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TITLE 710 SECURITIES DIVISION

Proposed Rule LSA Document #05-81

DIGEST

Adds 710 IAC 1-22 to establish definitions, phrases, and standards for loan brokers. Effective 30 days after filing with the secretary of state.

710 IAC 1-22

SECTION 1. 710 IAC 1-22 IS ADDED TO READ AS FOLLOWS:

Rule 22. Loan Broker Regulations

710 IAC 1-22-1 Originators

Authority: IC 23-2-1-15

Affected: IC 23-2

Sec. 1. (a) As used in this rule, “loan broker” includes a company that:

- (1) utilizes the Internet to collect information from potential borrowers; and**
- (2) submits that information to lenders for the purpose of considering whether the lender wishes to make a loan to the potential borrower or borrowers.**

(b) As used in this rule, “originator” means any person with access to the information described in subsection (a).

(c) Origination activities do not include the following:

- (1) Filing or collation of paperwork, including loan paperwork.**
- (2) Receptionist duties in which no loan terms or conditions are communicated either to or with borrowers or prospective borrowers.**

(d) An originator must be an employee of a loan broker as the term “employee” is defined in 26 U.S.C. 3121(d). Originators may not be independent contractors of a loan broker license holder.

(e) A loan broker may not pay, either directly or indirectly, any:

- (1) compensation;**
- (2) commission;**
- (3) fee;**
- (4) points; or**
- (5) other remuneration or benefits;**

to an originator other than an employee, as defined by this rule, of the loan broker. This prohibition does not include arrangements in which the compensation of a branch manager is based upon the net profit of the branch.

(f) Upon submittal of an initial license application, and with each subsequent license renewal application, a loan broker must submit a separate registration form for each originator employed by that loan broker. An originator may not be registered by more than one (1) loan broker licensee. A loan broker must maintain, at its principal office, the original registration document issued to each of that loan broker’s originators.

(g) If the employment of an originator is terminated, the loan broker must return the originator’s original registration document to the securities division within five (5) business days after the termination. (*Securities Division; 710 IAC 1-22-1*)

710 IAC 1-22-2 Loan broker licensing and originator licensing

Authority: IC 23-2-1-15

Affected: IC 23-2

Sec. 2. The loan broker must conduct an investigation of each applicant for origination registration. The investigation must include a criminal records check based on the fingerprints of the applicant and a civil records check. The securities division must require each applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the Department of Justice for state processing and with the Federal Bureau of Investigation for federal processing. All costs associated with the criminal history check are the responsibility of the employing loan broker, and the employing loan broker must have a copy of the background check report sent directly from the vendor chosen to perform the check. Criminal history records provided to the securities division under this section are confidential, and the securities division may use the records to determine whether the applicant is eligible for registration. If an investigation outside Indiana is necessary, the securities division may require the employing loan broker to advance sufficient funds to pay the actual expenses of the investigation. The securities division may deny the application if the:

- (1) applicant's criminal history shows any convictions within ten (10) years before the date of the application or any renewal thereof of any crime involving fraud or deceit; or
- (2) applicant has had any adverse civil judgments involving fraudulent or dishonest dealings.

As used in this rule, "conviction" means a judgment, or conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty, rendered either by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. (*Securities Division; 710 IAC 1-22-2*)

710 IAC 1-22-3 Branches and exemptions

Authority: IC 23-2-1-15

Affected: IC 23-2-5-19

Sec. 3. (a) If an exempt branch of a nonexempt loan broker loses its exemption, that branch must apply for a loan broker license.

(b) A loan broker or a branch of a loan broker that no longer qualifies for an exemption under IC 23-2-5-19 must obtain a license to conduct loan broker business in Indiana. (*Securities Division; 710 IAC 1-22-3*)

710 IAC 1-22-4 Educational requirements

Authority: IC 23-2-1-15

Affected: IC 23-2-5-21

Sec. 4. (a) Only live instruction courses shall be acceptable for the purposes of loan broker licensing and originator registration.

(b) The following topics shall be addressed during the academic instruction courses completed by each applicant for an initial or renewal license or certificate of registration:

- (1) Indiana loan broker law, including, but not limited to, the following:
 - (A) Licensing procedures.
 - (B) Bona fide third party fees.
 - (C) Advance fees.
 - (D) The Loan Broker Act.
 - (E) Loan broker regulations.
- (2) The Real Estate Settlement Procedures Act (RESPA).
- (3) The Equal Credit Opportunity Act (ECOA).
- (4) The Truth in Lending Act.

Each topic must be covered within the instructional hours required.

