Reprinted
January 29, 2013

HOUSE BILL No. 1084

DIGEST OF HB 1084 (Updated January 28, 2013 1:50 pm - DI 84)

Citations Affected: IC 24-5.5; IC 24-9; IC 25-1; IC 32-25.5.

Synopsis: Various property issues. Makes changes to the mortgage rescue protection fraud act to make it consistent with the credit services organization act and the home loan practices act, including providing that the statute of limitations on filing claims runs for five years from the occurrence of the violation and not from the time the home loan is made. Allows for suspension of the license of an individual licensed under the real estate licensing law for an emergency period if the licensee has engaged in material and intentional misrepresentations or omissions. (The law currently allows for emergency suspension of the licenses of real estate appraisers only.) Makes changes to the law governing homeowners associations to make the financial and certain legal records of an association available to members of the association and to the office of the attorney general.

Effective: July 1, 2013.

Burton

January 7, 2013, read first time and referred to Committee on Employment, Labor and Pensions.
January 22, 2013, reported — Do Pass.
January 28, 2013, read second time, amended, ordered engrossed.

C o p y

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

C o p y

HOUSE BILL No. 1084

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:

SECTION 1. IC 24-5.5-5-2, AS ADDED BY P.L.209-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. In addition to any prohibitions that apply under IC 24-5-15-1 through IC 24-5-15-8, a foreclosure consultant may not:

(1) enter into or attempt to enter into a foreclosure consultant contract with a homeowner unless the foreclosure consultant first provides the homeowner written notice of the homeowner's rights under this article;

(2) demand or receive compensation until after the foreclosure consultant has fully performed all services the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform, unless the foreclosure consultant complies with the security requirements under IC 24-5-15-8;

(3) demand or receive a fee, interest, or any other compensation that exceeds eight percent (8%) per year of the amount of any loan that the foreclosure consultant makes to the homeowner;

(4) take a wage assignment, a lien of any type on real or personal property, or any other security to secure the payment of compensation;

(5) receive consideration from a third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner;

(6) acquire any interest, directly or indirectly, in residential real property in foreclosure from a homeowner with whom the foreclosure consultant has contracted; ~~or~~

(7) except to inspect documents as provided by law, take any power of attorney from a homeowner for any purpose;

(8) execute any contract or agreement with a homeowner or receive money or other valuable consideration from a homeowner without providing the homeowner with the written statement required by IC 24-5-15-6; or

(9) fail to provide a homeowner with a written contract that includes the notice of cancellation required by IC 24-5-15-7.

SECTION 2. IC 24-5.5-5-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 8. A foreclosure consultant may not represent to a homeowner that the foreclosure consultant is endorsed, sponsored, or affiliated with any governmental or government sponsored agency or program.**

SECTION 3. IC 24-5.5-6-1, AS AMENDED BY P.L.114-2010, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. A person who knowingly or intentionally violates this article commits:

(1) a Class A misdemeanor; ~~and~~

(2) a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4 and is subject to the penalties and remedies available to the attorney general under IC 24-5-0.5; **and**

(3) a deceptive act that is actionable by the attorney general under IC 24-9-8-2 and is subject to the penalties and remedies available to the attorney general under IC 24-9.

SECTION 4. IC 24-9-2-7, AS AMENDED BY P.L.226-2011, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. (a) "Deceptive act" means:

(1) an act or a practice as part of a mortgage transaction (as defined in IC 24-9-3-7(a)), or of a real estate transaction (as defined in IC 24-9-3-7(b)), in which a person at the time of the transaction knowingly or intentionally:

C o p y

~~(1)~~ **(A)** makes a material misrepresentation; or

~~(2)~~ **(B)** conceals material information regarding the terms or conditions of the transaction; **or**

(2) a violation of IC 24-5.5 concerning mortgage rescue protection fraud as set forth in IC 24-5.5-6-1.

(b) For purposes of this section, "knowingly" means having actual knowledge at the time of the transaction.

SECTION 5. IC 24-9-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. (a) Beginning July 1, 2005, the attorney general and the attorney general's homeowner protection unit established under IC 4-6-12 shall enforce this article. ~~for any violation occurring within five (5) years after the making of a home loan.~~ **An action may not be brought under this article more than five (5) years after the occurrence of the violation.**

(b) The attorney general may refer a matter under section 1 of this chapter to a prosecuting attorney for enforcement.

SECTION 6. IC 25-1-11-13, AS AMENDED BY P.L.3-2008, SECTION 182, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 13. (a) The board may summarily suspend a practitioner's license for ninety (90) days before a final adjudication or during the appeals process if the board finds that a practitioner represents a clear and immediate danger to the public's health, safety, or property if the practitioner is allowed to continue to practice. The summary suspension may be renewed upon a hearing before the board, and each renewal may be for not more than ninety (90) days.

