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2012]: Sec. 7. (a) Except as provided in subsection (b), all
 11 funds collected under this article shall, at the end of each month, be
 12 reported to the auditor of state and deposited with the treasurer of state
 13 for deposit in the general fund. All expenses incurred in the
 14 administration of this article shall be paid from the general fund.

15 (b) The commission shall establish a fee of not more than twenty
 16 dollars (\$20) for real estate brokers and salespersons to provide funds
 17 for the purpose of administering and enforcing the provisions of this
 18 article, including investigating and taking enforcement action against
 19 real estate fraud and real estate appraisal fraud. All funds collected
 20 under this subsection shall be deposited in the investigative fund
 21 established by IC 25-34.1-8-7.5.

22 SECTION 10. IC 25-34.1-3-2 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) Except as
 24 provided in:

- 25 (1) subsection (b);
 - 26 (2) section 8(i) of this chapter; and
 - 27 (3) section 11 of this chapter;
- 28 no person shall, for consideration, sell, buy, trade, exchange, option,
 29 lease, rent, manage, list, or appraise real estate or negotiate or offer to
 30 perform any of those acts in Indiana or with respect to real estate
 31 situated in Indiana, without a license.

- 32 (b) This article does not apply to:
- 33 (1) acts of an attorney which constitute the practice of law;
 - 34 (2) performance by a public official of acts authorized by law;
 - 35 (3) acts of a receiver, executor, administrator, commissioner,
 36 trustee, or guardian, respecting real estate owned or leased by the
 37 person represented, performed pursuant to court order or a will;
 - 38 (4) rental, for periods of less than thirty (30) days, of rooms,
 39 lodging, or other accommodations, by any commercial hotel,
 40 motel, tourist facility, or similar establishment which regularly
 41 furnishes such accommodations for consideration;
 - 42 (5) rental of residential apartment units by an individual

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- 1 employed or supervised by a licensed broker;
- 2 (6) rental of apartment units which are owned and managed by a
- 3 person whose only activities regulated by this article are in
- 4 relation to a maximum of twelve (12) apartment units which are
- 5 located on a single parcel of real estate or on contiguous parcels
- 6 of real estate;
- 7 (7) referral of real estate business by a broker ~~salesperson~~, or
- 8 referral company which is licensed under the laws of another
- 9 state, to or from brokers and salespersons licensed by this state;
- 10 (8) acts performed by a person in relation to real estate owned by
- 11 that person unless that person is licensed under this article, in
- 12 which case the article does apply to him;
- 13 (9) acts performed by a regular, full-time, salaried employee of a
- 14 person in relation to real estate owned or leased by that person
- 15 unless the employee is licensed under this article, in which case
- 16 the article does apply to him;
- 17 (10) conduct of a sale at public auction by a licensed auctioneer
- 18 pursuant to IC 25-6.1;
- 19 (11) sale, lease, or other transfer of interests in cemetery lots; and
- 20 (12) acts of a broker, ~~or salesperson~~, who is licensed under the
- 21 laws of another state, which are performed pursuant to, and under
- 22 restrictions provided by, written permission that is granted by the
- 23 commission in its sole discretion, except that such a person shall
- 24 comply with the requirements of section 5(c) of this chapter.
- 25 SECTION 11. IC 25-34.1-3-3.1 IS REPEALED [EFFECTIVE JULY
- 26 1, 2012]. Sec. 3-1. (a) ~~To obtain a salesperson license, an individual~~
- 27 ~~must:~~
- 28 ~~(1) be at least eighteen (18) years of age before applying for a~~
- 29 ~~license and must not have a conviction for:~~
- 30 ~~(A) an act that would constitute a ground for disciplinary~~
- 31 ~~sanction under IC 25-1-11;~~
- 32 ~~(B) a crime that has a direct bearing on the individual's ability~~
- 33 ~~to practice competently; or~~
- 34 ~~(C) a crime that indicates the individual has the propensity to~~
- 35 ~~endanger the public;~~
- 36 ~~(2) have successfully completed courses in the principles,~~
- 37 ~~practices, and law of real estate, totaling eight (8) semester credit~~
- 38 ~~hours, or their equivalent, as a student at an accredited college or~~
- 39 ~~university or have successfully completed an approved~~
- 40 ~~salesperson course as provided in IC 25-34.1-5-5(a);~~
- 41 ~~(3) apply for a license by submitting the fee prescribed by the~~
- 42 ~~commission and an application containing the name, address, and~~

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1 age of the applicant; the name under which the applicant intends
 2 to conduct business; the principal broker's address where the
 3 business is to be conducted; proof of compliance with subdivision
 4 (2); and any other information the commission requires;
 5 (4) pass a written examination prepared and administered by the
 6 commission or its duly appointed agent; and
 7 (5) submit not more than one (1) year after passing the written
 8 examination under subdivision (4) a sworn certification of a
 9 principal broker that the principal broker intends to associate with
 10 the applicant and maintain that association until notice of
 11 termination of the association is given to the commission.

12 (b) Upon the applicant's compliance with the requirements of
 13 subsection (a), the commission shall:

14 (1) issue a wall certificate in the name of the salesperson to the
 15 principal broker who certified the applicant's association with the
 16 principal broker; and

17 (2) issue to the salesperson a pocket identification card which
 18 certifies that the salesperson is licensed and indicates the
 19 expiration date of the license and the name of the principal
 20 broker.

21 (c) A salesperson shall:

22 (1) act under the auspices of the principal broker responsible for
 23 that salesperson's conduct under this article;

24 (2) be associated with only one (1) principal broker;

25 (3) maintain evidence of licensure in the office, branch office, or
 26 sales outlet of the principal broker;

27 (4) advertise only in the name of the principal broker, with the
 28 principal broker's name in letters of advertising larger than that of
 29 the salesperson's name; and

30 (5) not maintain any real estate office apart from that office
 31 provided by the principal broker.

32 (d) Upon termination of a salesperson's association with a principal
 33 broker, the salesperson's license shall be returned to the commission
 34 within five (5) business days. The commission shall reissue the license
 35 to any principal broker whose certification, as prescribed in subsection
 36 (a)(5), is filed with the commission, and the commission shall issue a
 37 new identification card to the salesperson reflecting that change.

38 (e) Unless a license is renewed, a salesperson license expires on a
 39 date specified by the licensing agency under IC 25-1-6-4 and expires
 40 biennially after the initial expiration date. An applicant for renewal
 41 shall submit an application in the manner prescribed by the board and
 42 pay the renewal fee established by the board under IC 25-1-8-2 on or

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1 before the renewal date specified by the licensing agency. If the holder
 2 of a license does not renew the license by the date specified by the
 3 licensing agency, the license expires and becomes invalid without the
 4 board taking any action.

5 (f) If the holder of a license under this section fails to renew the
 6 license on or before the date specified by the licensing agency; the
 7 license may be reinstated by the commission if the holder of the
 8 license, not later than three (3) years after the expiration of the license,
 9 meets the requirements of IC 25-1-8-6(c).

10 (g) If a license under this section has been expired for more than
 11 three (3) years; the license may be reinstated by the commission if the
 12 holder meets the requirements for reinstatement under IC 25-1-8-6(d).

13 (h) A salesperson license may be issued to an individual who is not
 14 yet associated with a principal broker but who otherwise meets the
 15 requirements of subsection (a). A license issued under this subsection
 16 shall be held by the commission in an unassigned status until the date
 17 the individual submits the certification of a principal broker required
 18 by subsection (a)(5). If the individual does not submit the application
 19 for licensure within one (1) year after passing the commission
 20 examination; the commission shall void the application and may not
 21 issue a license to that applicant unless the applicant again complies
 22 with the requirements of subsection (a)(4) through (a)(5).

23 (i) If an individual holding a salesperson license is not associated
 24 with a principal broker for two (2) successive renewal periods; the
 25 commission shall notify the individual in writing that the individual's
 26 license will become void if the individual does not associate with a
 27 principal broker within thirty (30) days from the date the notification
 28 is mailed. A void license may not be renewed.