(c) As part of the education requirement set forth at IC 23-2-5-21, each person applying for either a license or a certificate of registration, or a renewal thereof, must provide to the commissioner evidence that during each licensing or registration period the applicant has completed at least:

(1) two (2) hours of federal law academic instruction; and
(2) one (1) hour of Indiana law academic instruction;
acceptable to the commissioner. Each applicant must complete a portion of either federal or Indiana law academic instruction requirements in each of the years covered by the licensing or registration period.

(d) Credit time for academic instruction shall be:
(1) based upon a fifty (50) minute hour; and
(2) awarded only for actual time of instruction.
No credit shall be given for testing time or meal or break time.

(e) Each person applying for a license or certificate of registration must successfully pass all tests required by the academic instruction courses submitted by the applicant to the commissioner for the purposes of license application or registration.

(f) A particular loan broker education course may not be taken more than once in any twelve (12) month period. This prohibition shall not apply to courses meant to refresh previous academic instruction by presenting changes in the following:
(1) Rules.
(2) Laws.
(3) Regulations.
(4) Other similar areas.

(g) To be given credit for academic instruction time for a course not currently approved by the commissioner, the license or registration applicant must request approval from the commissioner by submitting a detailed:
(1) syllabus;
(2) table of contents; or
(3) course outline;
including a time line for the course.

(h) Prospective vendors who wish to have their academic instruction courses approved must submit to the commissioner the following:
(1) A completed application form.
(2) The instructor's edition, bound and paginated, of the materials used for the course.
(3) A course time line.

(i) Prospective vendors who wish to have their academic instruction courses approved must submit for approval a list of any and all instructors who will be teaching the courses.

(j) Any academic instruction course approval issued by the commissioner shall remain valid for one (1) year from the date of the commissioner's approval letter. In order to obtain a renewal of course approval, the vendor shall submit:
(1) a renewal application; and
(2) any updated course materials;
to the commissioner. The course materials must be bound and paginated.

(k) Approved academic instruction course vendors shall maintain records of attendees for two (2) years after completion of the course. (*Securities Division; 710 IAC 1-22-4*)

710 IAC 1-22-5 Forms
Authority: IC 23-2-1-15
Affected: IC 23-2-5-18

Sec. 5. At or before the time an application for a loan is made to a loan broker, the loan broker shall enter into a separate, signed, and written loan broker agreement with the potential borrower. A copy of the agreement shall be given to the potential borrower, and the original shall be placed in the file of the borrower or proposed borrower under IC 23-2-5-18(a)(1)(B). The agreement shall contain, at a minimum, the following:
(1) The name of the loan broker.
(2) The Indiana loan broker license number of the loan broker.

- (3) The name of the prospective borrower.
- (4) The date of the agreement and the period for which it shall remain in effect.
- (5) A statement that the loan broker is not the credit provider.
- (6) A complete description of the services the loan broker undertakes to perform for the prospective borrower.
- (7) A specific statement of the circumstances under which the loan broker will be entitled to obtain or retain consideration from the party with whom the loan broker contracts.
- (8) An estimate of the costs of the broker's services, which may be expressed as a dollar amount or range together with the maximum cost of services, along with a statement that the amounts are not due unless and until the loan closes. The maximum cost shall be expressed as follows: "In no event shall the cost of these services exceed ____". The amounts shall include all compensation paid to the loan broker whether paid directly or indirectly, including any applicable yield-spread premium.
- (9) The following disclosure in clear and legible print:
“(Name of loan broker) IS LICENSED UNDER THE LAWS OF THE STATE OF INDIANA AND BY STATE LAW IS SUBJECT TO THE REGULATORY OVERSIGHT BY THE INDIANA SECRETARY OF STATE’S SECURITIES DIVISION. ANY CONSUMER WISHING TO FILE A COMPLAINT AGAINST OR INQUIRY REGARDING THE REGISTRATION STATUS OF (Name of loan broker) SHOULD CONTACT THE SECURITIES DIVISION THROUGH ONE OF THE MEANS LISTED BELOW:

IN PERSON OR BY U.S. MAIL:
302 W. WASHINGTON ST.
ROOM E-111
INDIANAPOLIS, IN 46204

BY TELEPHONE:
1-800-223-8791

FOR INDEPENDENT ADVICE OR COUNSEL REGARDING MORTGAGE LOAN PRODUCTS AND TERMS, CONTACT THE INDIANA MORTGAGE AND FORECLOSURE HELPLINE AT 1-866-722-9248”.