(b) The board may summarily suspend the license of a real estate appraiser for ninety (90) days before a final adjudication or during the appeals process if the board finds that the licensed real estate appraiser has engaged in material and intentional misrepresentations or omissions in the preparation of at least three (3) written appraisal reports that were submitted by a person to obtain a loan. The summary suspension may be renewed after a hearing before the board. Each renewal of a summary suspension may be for not more than ninety (90) days.

(c) The board may summarily suspend the license of an individual licensed under IC 25-34.1 for ninety (90) days before a final adjudication or during the appeals process if the board finds that the individual has engaged in material and intentional misrepresentations or omissions in at least three (3) transactions. The summary suspension may be renewed after a hearing before the board. Each renewal of a summary suspension may be for not

C o p y

more than ninety (90) days.

~~(c)~~ **(d)** Before the board may summarily suspend a license under this section, the consumer protection division of the office of the attorney general shall make a reasonable attempt to notify a practitioner of:

(1) a hearing by the board to suspend the practitioner's license; and

(2) information regarding the allegation against the practitioner.

The consumer protection division of the office of the attorney general shall also notify the practitioner that the practitioner may provide a written or an oral statement to the board on the practitioner's behalf before the board issues an order for summary suspension. A reasonable attempt to notify the practitioner is made if the consumer protection division of the office of the attorney general attempts to notify the practitioner by telephone or facsimile at the last telephone number or facsimile number of the practitioner on file with the board.

SECTION 7. IC 32-25.5-3-3, AS ADDED BY P.L.167-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. (a) A homeowners association shall prepare an annual budget.

(b) The annual budget must reflect:

(1) the estimated revenues and expenses for the budget year; and

(2) the estimated surplus or deficit as of the end of the current budget year.

(c) The homeowners association shall provide each member of the homeowners association with:

(1) a:

(A) copy of the proposed annual budget; or

(B) written notice that a copy of the proposed annual budget is available upon request at no charge to the member; and

(2) a written notice of the amount of any increase or decrease in a regular annual assessment paid by the members that would occur if the proposed annual budget is approved;

before the homeowners association meeting held under subsection (d).

(d) Subject to subsection (f), a homeowners association budget must be approved at a meeting of the homeowners association members by a majority of the members of the homeowners association in attendance at a meeting called and conducted in accordance with the requirements of the homeowners association's governing documents.

(e) For purposes of this section, a member of a homeowners association is considered to be in attendance at a meeting if the member attends:

(1) in person;

C o p y

(2) by proxy; or
(3) by any other means allowed under:
(A) state law; or
(B) the governing documents of the homeowners association.

(f) If the number of members of the homeowners association in attendance at a meeting held under subsection (d) does not constitute a quorum as defined in the governing documents of the homeowners association, the board may adopt an annual budget for the homeowners association for the ensuing year in an amount that does not exceed one hundred percent (100%) of the amount of the last approved homeowners association annual budget. However, the board may adopt an annual budget for the homeowners association for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved homeowners association annual budget if the governing documents of the homeowners association allow the board to adopt an annual budget under this subsection for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved homeowners association annual budget.

(g) The financial records, including all contracts, invoices, bills, receipts, and bank records, of a homeowners association must be available for inspection and copying by:
(1) each member of the homeowners association; and
(2) the office of the attorney general;
upon request. The homeowners association may charge a fee for copies made under this subsection that may not exceed ten cents ($0.10) per page. A request for inspection or copying must identify with reasonable particularity the information being requested. No request may be denied because the person making the request refuses to state the purpose of the request.

(h) If there is a dispute between a homeowner and a homeowners association, the officers of the homeowners association must make all communications concerning the dispute available to the homeowner.

(i) A homeowners association must make all communications and information concerning a lot available to the owner of the lot or a home on the lot.

(j) Notwithstanding subsections (h) and (i), a homeowners association is not required to make:
(1) communications between the homeowners association and the legal counsel of the homeowners association; and
(2) other communications or attorney work product prepared

C o p y

in anticipation of litigation;
available to the owner of a lot or home.

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred House Bill 1084, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

GUTWEIN, Chair

Committee Vote: yeas 12, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1084 be amended to read as follows:

Page 5, after line 30, begin a new paragraph and insert:

"**(h) If there is a dispute between a homeowner and a homeowners association, the officers of the homeowners association must make all communications concerning the dispute available to the homeowner.**

(i) A homeowners association must make all communications and information concerning a lot available to the owner of the lot or a home on the lot.

(j) Notwithstanding subsections (h) and (i), a homeowners association is not required to make:

(1) communications between the homeowners association and the legal counsel of the homeowners association; and

(2) other communications or attorney work product prepared in anticipation of litigation;

available to the owner of a lot or home.".

(Reference is to HB 1084 as printed January 22, 2013.)

BURTON

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