29 SECTION 12. IC 25-34.1-3-3.2 IS ADDED TO THE INDIANA
 30 CODE AS A NEW SECTION TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2012]: **Sec. 3.2. (a) From July 1, 2012,**
 32 **through June 30, 2014, an individual holding a license as a**
 33 **salesperson under IC 25-34.1-3-3.1, before its repeal, may perform**
 34 **the functions the licensee performed as a salesperson.**

35 **(b) This section expires July 1, 2014.**

36 SECTION 13. IC 25-34.1-3-4.1, AS AMENDED BY P.L.105-2008,
 37 SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2012]: Sec. 4.1. (a) To obtain a broker license, an individual
 39 must:

40 (1) be at least eighteen (18) years of age before applying for a
 41 license and must not have a conviction for:

42 (A) an act that would constitute a ground for disciplinary

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- 1 sanction under IC 25-1-11;
- 2 (B) a crime that has a direct bearing on the individual's ability
- 3 to practice competently; or
- 4 (C) a crime that indicates the individual has the propensity to
- 5 endanger the public;
- 6 ~~(2) have satisfied section 3.1(a)(2) of this chapter and have had~~
- 7 ~~continuous active experience for one (1) year immediately~~
- 8 ~~preceding the application as a licensed salesperson in Indiana.~~
- 9 ~~However, this one (1) year experience requirement may be~~
- 10 ~~waived by the commission upon a finding of equivalent~~
- 11 ~~experience;~~
- 12 **(2) have a high school diploma or a general educational**
- 13 **development (GED) diploma under IC 20-20-6 (before its**
- 14 **repeal) or IC 22-4.1-18;**
- 15 (3) have successfully completed an approved broker course of
- 16 study as prescribed in ~~IC 25-34.1-5-5(b);~~ **IC 25-34.1-5-5;**
- 17 (4) apply for a license by submitting the application fee
- 18 prescribed by the commission and an application specifying the
- 19 name, address, and age of the applicant, the name under which
- 20 the applicant intends to conduct business, the address where the
- 21 business is to be conducted, proof of compliance with
- 22 subdivisions (2) and (3), and any other information the
- 23 commission requires;
- 24 (5) pass a written examination prepared and administered by the
- 25 commission or its duly appointed agent; and
- 26 (6) within one (1) year after passing the commission examination,
- 27 submit the license fee established by the commission under
- 28 IC 25-1-8-2. If an individual applicant fails to file a timely license
- 29 fee, the commission shall void the application and may not issue
- 30 a license to that applicant unless that applicant again complies
- 31 with the requirements of subdivisions (4) and (5) and this
- 32 subdivision.
- 33 (b) To obtain a broker license, a partnership must:
- 34 (1) have as partners only individuals who are licensed brokers;
- 35 (2) have at least one (1) partner who:
- 36 (A) is a resident of Indiana; or
- 37 (B) is a principal broker under IC 25-34.1-4-3(b);
- 38 (3) cause each employee of the partnership who acts as a broker
- 39 or salesperson to be licensed; and
- 40 (4) submit the license fee established by the commission under
- 41 IC 25-1-8-2 and an application setting forth the name and
- 42 residence address of each partner and the information prescribed

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- 1 in subsection (a)(4).
 2 (c) To obtain a broker license, a corporation must:
 3 (1) have a licensed broker:
 4 (A) residing in Indiana who is either an officer of the
 5 corporation or, if no officer resides in Indiana, the highest
 6 ranking corporate employee in Indiana with authority to bind
 7 the corporation in real estate transactions; or
 8 (B) who is a principal broker under IC 25-34.1-4-3(b);
 9 (2) cause each employee of the corporation who acts as a broker
 10 or salesperson to be licensed; and
 11 (3) submit the license fee established by the commission under
 12 IC 25-1-8-2, an application setting forth the name and residence
 13 address of each officer and the information prescribed in
 14 subsection (a)(4), a copy of the certificate of incorporation, and a
 15 certificate of good standing of the corporation issued by the
 16 secretary of state.
 17 (d) To obtain a broker license, a limited liability company must:
 18 (1) if a member-managed limited liability company:
 19 (A) have as members only individuals who are licensed
 20 brokers; and
 21 (B) have at least one (1) member who is:
 22 (i) a resident of Indiana; or
 23 (ii) a principal broker under IC 25-34.1-4-3(b);
 24 (2) if a manager-managed limited liability company, have a
 25 licensed broker:
 26 (A) residing in Indiana who is either a manager of the
 27 company or, if no manager resides in Indiana, the highest
 28 ranking company officer or employee in Indiana with authority
 29 to bind the company in real estate transactions; or
 30 (B) who is a principal broker under IC 25-34.1-4-3(b);
 31 (3) cause each employee of the limited liability company who acts
 32 as a broker or salesperson to be licensed; and
 33 (4) submit the license fee established by the commission under
 34 IC 25-1-8-2 and an application setting forth the information
 35 prescribed in subsection (a)(4), together with:
 36 (A) if a member-managed company, the name and residence
 37 address of each member; or
 38 (B) if a manager-managed company, the name and residence
 39 address of each manager, or of each officer if the company has
 40 officers.
 41 (e) Licenses granted to partnerships, corporations, and limited
 42 liability companies are issued, expire, are renewed, and are effective on

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1 the same terms as licenses granted to individual brokers, except as
 2 provided in subsection (h), and except that expiration or revocation of
 3 the license of:

4 (1) any partner in a partnership or all individuals in a corporation
 5 satisfying subsection (c)(1); or

6 (2) a member in a member-managed limited liability company or
 7 all individuals in a manager-managed limited liability company
 8 satisfying subsection (d)(2);

9 terminates the license of that partnership, corporation, or limited
 10 liability company.

11 (f) Upon the applicant's compliance with the requirements of
 12 subsection (a), (b), or (c), the commission shall issue the applicant a
 13 broker license and an identification card which certifies the issuance
 14 of the license and indicates the expiration date of the license. The
 15 license shall be displayed at the broker's place of business. **For at least
 16 two (2) years after the issuance of a license, the license must be
 17 assigned to a managing broker. During the first two (2) years after
 18 the license is issued, an individual with a broker's license must take
 19 and pass thirty (30) hours of post-licensing education focused on
 20 the practical matters of real estate transactions instead of the
 21 continuing education requirements of IC 25-34.1-9.**

22 (g) Unless the license is renewed, a broker license expires, for
 23 individuals, on a date specified by the licensing agency under
 24 IC 25-1-6-4 and expires ~~biennially~~ **three (3) years** after the initial
 25 expiration date. An applicant for renewal shall submit an application
 26 in the manner prescribed by the board and pay the renewal fee
 27 established by the commission under IC 25-1-8-2 on or before the
 28 renewal date specified by the licensing agency. If the holder of a
 29 license does not renew the license by the date specified by the licensing
 30 agency, the license expires and becomes invalid without the board
 31 taking any action.

32 (h) If the holder of a license under this section fails to renew the
 33 license on or before the date specified by the licensing agency, the
 34 license may be reinstated by the commission if the holder of the
 35 license, not later than three (3) years after the expiration of the license,
 36 meets the requirements of IC 25-1-8-6(c).

37 (i) If a license under this section has been expired for more than
 38 three (3) years, the license may be reinstated by the commission if the
 39 holder meets the requirements for reinstatement under IC 25-1-8-6(d).

40 (j) A partnership, corporation, or limited liability company may not
 41 be a broker-salesperson except as authorized in IC 23-1.5. An
 42 individual broker who associates as a broker-salesperson with a

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1 principal broker shall immediately notify the commission of the name
2 and business address of the principal broker and of any changes of
3 principal broker that may occur. The commission shall then change the
4 address of the broker-salesperson on its records to that of the principal
5 broker.

6 **(k) On July 1, 2014, an individual who:**

7 **(1) holds a salesperson license on June 30, 2012; and**

8 **(2) meets the broker licensing requirements of this section;**
9 **is a licensed broker.**

10 SECTION 14. IC 25-34.1-3-5 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) A resident of
12 another state, meeting the requirements of this chapter, may be
13 licensed.

14 (b) A nonresident ~~salesperson~~ or broker shall file with the
15 commission a written consent that any action arising out of the conduct
16 of the licensee's business in Indiana may be commenced in any county
17 of this state in which the cause of action accrues. The consent shall
18 provide that service of process may be made upon the commission, as
19 agent for the nonresident licensee, and that service in accordance with
20 the Indiana Rules of Trial Procedure subjects the licensee to the
21 jurisdiction of the courts in that county.

22 (c) The requirements of this section may be waived for individuals
23 of or moving from other jurisdictions if the following requirements are
24 met:

25 (1) The jurisdiction grants the same privilege to the licensees of
26 this state.

27 (2) The individual is licensed in that jurisdiction.

28 (3) The licensing requirements of that jurisdiction are
29 substantially similar to the requirements of this chapter.

30 (4) The applicant states that the applicant has studied, is familiar
31 with, and will abide by the statutes and rules of this state.

32 SECTION 15. IC 25-34.1-3-6 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. Each licensee and
34 each licensee's ~~principal~~ **managing** broker, if any, shall notify the
35 commission immediately of any change of name, name under which the
36 licensee transacts business, business address, or association.

37 SECTION 16. IC 25-34.1-3-10, AS AMENDED BY P.L.157-2006,
38 SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2012]: Sec. 10. (a) A ~~salesperson licensed under section 3.1~~
40 ~~of this chapter~~ or a broker licensed under section 4.1 of this chapter
41 may apply for and receive an inactive license from the commission.

42 (b) An individual may not be granted an inactive license without the

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1 approval of the commission if a disciplinary or suspension hearing is
2 pending against the individual.

3 (c) An individual with an inactive license:

4 (1) may not perform an act that requires a ~~salesperson or broker's~~
5 license;

6 (2) is not required to fulfill the continuing education requirements
7 under IC 25-34.1-9;

8 (3) is required to pay any fees that a licensee is required to pay;
9 and

10 (4) must fulfill the requirements under IC 25-34.1-9-11 for the
11 current licensing period before applying for reactivation of the
12 individual's license.