(Securities Division; 710 IAC 1-22-5)

710 IAC 1-22-6 Fees

Authority: IC 23-2-1-15

Affected: IC 23-2

Sec. 6. In connection with the application for credit and on behalf of the borrower, the following fees, subject to the limitations enumerated in this section, may be collected before the closing of the loan:

- (1) Property appraisal fees, if applicable, shall be limited to the following:**
 - (A) The amount paid to a licensed appraiser for the appraisal.**
 - (B) Those amounts that are customary and reasonable.**
 - (2) Credit report fees, if applicable, shall be limited to the actual cost of the report, the amount of which was paid to a third party. The amounts shall be customary and reasonable.**
 - (3) Title examination fees or title insurance, or both, if applicable, shall be limited to those amounts actually expended for such purposes. The amounts shall be customary and reasonable.**
 - (4) Returned check charges, if applicable, may be assessed to consumers, provided the amounts of the charges are customary and reasonable for checks that are returned unpaid.**
 - (5) Other bona fide third party fees actually and reasonably paid or incurred on behalf of the borrower. Such other fees shall:**
 - (A) not be incurred without the express permission of the borrower; and**
 - (B) be limited to amounts actually paid or incurred.**
- The amounts shall be customary and reasonable.**
- (6) Fees associated with the commitment of a specific interest rate, to be held for a specified period of time, may be collected in accordance with a signed rate lock agreement, provided the fees are payable to the lender.**

(Securities Division; 710 IAC 1-22-6)

710 IAC 1-22-7 Deceitful practices

Authority: IC 23-2-1-15

Affected: IC 23-2-5-20

Sec. 7. The following conduct, without limitation because of enumeration, constitutes a deceitful practice upon a person by a loan broker prohibited by IC 23-2-5-20(3):

(1) Using or permitting the use of any document that a registrant knows contains erroneous or false information concerning a prospective borrower's eligibility for a loan.

(2) Making or causing to be made any false, deceptive, or misleading statement or representation in regard to services being offered by the registrant.

(Securities Division; 710 IAC 1-22-7)

710 IAC 1-22-8 Material facts

Authority: IC 23-2-1-15

Affected: IC 23-2-5-21

Sec. 8. As used in IC 23-2-5, "material fact" includes, but is not limited to, the following:

(1) The address of the following:

(A) A principal place of business.

(B) Any branch office.

(2) The type of business entity the loan broker is registered with the securities division.

(3) Criminal convictions of the principal or originators of the loan broker business.

(4) Information pertaining to education courses to fulfill the necessary academic instruction requirement of IC 23-2-5-21.

(Securities Division; 710 IAC 1-22-8)

710 IAC 1-22-9 Record maintenance

Authority: IC 23-2-1-15

Affected: IC 23-2-5-18

Sec. 9. Any loan broker who procures a residential mortgage loan shall include in the file of the borrower or potential borrower, in addition to the requirements set forth in IC 23-2-5-18(a)(1), the following:

(1) The initial loan application, signed and dated by the loan originator.

(2) The initial and subsequent good faith estimate or estimates provided by the loan broker.

(3) The required provider list.

(4) A credit report, if obtained.

(5) Verification of the borrower's income and employment as required by the initial lender.

(6) Any Truth in Lending Act disclosure.

(7) All written and electronic correspondence, including fax transmissions, between the broker and the lender.

(8) A HUD-1 or HUD 1A Settlement Statement signed by the borrower or borrowers and the initial lender or settlement agent, if applicable.

(9) Affiliated business arrangement disclosure statements provided to the borrower.

(10) A servicing transfer disclosure statement.

(11) A right to receive appraisal disclosure, if applicable.

(12) A right of rescission notice, if applicable.

(13) A tangible net benefit worksheet, if applicable.

(14) An appraisal or appraisals of the property obtained by the broker.

(15) A written justification for using a nonlocal appraiser, if applicable.

(16) Any commitment or rate lock-in agreements, if applicable.

(17) Copies of all notes or electronic correspondence, including facsimile transmissions, with the following:

(A) Borrowers.

(B) Third party settlement service providers, including the following:

(i) Appraisers.

(ii) Title agents.

(iii) Credit reporting agencies.

(18) A record of all charges or fees assessed to the borrower's account reflecting the following:

(A) Amount of the charge or fee.

(B) Purpose.

(C) Date imposed.

(Securities Division; 710 IAC 1-22-9)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 27, 2005 at 1:00 p.m., at the Indiana Government Center-South, 302 West Washington Street, Room E111, Indianapolis, Indiana the Securities Division will hold a public hearing on a proposed new rule to establish definitions, phrases, and standards for loan brokers.

Although this rule creates new requirements for loan brokers, the standards are necessary to address regulatory concerns.

Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E111 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

James Joven, Commissioner
Securities Division
Secretary of State