13 (d) Notwithstanding IC 25-34.1-9-11(2), the commission may adopt
14 rules under IC 4-22-2 establishing continuing education requirements
15 for individuals who have reactivated a license with less than twelve
16 (12) months remaining in the licensing period.

17 SECTION 17. IC 25-34.1-3-11 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. (a) An out-of-state
19 commercial broker, for a fee, commission, or other valuable
20 consideration, or in expectation, or upon the promise of receiving or
21 collecting a fee, commission, or other valuable consideration, may
22 perform acts with respect to commercial real estate that require a
23 license under this article without a license under this article, if the
24 out-of-state commercial broker does all of the following:

25 (1) Works in cooperation with a broker who holds a valid license
26 issued under this article.

27 (2) Enters into a written agreement with the broker described in
28 subdivision (1) that includes the terms of cooperation and
29 compensation and a statement that the out-of-state commercial
30 broker and the broker's agents will comply with the laws of this
31 state.

32 (3) Furnishes the broker described in subdivision (1) with a copy
33 of the out-of-state commercial broker's current certificate of good
34 standing or other proof of a license in good standing from a
35 jurisdiction where the out-of-state commercial broker maintains
36 a valid real estate license.

37 (4) Files an irrevocable written consent with the commission that
38 legal actions arising out of the conduct of the out-of-state
39 commercial broker or the broker's agents may be commenced
40 against the out-of-state commercial broker in a court with
41 jurisdiction in a county in Indiana in which the cause of action
42 accrues.

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- 1 (5) Advertises in compliance with state law and includes the
- 2 name of the broker described in subdivision (1) in all advertising.
- 3 (6) Deposits all escrow funds, security deposits, and other money
- 4 received by either the out-of-state commercial broker or the
- 5 broker described in subdivision (1) in a trust account maintained
- 6 by the broker described in subdivision (1).
- 7 (7) Deposits all documentation required by this section and
- 8 records and documents related to the transaction with the broker
- 9 described in subdivision (1).
- 10 (b) The broker described in subsection (a)(1) shall retain the
- 11 documentation that is provided by the out-of-state commercial broker
- 12 as required under this section, and the records and documents related
- 13 to a transaction, for at least five (5) years.
- 14 (c) An out-of-state commercial salesperson may perform acts with
- 15 respect to commercial real estate that require a ~~salesperson~~ **broker** to
- 16 be licensed under this article without a license under this article if the
- 17 out-of-state commercial salesperson meets all of the following
- 18 requirements:
- 19 (1) The out-of-state commercial salesperson:
- 20 (A) is licensed with and works under the direct supervision of
- 21 the out-of-state commercial broker;
- 22 (B) provides the broker described in subsection (a)(1) with a
- 23 copy of the out-of-state commercial salesperson's current
- 24 certificate of good standing or other proof of a license in good
- 25 standing from the jurisdiction where the out-of-state
- 26 commercial salesperson maintains a valid real estate license in
- 27 connection with the out-of-state commercial broker; and
- 28 (C) collects money, including:
- 29 (i) commissions;
- 30 (ii) deposits;
- 31 (iii) payments;
- 32 (iv) rentals; or
- 33 (v) escrow funds;
- 34 only in the name of and with the consent of the out-of-state
- 35 commercial broker under whom the out-of-state commercial
- 36 salesperson is licensed.
- 37 (2) The out-of-state commercial broker described in subdivision
- 38 (1)(A) meets all of the requirements of subsection (a).
- 39 (d) A person licensed in a jurisdiction where there is not a legal
- 40 distinction between a real estate broker license and a real estate
- 41 salesperson license must meet the requirements of subsection (a)
- 42 before engaging in an act that requires a license under this article.

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1 (e) An out-of-state commercial broker or salesperson acting under
2 this section shall file a written consent as provided in section 5(b) of
3 this chapter.

4 SECTION 18. IC 25-34.1-4-1 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. A ~~principal~~
6 **managing** broker is responsible under this article for the actions of any
7 associated ~~salesperson and broker-salesperson:~~ **broker**. Any ~~principal~~
8 **managing** broker who maintains two (2) or more separate offices for
9 associated licensees shall notify the commission of the name and
10 address of the broker who manages each office.

11 SECTION 19. IC 25-34.1-4-2 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. Except as provided
13 in IC 23-1.5, a partnership broker, corporate broker, or limited liability
14 company broker may act only as a ~~principal~~ **managing** broker and shall
15 designate to the commission a licensed individual broker, who is a
16 partner or a corporate representative satisfying IC 25-34.1-3-4.1(c)(1)
17 or a member-managed limited liability company member or a
18 manager-managed limited liability company representative satisfying
19 IC 25-34.1-3-4.1(d)(2), to be primarily responsible to the commission
20 for its actions.

21 SECTION 20. IC 25-34.1-4-3 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) Except as
23 provided in subsection (b), each individual who is a ~~principal~~
24 **managing** broker or is designated by a partnership, corporation, or a
25 limited liability company pursuant to section 2 of this chapter shall be
26 a resident of Indiana.

27 (b) A nonresident:

28 (1) individual broker; or

29 (2) individual designated by a partnership, corporation, or limited
30 liability company under section 2 of this chapter;

31 may be a ~~principal~~ **managing** broker if all the licensees affiliated with
32 the broker, partnership, corporation, or limited liability company are
33 not residents of Indiana.

34 SECTION 21. IC 25-34.1-4-4 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. Notwithstanding
36 IC 23-1.5, the association of a ~~salesperson or~~ broker with a ~~principal~~
37 **managing** broker, as provided by this article, creates an independent
38 contractor relationship unless otherwise specified by a written contract
39 entered into by the ~~principal~~ **managing** broker and the associated
40 ~~salesperson or~~ broker.

41 SECTION 22. IC 25-34.1-4-5, AS AMENDED BY P.L.114-2010,
42 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2012]: Sec. 5. (a) Each ~~principal~~ **managing** broker:

2 (1) shall keep in one (1) or more trust accounts (interest or
3 noninterest bearing) all funds belonging to others that come into
4 the possession of the ~~principal~~ **managing** broker or of any
5 associated ~~salesperson or broker-salesperson;~~ **broker;** and

6 (2) shall clearly identify any account containing those funds as a
7 trust account. The trust accounts shall contain all earnest money
8 deposits, funds held for closing escrows, sale proceeds not yet
9 disbursed, and all other funds belonging to others.

10 (b) The ~~principal~~ **managing** broker shall not use any trust account
11 for the deposit of any personal funds or other business funds and shall
12 keep a detailed record of the funds and any interest accrued in each
13 trust account that identifies the amount of funds held for each
14 beneficiary. Any interest earned shall be held for the beneficiary.

15 (c) Upon the death or termination of a ~~principal~~ **managing** broker
16 or the expiration, revocation, or suspension of the ~~principal~~ **managing**
17 broker's license, the commission shall take custody of each trust
18 account and may appoint a successor trustee to protect and distribute
19 the proceeds of that account.

20 SECTION 23. IC 25-34.1-4-6 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. (a) In the event of
22 the death of an individual ~~principal~~ **managing** broker or the
23 termination of a partnership principal broker by the death of a partner,
24 a ~~salesperson~~ **broker** formerly associated with ~~that principal~~ **the**
25 **managing** broker may continue to carry out business contracted for
26 before the death or termination of the ~~principal~~ **managing** broker, for
27 a maximum period of ninety (90) days after the death or termination.
28 During that period, the ~~salesperson~~ **broker** shall maintain a trust
29 account as provided in section 5 of this chapter. However, until
30 associating with another ~~principal~~ **managing** broker, the ~~salesperson~~
31 **broker** may not undertake any new business.

32 (b) Upon associating with a new ~~principal~~ **managing** broker, the
33 ~~salesperson~~ **broker** may conduct on behalf of the deceased or
34 terminated ~~principal~~ broker only that business which is necessary to
35 complete obligations assumed while associated with ~~that principal~~ **the**
36 **managing** broker. All other acts performed by the salesperson shall be
37 performed in association with the new ~~principal~~ **managing** broker.

38 (c) Each ~~broker-salesperson~~ **broker** formerly associated with the
39 deceased or terminated ~~principal~~ **managing** broker becomes, upon the
40 death or termination of the ~~principal~~ **managing** broker, a ~~principal~~
41 **managing** broker until the broker elects to act as a ~~broker-salesperson~~
42 **broker** for another ~~principal~~ **managing** broker.



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1 (d) This section applies only to matters of licensing and
 2 responsibility under this article and does not affect the transfer of the
 3 deceased ~~principal~~ **managing** broker's property interests as provided
 4 by IC 29 and other laws of succession.

5 SECTION 24. IC 25-34.1-5-1 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. No person shall
 7 conduct, solicit or accept student enrollment for a broker ~~or salesperson~~
 8 course as prescribed in this chapter without approval of the course by
 9 the commission.

10 SECTION 25. IC 25-34.1-5-4 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) To obtain
 12 approval of a broker ~~or salesperson~~ course, a school shall:

- 13 (1) provide the curriculum prescribed in section 5 of this chapter;
- 14 (2) have no more than thirty-five (35) students per instructor per
 15 classroom;
- 16 (3) provide adequate educational facilities and supportive
 17 personnel as is necessary to implement the purpose of this article;
- 18 (4) schedule not more than the maximum number of hours of
 19 instruction established by the commission in any twenty-four (24)
 20 hour period;
- 21 (5) administer two (2) written examinations during the broker
 22 course ~~and three (3) written examinations during the salesperson~~
 23 ~~course~~ which are approved, and passing scores established, by the
 24 commission;
- 25 (6) within ~~fourteen (14)~~ **thirty (30)** days of the end of each
 26 course, submit to the commission the names and addresses of
 27 those students who successfully complete the course;
- 28 (7) maintain records of students who successfully complete and
 29 pass the course of study for a minimum of five (5) years or, in the
 30 event the school should cease operation, the owner shall provide
 31 a custodian acceptable to the commission to keep those records
 32 and provide copies to students at the fee in effect when the school
 33 ceases operation; and
- 34 (8) meet any other standards the commission may establish by
 35 regulation.

36 (b) Any instruction conducted in a broker ~~or salesperson~~ office does
 37 not apply to the minimum hour requirements of section 5 of this
 38 chapter.

39 SECTION 26. IC 25-34.1-5-5 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. ~~(a) The required~~
 41 ~~curriculum for salespersons shall consist of a total of at least forty (40)~~
 42 ~~hours of instruction and shall include the following subjects: Indiana~~

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1 license law and professional standards; law of agency; contracts;
 2 interests in real property; evidence of title; deeds; legal property
 3 descriptions; mathematics; taxes; valuation of real property; financing;
 4 listing contracts and purchase agreements; settlement procedures;
 5 property management; government regulations; and planning and
 6 zoning;

7 (b) The required curriculum for brokers shall consist of a total of at
 8 least ~~twenty-four (24)~~ **ninety (90)** hours of instruction and shall include
 9 the following subjects: **principles, practices**, Indiana license law and
 10 professional standards, law of agency, contracts, financing, settlement
 11 procedures, escrow responsibility, recordkeeping, government
 12 regulations, and appraising.

13 SECTION 27. IC 25-34.1-6-2, AS AMENDED BY P.L.84-2010,
 14 SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2012]: Sec. 2. (a) A person who:

16 (1) ~~performs the acts of a salesperson without a salesperson~~
 17 ~~license;~~

18 (2) **(1)** performs the acts of a broker without a broker license; or

19 (3) **(2)** conducts, or solicits or accepts enrollment of students for,
 20 a course as prescribed in IC 25-34.1-3 without course approval;
 21 commits a Class A infraction. Upon conviction for an offense under
 22 this section, the court shall add to any fine imposed the amount of any
 23 fee or other compensation earned in the commission of the offense.
 24 Each transaction constitutes a separate offense.

25 (b) In all actions for the collection of a fee or other compensation for
 26 performing acts regulated by this article, it must be alleged and proved
 27 that, at the time the cause of action arose, the party seeking relief was
 28 not in violation of this section.

29 (c) Each enforcement procedure established in this section and
 30 IC 25-1-7-14 is supplemental to other enforcement procedures
 31 established in this section.

32 SECTION 28. IC 25-34.1-7-6 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. Any broker ~~or~~
 34 ~~salesperson~~ who is licensed or renews a license under this article after
 35 December 31, 1987, and upon whom personal service cannot be made
 36 with reasonable diligence shall be considered to have appointed the
 37 commission as the licensee's agent for service of process for purposes
 38 of actions filed under section 4 of this chapter for recovery from the
 39 real estate recovery fund. Service of process under this section shall be
 40 made as nearly as practicable in the manner prescribed by the Indiana
 41 Rules of Trial Procedure for service on corporations.

42 SECTION 29. IC 25-34.1-7-10 IS AMENDED TO READ AS



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1 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 10. If the commission
 2 is required to make any payment from the real estate recovery fund in
 3 settlement of a claim or toward the satisfaction of a judgment under
 4 this chapter, the commission shall suspend the judgment debtor's
 5 license and, if the judgment debtor is licensed under ~~IC 25-34.1-3-3.1;~~
 6 **IC 25-34.1-3-4.1** the license of the individual designated broker, under
 7 this article. The licensee is not eligible to be licensed again as ~~either a~~
 8 ~~broker or a salesperson~~ until the licensee has repaid in full the amount
 9 paid from the real estate recovery fund with interest of twelve percent
 10 (12%) per annum.

11 SECTION 30. IC 25-34.1-9-3 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) The council
 13 consists of **five (5) members, three (3) of whom must be selected**
 14 **from members of the Indiana association of realtors, the following**
 15 **members** appointed by the commission.

16 (1) ~~Three (3) members who represent residential real estate sales~~
 17 ~~practitioners:~~

18 (2) ~~Three (3) members who represent other segments and~~
 19 ~~specialties of the real estate industry besides residential real estate~~
 20 ~~sales practitioners:~~

21 (3) ~~One (1) member who represents real estate education:~~

22 (b) The commission shall appoint members from different
 23 geographic areas of Indiana. ~~Six (6) members of the council must be~~
 24 ~~members of Indiana real estate trade organizations:~~

25 SECTION 31. IC 25-34.1-9-4.2 IS ADDED TO THE INDIANA
 26 CODE AS A **NEW SECTION 4.2 TO READ AS FOLLOWS**
 27 **[EFFECTIVE JULY 1, 2012]: (a) To obtain a managing broker**
 28 **license, a broker must:**

- 29 (1) **maintain trust accounts and trust account records;**
 30 (2) **maintain company transaction records;**
 31 (3) **supervise all licensees or brokers whose licenses are placed**
 32 **with the managing broker;**
 33 (4) **facilitate brokerage relationships including cooperating**
 34 **and communication for the benefit of clients;**
 35 (5) **be knowledgeable and fulfill duties of agency and license**
 36 **laws;**
 37 (6) **be aware of and involved with commission requirements;**
 38 (7) **stay current on risk management techniques and legal**
 39 **developments in the real estate business;**
 40 (8) **comply with fiduciary responsibilities of business**
 41 **ownership, including accounting, profit and loss, corporate**
 42 **records, minutes, and taxes; and**



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- 1 **(9) supervise all advertising of the firm and independent**
- 2 **contractors of the firm.**
- 3 **(b) To become a managing broker, an individual must hold a**
- 4 **brokers license issued under this article for at least two (2) years**
- 5 **and take and pass a twenty-four (24) hour broker management**
- 6 **course approved by the commission.**
- 7 **(c) For license renewal, a managing broker must complete**
- 8 **twelve (12) hours of continuing education each year. At least four**
- 9 **(4) hours of the continuing education must be dedicated to the**
- 10 **necessary business and management skills and legal knowledge**
- 11 **needed by a managing broker. The commission shall develop or**
- 12 **approve the continuing education courses for managing brokers.**
- 13 **(d) On July 1, 2012, an a licensee holding a license as a principal**
- 14 **broker is a managing broker.**

15 SECTION 32. IC 25-34.1-9-9 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. **(a)** The council shall
 17 make recommendations to the commission concerning the following:

- 18 (1) Requirements for sponsors of courses under this chapter.
- 19 (2) Requirements for instructors to be used by sponsors in
- 20 providing courses under this chapter.
- 21 (3) Requirements for the curricula **in providing for prelicensing**
- 22 **and continuing education** courses under this chapter.
- 23 (4) Rules to implement this chapter.
- 24 (5) Other issues identified by the commission to implement this
- 25 chapter.

26 **(b) Notwithstanding IC 25-1-4-0.2, the commission shall**
 27 **approve all prelicensing and continuing education courses.**

28 **(c) The commission may, with the advice of the council, approve**
 29 **online education required for licensing.**

30 SECTION 33. IC 25-34.1-9-10 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 10. Except for an
 32 individual who has been granted an inactive license under
 33 IC 25-34.1-3-10, an individual who is licensed as a real estate broker
 34 under IC 25-34.1-3-4.1 **or a salesperson under IC 25-34.1-3-3.1** must
 35 complete the approved education requirement before the end of each
 36 renewal period.

37 SECTION 34. IC 25-34.1-9-11 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. **(a)** The approved
 39 education requirement is as follows:

- 40 (1) At least ~~six (6) hours~~ **twelve (12) hours per year** in any of the
- 41 following subjects as determined by the commission:
- 42 (A) License and escrow law.

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- 1 (B) Anti-trust law.
 2 (C) Civil rights law.
 3 (D) Agency law.
 4 (E) Listing contracts and purchase agreements.
 5 (F) Ethics and professionals standards.
 6 (G) Settlement procedures.
 7 ~~(H) Other courses approved by the commission.~~
 8 ~~(2) At least ten (10) hours of course work in any of the following~~
 9 ~~subjects as determined by the commission:~~
 10 ~~(A) (H) Appraising.~~
 11 ~~(B) (I) Property management.~~
 12 ~~(C) (J) Farm property management.~~
 13 ~~(D) (K) Commercial brokerage and leasing.~~
 14 ~~(E) (L) Financing.~~
 15 ~~(F) (M) Residential brokerage.~~
 16 ~~(G) (N) Land development.~~
 17 ~~(H) (O) Legislative issues affecting the real estate practice.~~
 18 ~~(I) (P) Other courses approved by the commission.~~

19 (b) An attorney in good standing licensed to practice law in Indiana
 20 may satisfy the requirements of subsection (a) by completing the
 21 number of hours required by subsection (a) in continuing legal
 22 education courses in the subject matters listed in subsection (a).

23 SECTION 35. IC 25-34.1-9-11.1 IS ADDED TO THE INDIANA
 24 CODE AS A NEW SECTION TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 2012]: **Sec. 11.1. (a) Notwithstanding section**
 26 **11 of this chapter, from July 1, 2012, until June 30, 2014, a real**
 27 **estate salesperson licensed under IC 25-34.1-3-3 , before its repeal,**
 28 **must complete twelve (12) hours of continuing education each year.**

29 (b) **Notwithstanding section 11 of this chapter, from July 1,**
 30 **2012, until June 30, 2013, a real estate broker licensed under**
 31 **IC 25-34.1-3-4.1, must complete sixteen (16) hours of continuing**
 32 **education each year.**

33 (c) **Notwithstanding section 11 of this chapter, from July 1,**
 34 **2013, until June 30, 2014, a real estate broker licensed under**
 35 **IC 25-34.1-3-4.1, must complete twelve (12) hours of continuing**
 36 **education.**

37 (d) **This section expires July 1, 2014.**

38 SECTION 36. IC 25-34.1-9-19, AS AMENDED BY P.L.42-2011,
 39 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2012]: Sec. 19. The commission may grant an applicant a
 41 waiver from the continuing education requirement for the renewal
 42 period if the applicant meets one (1) of the following conditions:



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- 1 (1) Was not able to fulfill the requirement due to a hardship that
- 2 resulted from any of the following:
- 3 (A) Service in the armed forces of the United States during a
- 4 substantial part of the renewal period.
- 5 (B) An incapacitating illness.
- 6 (C) Other circumstances determined by the commission.
- 7 (2) Has certified on approved forms to the commission the
- 8 following:
- 9 (A) That the applicant has an active license but will not
- 10 perform an act that requires a ~~salesperson~~ or broker's license.
- 11 (B) That the applicant is affiliated with a ~~principal~~ **managing**
- 12 broker for the sole purpose of making referrals to a licensed
- 13 ~~salesperson~~ or broker.

14 An individual granted a waiver under this subdivision may not
 15 perform an act that requires a ~~salesperson~~ or broker's license until
 16 the individual has fulfilled the same continuing education
 17 requirements needed to reactivate an inactive license under
 18 IC 25-34.1-3-10(c) and IC 25-34.1-3-10(d).

19 SECTION 37. IC 25-34.1-10-6.8 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6.8. As used in this
 21 chapter, "licensee" means an individual or entity issued a ~~salesperson's~~
 22 or broker's real estate license by the Indiana real estate commission.

23 SECTION 38. IC 25-34.1-10-7.5 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7.5. As used in this
 25 chapter, "managing broker" means a broker who manages a branch
 26 office. ~~or who acts on behalf of a principal broker.~~

27 SECTION 39. IC 25-34.1-10-7.8 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7.8. As used in this
 29 chapter, "~~principal broker~~" "**managing broker**" means the individual
 30 broker (including the broker designated or representative of a
 31 partnership, corporation, or limited liability company) whom the
 32 Indiana real estate commission shall hold responsible for the actions of
 33 licensees who are affiliated with the individual broker.

34 SECTION 40. IC 25-34.1-10-12.5 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 12.5. (a) An individual
 36 licensee affiliated with a ~~principal~~ **managing** broker represents only
 37 the client with which the licensee is working in an in-house agency
 38 relationship. A client represented by an individual licensee affiliated
 39 with a ~~principal~~ **managing** broker is represented only by that licensee
 40 to the exclusion of all other licensees. A ~~principal~~ or managing broker
 41 does not represent any party in such transactions unless the ~~principal~~
 42 or managing broker has an agency relationship to personally represent

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1 a client.

2 (b) A licensee who personally represents both the seller and buyer

3 or both the landlord and tenant in a real estate transaction is a limited

4 agent and is required to comply with the provisions of this chapter

5 governing limited agents.

6 (c) A licensee representing a client in an in-house agency

7 relationship owes the client duties and obligations set forth in this

8 chapter and shall not disclose material or confidential information

9 obtained from the client to other licensees, except to the principal ~~or~~

10 ~~managing~~ broker for the purpose of seeking advice or assistance for the

11 client's benefit.

12 (d) A ~~principal broker,~~ managing broker and any affiliated licensee

13 shall take reasonable and necessary care to protect any material or

14 confidential information disclosed by a client to the client's in-house

15 agent.

16 (e) In all in-house agency relationships, a ~~principal broker,~~

17 managing broker and an individual licensee possess only actual

18 knowledge and information. There is no imputation of agency,

19 knowledge, or information among or between clients, ~~the principal~~

20 ~~broker,~~ the managing broker, and licensees.

21 SECTION 41. IC 25-34.1-10-13 IS AMENDED TO READ AS

22 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. (a) A ~~principal~~

23 ~~managing~~ broker shall develop and enforce a written office policy that

24 identifies and describes the agency relationships that a licensee may

25 have with a seller, landlord, buyer, or tenant and that specifically

26 permits or rejects the practice of disclosed limited agency.

27 (b) At the beginning of an agency relationship, a licensee shall

28 disclose in writing the ~~principal~~ **managing** broker's written office

29 policy set forth in this section before the disclosure by the potential

30 seller, landlord, buyer, or tenant of any confidential information

31 specific to that potential seller, landlord, buyer, or tenant.

32 (c) Parties to a real estate transaction shall be advised whether

33 compensation will be shared with other ~~principal~~ **managing** brokers

34 who may represent other parties to the transaction whose interests are

35 different or even adverse.

36 (d) The payment of compensation does not create an agency

37 relationship between a licensee and a seller, landlord, buyer, or tenant.

38 SECTION 42. IC 27-7-3-15.5, AS AMENDED BY P.L.226-2011,

39 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

40 JULY 1, 2012]: Sec. 15.5. (a) This section applies to the following

41 transactions:

42 (1) A mortgage transaction (as defined in IC 24-9-3-7(a)) that:

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- 1 (A) is:
- 2 (i) a first lien purchase money mortgage transaction; or
- 3 (ii) a refinancing transaction; and
- 4 (B) is closed by a closing agent after December 31, 2009.
- 5 (2) A real estate transaction (as defined in IC 24-9-3-7(b)) that:
- 6 (A) does not involve a mortgage transaction described in
- 7 subdivision (1); and
- 8 (B) is closed by a closing agent (as defined in
- 9 IC 6-1.1-12-43(a)(2)) after December 31, 2011.
- 10 (b) For purposes of this subsection, a person described in this
- 11 subsection is involved in a transaction to which this section applies if
- 12 the person participates in or assists with, or will participate in or assist
- 13 with, a transaction to which this section applies. The department shall
- 14 establish and maintain an electronic system for the collection and
- 15 storage of the following information, to the extent applicable,
- 16 concerning a transaction to which this section applies:
- 17 (1) In the case of a transaction described in subsection (a)(1), the
- 18 name and license number (under IC 23-2-5) of each loan
- 19 brokerage business involved in the transaction.
- 20 (2) In the case of a transaction described in subsection (a)(1), the
- 21 name and license or registration number of any mortgage loan
- 22 originator who is:
- 23 (A) either licensed or registered under state or federal law as
- 24 a mortgage loan originator consistent with the Secure and Fair
- 25 Enforcement for Mortgage Licensing Act of 2008 (H.R. 3221
- 26 Title V); and
- 27 (B) involved in the transaction.
- 28 (3) The name and license number (under IC 25-34.1) of each:
- 29 (A) ~~principal managing~~ **broker**; and
- 30 (B) ~~salesperson or broker-salesperson,~~ **broker** if any;
- 31 involved in the transaction.
- 32 (4) The following information:
- 33 (A) The:
- 34 (i) name of; and
- 35 (ii) code assigned by the National Association of Insurance
- 36 Commissioners (NAIC) to;
- 37 each title insurance underwriter involved in the transaction.
- 38 (B) The type of title insurance policy issued in connection with
- 39 the transaction.
- 40 (5) The name and license number (under IC 27-1-15.6) of each
- 41 title insurance agency and agent involved in the transaction as a
- 42 closing agent (as defined in IC 6-1.1-12-43(a)(2)).

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- 1 (6) The following information:
- 2 (A) The name and:
- 3 (i) license or certificate number (under IC 25-34.1-3-8) of
- 4 each licensed or certified real estate appraiser; or
- 5 (ii) license number (under IC 25-34.1) of each broker;
- 6 who appraises the property that is the subject of the
- 7 transaction.
- 8 (B) The name and registration number (under
- 9 IC 25-34.1-11-10) of any appraisal management company that
- 10 performs appraisal management services (as defined in
- 11 IC 25-34.1-11-3) in connection with the transaction.
- 12 (7) In the case of a transaction described in subsection (a)(1), the
- 13 name of the creditor and, if the creditor is required to be licensed
- 14 under IC 24-4.4, the license number of the creditor.
- 15 (8) In the case of a transaction described in subsection
- 16 (a)(1)(A)(i) or (a)(2), the name of the seller of the property that is
- 17 the subject of the transaction.
- 18 (9) In the case of a transaction described in subsection
- 19 (a)(1)(A)(i), the following information:
- 20 (A) The name of the buyer of the property that is the subject of
- 21 the transaction.
- 22 (B) The purchase price of the property that is the subject of the
- 23 transaction.
- 24 (C) The loan amount of the mortgage transaction.
- 25 (10) In the case of a transaction described in subsection (a)(2), the
- 26 following information:
- 27 (A) The name of the buyer of the property that is the subject of
- 28 the transaction.
- 29 (B) The purchase price of the property that is the subject of the
- 30 transaction.
- 31 (11) In the case of a transaction described in subsection
- 32 (a)(1)(A)(ii), the following information:
- 33 (A) The name of the borrower in the mortgage transaction.
- 34 (B) The loan amount of the refinancing.
- 35 (12) The:
- 36 (A) name; and
- 37 (B) license number, certificate number, registration number,
- 38 or other code, as appropriate;
- 39 of any other person that is involved in a transaction to which this
- 40 section applies, as the department may prescribe.
- 41 (c) The system established by the department under this section
- 42 must include a form that:

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1 (1) is uniformly accessible in an electronic format to the closing
2 agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and

3 (2) allows the closing agent to do the following:

4 (A) Input information identifying the property that is the
5 subject of the transaction by lot or parcel number, street
6 address, or some other means of identification that the
7 department determines:

8 (i) is sufficient to identify the property; and

9 (ii) is determinable by the closing agent.

10 (B) Subject to subsection (d) and to the extent determinable,
11 input the applicable information described in subsection (b).

12 (C) Respond to the following questions, if applicable:

13 (i) "On what date did you receive the closing instructions
14 from the creditor in the transaction?"

15 (ii) "On what date did the transaction close?"

16 (D) Submit the form electronically to a data base maintained
17 by the department.

18 (d) Not later than the time of the closing, each person described in
19 subsection (b), other than a person described in subsection (b)(8),
20 (b)(9), (b)(10), or (b)(11), shall provide to the closing agent in the
21 transaction the person's:

22 (1) legal name; and

23 (2) license number, certificate number, registration number, or
24 NAIC code, as appropriate;

25 to allow the closing agent to comply with subsection (c)(2)(B). In the
26 case of a transaction described in subsection (a)(1), the person
27 described in subsection (b)(7) shall, with the cooperation of any person
28 involved in the transaction and described in subsection (b)(6)(A) or
29 (b)(6)(B), provide the information described in subsection (b)(6). In the
30 case of a transaction described in subsection (a)(1)(A)(ii), the person
31 described in subsection (b)(7) shall also provide the information
32 described in subsection (b)(11). A person described in subsection
33 (b)(3)(B) who is involved in the transaction may provide the
34 information required by this subsection for a person described in
35 subsection (b)(3)(A) that serves as the ~~principal~~ **managing** broker for
36 the person described in subsection (b)(3)(B). The closing agent shall
37 determine the information described in subsection (b)(8), (b)(9), and
38 (b)(10) from the HUD-1 settlement statement, or in the case of a
39 transaction described in subsection (a)(2), from the contract or any
40 other document executed by the parties in connection with the
41 transaction.

42 (e) Except for a person described in subsection (b)(8), (b)(9),

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1 (b)(10), or (b)(11), a person described in subsection (b) who fails to
 2 comply with subsection (d) is subject to a civil penalty of one hundred
 3 dollars (\$100) for each closing with respect to which the person fails
 4 to comply with subsection (d). The penalty:

5 (1) may be enforced by the state agency that has administrative
 6 jurisdiction over the person in the same manner that the agency
 7 enforces the payment of fees or other penalties payable to the
 8 agency; and

9 (2) shall be paid into the home ownership education account
 10 established by IC 5-20-1-27.

11 (f) Subject to subsection (g), the department shall make the
 12 information stored in the data base described in subsection (c)(2)(D)
 13 accessible to:

14 (1) each entity described in IC 4-6-12-4; and

15 (2) the homeowner protection unit established under IC 4-6-12-2.

16 (g) The department, a closing agent who submits a form under
 17 subsection (c), each entity described in IC 4-6-12-4, and the
 18 homeowner protection unit established under IC 4-6-12-2 shall exercise
 19 all necessary caution to avoid disclosure of any information:

20 (1) concerning a person described in subsection (b), including the
 21 person's license, registration, or certificate number; and

22 (2) contained in the data base described in subsection (c)(2)(D);
 23 except to the extent required or authorized by state or federal law.

24 (h) The department may adopt rules under IC 4-22-2, including
 25 emergency rules under IC 4-22-2-37.1, to implement this section. Rules
 26 adopted by the department under this subsection may establish
 27 procedures for the department to:

28 (1) establish;

29 (2) collect; and

30 (3) change as necessary;

31 an administrative fee to cover the department's expenses in establishing
 32 and maintaining the electronic system required by this section.

33 (i) If the department adopts a rule under IC 4-22-2 to establish an
 34 administrative fee to cover the department's expenses in establishing
 35 and maintaining the electronic system required by this section, as
 36 allowed under subsection (h), the department may:

37 (1) require the fee to be paid:

38 (A) to the closing agent responsible for inputting the
 39 information and submitting the form described in subsection
 40 (c)(2); and

41 (B) by the borrower, the seller, or the buyer in the transaction;

42 (2) allow the closing agent described in subdivision (1)(A) to

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1 retain a part of the fee collected to cover the closing agent's costs
 2 in inputting the information and submitting the form described in
 3 subsection (c)(2); and

4 (3) require the closing agent to pay the remainder of the fee
 5 collected to the department for deposit in the title insurance
 6 enforcement fund established by IC 27-7-3.6-1, for the
 7 department's use in establishing and maintaining the electronic
 8 system required by this section.

9 SECTION 43. IC 32-21-14-2, AS ADDED BY P.L.136-2011,
 10 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2012]: Sec. 2. (a) As used in this ~~section~~, **chapter**, "transfer
 12 fee" means a fee or charge that:

13 (1) is required under a transfer fee covenant; and

14 (2) is payable:

15 (A) upon the transfer of an interest in real property; or

16 (B) for the right to make or accept a transfer of an interest in
 17 real property;

18 regardless of whether the fee or charge is in a fixed amount or is
 19 determined as a percentage of the value of the property, of the purchase
 20 price of the property, or of any consideration given for the transfer of
 21 the property.

22 (b) The term does not include any of the following:

23 (1) Any consideration payable by the transferee to the transferor
 24 for the interest in the real property being transferred, including
 25 any consideration payable for a separate mineral estate and its
 26 appurtenant surface access rights.

27 (2) Any commission to a real estate broker ~~or salesperson~~ licensed
 28 under IC 25-34.1 payable:

29 (A) in connection with the transfer of an interest in real
 30 property; and

31 (B) under an agreement between the real estate broker ~~or~~
 32 ~~salesperson~~ and the transferor or transferee.

33 (3) Any interest, charges, fees, or other amounts payable by a
 34 borrower to a lender under a loan secured by a mortgage against
 35 an interest in real property, including the following:

36 (A) Any fee payable to the lender for consenting to an
 37 assumption of the loan or to a transfer of the property interest
 38 subject to the mortgage.

39 (B) Any fees or charges payable to the lender for estoppel
 40 letters or certificates.

41 (C) Any other consideration allowed by law and payable to the
 42 lender in connection with the loan.

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- 1 (4) Any rent, reimbursement, charge, fee, or other amount payable
- 2 by a lessee to a lessor under a lease, including any fee payable to
- 3 the lessor for consenting to an assignment, subletting,
- 4 encumbrance, or transfer of the lease.
- 5 (5) Any consideration payable to the holder of:
- 6 (A) an option to purchase an interest in real property; or
- 7 (B) a right of first refusal or first offer to purchase an interest
- 8 in real property;
- 9 for waiving, releasing, or not exercising the option or right upon
- 10 the transfer of the property interest to another person.
- 11 (6) Any tax, fee, charge, assessment, fine, or other amount
- 12 payable to or imposed by a governmental entity.
- 13 (7) Any fee, charge, assessment, fine, or other amount payable to:
- 14 (A) a homeowners association;
- 15 (B) a condominium association;
- 16 (C) a cooperative association;
- 17 (D) a mobile home association;
- 18 (E) another property owners association; or
- 19 (F) an agent representing an association described in clauses
- 20 (A) through (E);

21 under a covenant, law, or contract applicable to the association.

22 SECTION 44. IC 32-28-12.5-3, AS ADDED BY P.L.78-2006,
23 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2012]: Sec. 3. As used in this chapter, "~~principal broker~~"
25 "**managing broker**" has the meaning set forth in IC 25-34.1-1-2.

26 SECTION 45. IC 32-28-12.5-5, AS ADDED BY P.L.78-2006,
27 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JULY 1, 2012]: Sec. 5. A ~~principal~~ **managing** broker may have a lien
29 upon commercial real estate, or any interest in commercial real estate,
30 that is the subject of a purchase, a lease, or other conveyance to a buyer
31 or tenant, in the amount that the ~~principal~~ **managing** broker is due for
32 licensed services, including brokerage fees, consulting fees, and
33 management fees due the ~~principal~~ **managing** broker under a written
34 agreement, a contract, or another written instrument:

- 35 (1) signed by:
- 36 (A) the owner of an interest in the commercial real estate or by
- 37 the owner's authorized agent; or
- 38 (B) a prospective buyer or prospective tenant, or by the buyer's
- 39 or tenant's authorized agent; and
- 40 (2) entered into after June 30, 2006.

41 A lien under this chapter is available to the ~~principal~~ **managing** broker
42 named in the written agreement, contract, or other written instrument

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1 signed by the owner, buyer, or tenant, or their respective agents, and
2 not to an employee or independent contractor of the ~~principal~~
3 **managing** broker.

4 SECTION 46. IC 32-28-12.5-6, AS ADDED BY P.L.78-2006,
5 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2012]: Sec. 6. (a) A lien under this chapter attaches to
7 commercial real estate or an interest in commercial real estate upon:

8 (1) the ~~principal~~ **managing** broker being entitled to fees or
9 commissions under a written agreement, a contract, or another
10 instrument signed by the owner, buyer, or tenant of the
11 commercial real estate, or by an authorized agent of the owner,
12 buyer, or tenant; and

13 (2) except as provided in sections 8 and 9 of this chapter, the
14 ~~principal~~ **managing** broker recording a notice of lien in the office
15 of the recorder of the county in which the commercial real estate
16 or an interest in the commercial real estate is located:

17 (A) before the recording of the deed for the actual conveyance
18 or transfer of the commercial real estate against which the
19 broker is claiming a lien, if the ~~principal~~ **managing** broker
20 claims fees or commissions from the party conveying or
21 transferring an interest in the commercial real estate; or

22 (B) not later than ninety (90) days after the recording of the
23 deed or other instrument for the purchase or other conveyance
24 or transfer of the commercial real estate, if the ~~principal~~
25 **managing** broker claims fees or commissions from the party
26 receiving a conveyance or transfer of an interest in the
27 commercial real estate.

28 (b) A lien under this chapter attaches on the date of the recording of
29 the notice of the lien under subsection (a)(2) and does not relate back
30 to the date of the written agreement, contract, or other written
31 instrument described in subsection (a)(1).

32 SECTION 47. IC 32-28-12.5-7, AS ADDED BY P.L.78-2006,
33 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2012]: Sec. 7. (a) This section does not apply:

35 (1) to fees or commissions that arise from a lease, including fees
36 or commissions for a sale of the property, lease expansions, or
37 lease renewals;

38 (2) if a ~~principal~~ **managing** broker's fees or commissions have
39 been paid in full; or

40 (3) if a ~~principal~~ **managing** broker waives the notice requirements
41 of this section in writing.

42 (b) Not later than ten (10) days before the planned closing of a

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1 transaction involving the sale of commercial real estate, the owner shall
 2 notify the following persons of the date of the closing, the time of the
 3 closing, the address of the closing, and of the name of the closing
 4 agent, title company, or title insurance agent:

5 (1) One (1) or more ~~principal~~ **managing** brokers to whom the
 6 owner owes fees or commissions.

7 (2) The closing agent, title company, or title insurance agent
 8 involved in the transaction.

9 Notice under this subsection shall be sent by registered or certified
 10 mail, return receipt requested, or by another means of service
 11 authorized by the Indiana trial rules that provides proof that the
 12 addressee has received the notice.

13 (c) To exercise its rights under this chapter to file a lien after receipt
 14 of the notice under subsection (b), the ~~principal~~ **managing** broker must
 15 notify the closing agent, title company, or title insurance agent at the
 16 address in the notice of the amount of the fees or commissions owed
 17 before the time of the closing stated in the notice.

18 (d) If the ~~principal~~ **managing** broker does not attend the closing of
 19 a transaction involving the sale of commercial real estate, the owner
 20 shall certify in writing at the closing, under the penalties of perjury:

21 (1) that:

22 (A) the owner has notified the ~~principal~~ **managing** broker in
 23 accordance with subsection (b); and

24 (B) the ~~principal~~ **managing** broker received the notice; or

25 (2) that the ~~principal~~ **managing** broker has been paid in full.

26 SECTION 48. IC 32-28-12.5-8, AS ADDED BY P.L.78-2006,
 27 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2012]: Sec. 8. (a) This section applies to a transaction
 29 involving the conveyance or transfer of commercial real estate in
 30 which:

31 (1) payment to a ~~principal~~ **managing** broker is due in
 32 installments; and

33 (2) a part of the installment payments is due only after the
 34 conveyance or transfer of the commercial real estate involved in
 35 the transaction.

36 (b) Subject to subsection (c), the ~~principal~~ **managing** broker may
 37 record a notice of lien for those payments described in subsection
 38 (a)(2) at any time after the transfer or conveyance, but not later than
 39 ninety (90) days after the date on which the payment is due. A notice
 40 of lien under this section is effective as a lien against the transferor's
 41 interest in the commercial real estate only to the extent consideration
 42 is still owed to the transferor by the transferee. However, the lien is



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1 effective against the transferee's interest in the commercial real estate
2 without the limitation described in this subsection.

3 (c) A single claim for a lien recorded:

4 (1) before the transfer or conveyance of the commercial real
5 estate; and

6 (2) with respect to all payments due in installments;

7 is valid and enforceable with respect to payments due after the transfer
8 or conveyance. However, as payments or partial payments of fees or
9 commissions are received by the ~~principal~~ **managing** broker, the
10 ~~principal~~ **managing** broker shall, by providing partial releases with
11 respect to those payments, reduce the amount due the ~~principal~~
12 **managing** broker under the notice of lien described in this subsection.

13 SECTION 49. IC 32-28-12.5-9, AS AMENDED BY P.L.1-2007,
14 SECTION 212, IS AMENDED TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2012]: Sec. 9. (a) Subject to subsection (b), in
16 the case of a lease of commercial real estate, including a sublease or an
17 assignment of a lease, the notice of a lien under this chapter must be
18 recorded not later than ninety (90) days after the tenant takes
19 possession of the leased premises. However, if:

20 (1) the transferor personally serves, on the ~~principal~~ **managing**
21 broker entitled to claim a lien, written notice of the intended
22 execution of the lease; and

23 (2) the notice described in subdivision (1) is served not later than
24 ten (10) days before the date of the intended execution of the
25 lease;

26 the ~~principal~~ **managing** broker's notice of lien must be recorded before
27 the date indicated in the notice described in subdivision (1) for the
28 execution of the lease. The lien attaches on the recording of the notice
29 of lien and does not relate back to the date of the written agreement,
30 contract, or written instrument under which the ~~principal~~ **managing**
31 broker is entitled to fees or commissions.

32 (b) As used in this subsection, "future fees or commissions" refers
33 to fees or commissions:

34 (1) other than those fees or commissions due to a ~~principal~~
35 **managing** broker upon the execution of a lease under subsection
36 (a); or

37 (2) due to the ~~principal~~ **managing** broker upon the exercise of an
38 option to:

39 (A) expand the leased premises;

40 (B) renew or extend a lease; or

41 (C) purchase the commercial real estate;

42 under a written agreement, a contract, or another written instrument

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1 signed by the owner or tenant of the commercial real estate. The
 2 ~~principal managing~~ broker may record a memorandum of lien at any
 3 time after execution of the lease or other written agreement, contract,
 4 or written instrument that contains rights to future fees or commissions.
 5 The ~~principal managing~~ broker shall record a notice of lien no later
 6 than ninety (90) days after the occurrence of a condition for which
 7 future fees or commissions are claimed, but may not file a notice of lien
 8 against an owner's property if the tenant is the sole party liable for
 9 payment of the future fees or commissions. Except as provided in
 10 section 11(a) or 13(b) of this chapter, an action to foreclose a lien to
 11 collect future fees or commissions must be commenced not later than
 12 one (1) year after the recording of the notice of the lien. A
 13 memorandum of lien recorded under this chapter must meet the
 14 requirements of section 12(1)(A), 12(1)(B), 12(1)(C), 12(1)(E), 12(2),
 15 12(3), and 12(4) of this chapter. A memorandum of lien shall not
 16 constitute a lien against the real estate but shall provide notice of the
 17 right to future fees or commissions.

18 (c) If:

- 19 (1) commercial real estate is sold or otherwise conveyed before
- 20 the date on which future fees or commissions are due; and
- 21 (2) the ~~principal managing~~ broker has recorded a valid
- 22 memorandum of lien or notice of lien before the sale or other
- 23 conveyance of the commercial real estate;

24 the purchaser or transferee is considered to have notice of and takes
 25 title to the commercial real estate subject to the right to future fees or
 26 commissions and, if applicable, notice of lien. However, if a ~~principal~~
 27 ~~managing~~ broker claiming future fees or commissions fails to record
 28 a memorandum of lien or notice of lien for the future fees or
 29 commissions before the recording of a deed conveying legal title to the
 30 commercial real estate to the purchaser or transferee, the ~~principal~~
 31 ~~managing~~ broker may not claim a lien on the commercial real estate.
 32 This subsection does not limit or otherwise affect claims or defenses a
 33 ~~principal managing~~ broker or owner or any other party may have in
 34 law or equity.

35 SECTION 50. IC 32-28-12.5-10, AS ADDED BY P.L.78-2006,
 36 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2012]: Sec. 10. A ~~principal managing~~ broker shall, not later
 38 than ten (10) days after recording a notice of lien under this chapter,
 39 personally serve or mail, by registered or certified mail, a copy of the
 40 notice of lien to the owner of record of the commercial real estate, or
 41 to the agent of the owner of record, at the address of the owner stated
 42 in the written agreement, contract, or other written instrument on which

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1 the claim for the lien is based. If the address of the owner or the
 2 owner's agent is not stated, the ~~principal~~ **managing** broker shall
 3 personally serve or mail, by registered or certified mail, a copy of the
 4 notice of the lien to the address where real estate taxes are sent for the
 5 commercial real estate on which the claim of lien is based. Mailing of
 6 the copy of the notice of lien is effective when deposited in the United
 7 States mail with postage prepaid. Personal service of the notice of the
 8 lien is effective upon receipt by the owner or the agent of the owner of
 9 record. A ~~principal~~ **managing** broker's lien is unenforceable if mailing
 10 or service of the copy of notice of lien does not occur at the time and
 11 in the manner required by this section.

12 SECTION 51. IC 32-28-12.5-11, AS ADDED BY P.L.78-2006,
 13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2012]: Sec. 11. (a) The ~~principal~~ **managing** broker claiming
 15 the lien shall, not later than one (1) year after recording the notice of
 16 the lien, commence proceedings to foreclose the lien. However, for
 17 future fees or commissions payable over a period in excess of one (1)
 18 year from the occurrence of a condition for which such future fees or
 19 commissions are claimed, the commencement of the suit must be
 20 within one (1) year of the latest date for which future fees or
 21 commissions are due. A ~~principal~~ **managing** broker's failure to
 22 commence proceedings within the time prescribed by this subsection
 23 extinguishes the lien and a subsequent notice of lien may not be given
 24 for the same claim, nor may that claim be asserted in any other
 25 proceedings under this chapter.

26 (b) A ~~principal~~ **managing** broker claiming a lien based upon an
 27 option or other right to purchase or lease commercial real estate shall,
 28 not later than one (1) year after recording the notice of the lien,
 29 commence proceedings to foreclose the lien. A ~~principal~~ **managing**
 30 broker's failure to commence proceedings within the time prescribed
 31 by this subsection extinguishes the lien and a subsequent notice of lien
 32 may not be given for the same claim, nor may that claim be asserted in
 33 any other proceedings under this chapter.

34 (c) The foreclosure of a lien recorded under this chapter shall be
 35 conducted under the same rules and same procedures applicable to the
 36 foreclosure of mortgages upon real estate. A complaint under this
 37 section must contain:

- 38 (1) a brief statement of the written agreement, contract, or other
 39 written instrument that is the basis for the lien;
 40 (2) the date when the written agreement, contract, or other written
 41 instrument was made;
 42 (3) a description of the services performed by the ~~principal~~

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1 **managing** broker;

2 (4) the amount due and unpaid for the services described in
3 subdivision (3);

4 (5) a description of the commercial real estate subject to the
5 notice of lien; and

6 (6) other facts reasonably necessary to describe the rights of the
7 parties.

8 SECTION 52. IC 32-28-12.5-13, AS ADDED BY P.L.78-2006,
9 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2012]: Sec. 13. (a) If:

11 (1) a memorandum of lien or notice of lien has been recorded
12 with the office of the recorder of the appropriate county; and

13 (2) a condition occurs that would preclude the ~~principal~~
14 **managing** broker from receiving fees or commissions under the
15 terms of the written agreement, contract, or other written
16 instrument upon which the lien is based;

17 the ~~principal~~ **managing** broker shall provide to the owner of record of
18 the commercial real estate, not later than ten (10) days after written
19 demand by the owner of record, a written release or satisfaction of the
20 memorandum of lien or notice of lien.

21 (b) Upon written demand:

22 (1) served by the owner, buyer, or tenant described in section 5 of
23 this chapter, or the authorized agent of the owner, buyer, or tenant
24 described in section 5 of this chapter, on the ~~principal~~ **managing**
25 broker claiming a lien under this chapter; and

26 (2) requiring the ~~principal~~ **managing** broker to:

27 (A) bring a suit to enforce the lien; or

28 (B) file an answer in a pending suit;

29 the ~~principal~~ **managing** broker shall bring a suit or file an answer not
30 later than thirty (30) days after service of the demand. If the ~~principal~~
31 **managing** broker does not bring a suit or file an answer within the time
32 prescribed by this subsection, the lien is extinguished. The service of
33 a written demand under this subsection may be made by registered or
34 certified mail, return receipt requested, or by personal service.

35 (c) If:

36 (1) a memorandum of lien or notice of lien under this chapter has
37 been filed with the office of the recorder and the fees or
38 commissions upon which the lien is based have been paid to the
39 ~~principal~~ **managing** broker claiming the lien; or

40 (2) the ~~principal~~ **managing** broker fails to institute a suit to
41 enforce the lien within the time prescribed by this chapter;

42 the ~~principal~~ **managing** broker shall, not later than five (5) days after

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1 receipt of a written demand from the owner, buyer, or tenant described
 2 in section 5 of this chapter for a release or an acknowledgment of
 3 satisfaction of the memorandum or lien, acknowledge satisfaction or
 4 release of the memorandum or lien in writing.

5 SECTION 53. IC 32-28-12.5-14, AS ADDED BY P.L.78-2006,
 6 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2012]: Sec. 14. If the **principal managing** broker and the party
 8 from whom fees or commissions are claimed under this chapter agree
 9 to alternative dispute resolution, any claim under this chapter must be
 10 heard and resolved in the forum agreed to by the parties. The court
 11 before which a lien foreclosure proceeding is brought under this
 12 chapter retains jurisdiction to enter judgment on the award or other
 13 result made or reached under alternative dispute resolution proceedings
 14 with respect to all parties to the foreclosure. The **principal managing**
 15 broker's notice of lien remains of record and the foreclosure proceeding
 16 shall be stayed during the pendency of the alternative dispute resolution
 17 proceedings.

18 SECTION 54. IC 32-28-12.5-16, AS ADDED BY P.L.78-2006,
 19 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2012]: Sec. 16. Except for a waiver or release of a
 21 memorandum or lien provided in consideration of payment of the fees
 22 or commissions claimed by a **principal managing** broker under this
 23 chapter, or except as otherwise provided in section 13 of this chapter,
 24 any waiver of a **principal managing** broker's right to a lien on
 25 commercial property under this chapter is void.

26 SECTION 55. IC 32-28-12.5-18, AS ADDED BY P.L.78-2006,
 27 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2012]: Sec. 18. If:

29 (1) a claim for a lien under this chapter has been filed with the
 30 office of the recorder of the county in which commercial real
 31 estate or any interest in commercial real estate is located; and

32 (2) an escrow account is established among:

33 (A) the one (1) or more parties allegedly responsible for
 34 payment of the fees or commissions on which the lien is based;

35 (B) the **principal managing** broker that filed the lien; and

36 (C) an independent third party as escrowee;

37 from the proceeds of the conveyance, or from any other source of
 38 funds, in an amount that is at least one hundred ten percent

39 (110%) of the amount of the lien claimed under this chapter;

40 the lien against the real estate is extinguished and becomes a lien on
 41 the funds contained in the escrow account. The establishment of an
 42 escrow account described in this section does not constitute cause for

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1 any party to refuse to close the transaction.
 2 SECTION 56. IC 32-28-12.5-19, AS ADDED BY P.L.78-2006,
 3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2012]: Sec. 19. (a) If any party, including a **principal**
 5 **managing** broker, buyer, or buyer's mortgagee suffers a pecuniary loss
 6 as the result of an owner's violation of the notice or certification
 7 provisions described in section 7 of this chapter, the party may bring a
 8 civil action against the owner for the following:
 9 (1) Actual damages.
 10 (2) The costs of the action.
 11 (3) Reasonable attorney's fees.
 12 However, if the party establishes that the owner's violation of the notice
 13 or certification provisions was fraudulent, a court may award the party
 14 damages that do not exceed three (3) times actual damages.
 15 (b) It is a defense to an action brought under this section that the
 16 most recent address provided by the **principal managing** broker to the
 17 owner in the agreement, contract, or other written instrument, including
 18 a written instrument described in section 5 of this chapter, was
 19 incorrect, and as a result of the incorrect address, the principal broker
 20 did not receive the owner's notice described in section 7(b) of this
 21 chapter, and as a result the **principal managing** broker failed to provide
 22 the notice as required in section 7(c) of this chapter.

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