

IC 23-2-5

Chapter 5. Loan Brokers

IC 23-2-5-1

"Commissioner" defined

Sec. 1. As used in this chapter, "commissioner" refers to the securities commissioner appointed under IC 23-19-6-1(a).

As added by P.L.235-1985, SEC.1. Amended by P.L.27-2007, SEC.17.

IC 23-2-5-2

"Loan" defined

Sec. 2. As used in this chapter, "loan" means any agreement to advance money or property in return for the promise to make payments for the money or property.

As added by P.L.235-1985, SEC.1.

IC 23-2-5-3

Definitions

Sec. 3. (a) As used in this chapter, "loan broker license" means a license issued by the commissioner authorizing a person to engage in the loan brokerage business.

(b) As used in this chapter, "licensee" means a person that is issued a license under this chapter.

(c) As used in this chapter, "loan broker" means any person who, in return for any consideration from any source procures, attempts to procure, or assists in procuring, a residential mortgage loan from a third party or any other person, whether or not the person seeking the loan actually obtains the loan. "Loan broker" does not include:

(1) any supervised financial organization (as defined in IC 26-1-4-102.5), including a bank, savings bank, trust company, savings association, or credit union;

(2) any other financial institution that is:

(A) regulated by any agency of the United States or any state; and

(B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

(3) any insurance company;

(4) any person arranging financing for the sale of the person's product; or

(5) a creditor that is licensed under IC 24-4.4-2-402.

(d) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

(e) As used in this chapter, "mortgage loan origination activities" means performing any of the following activities for compensation or gain in connection with a residential mortgage loan:

(1) Receiving or recording a borrower's or potential borrower's residential mortgage loan application information in any form

for use in a credit decision by a creditor.

(2) Offering to negotiate or negotiating terms of a residential mortgage loan.

(f) As used in this chapter, "borrower's residential mortgage loan application information" means the address of the proposed residential real property to be mortgaged and borrower's essential personal and financial information necessary for an informed credit decision to be made on the borrower's mortgage loan application.

(g) As used in this chapter, "mortgage loan originator" means an individual engaged in mortgage loan origination activities. The term does not include a person who:

(1) performs purely administrative or clerical tasks on behalf of a mortgage loan originator or acts as a loan processor or underwriter;

(2) performs only real estate brokerage activities and is licensed in accordance with IC 25-34.1 or the applicable laws of another state, unless the person is compensated by a creditor, a loan broker, a mortgage loan originator, or any agent of a creditor, a loan broker, or a mortgage loan originator; or

(3) is involved only in extensions of credit relating to time share plans (as defined in 11 U.S.C. 101(53D)).

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

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

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

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

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

(A) as a mortgage loan originator; or

(B) in financial services;

that is acceptable to the commissioner; and

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

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

(1) a principal manager; and

(2) a mortgage loan originator;

on behalf of a loan broker licensee.

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

- (1) Fees for real estate appraisals. However, if the residential mortgage loan is governed by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (12 U.S.C. 3331 through 3352), the fee for an appraisal performed in connection with the loan is not a bona fide third party fee unless the appraisal is performed by a person that is licensed or certified under IC 25-34.1-3-8.
- (2) Fees for title examination, abstract of title, title insurance, property surveys, or similar purposes.
- (3) Notary and credit report fees.
- (4) Fees for the services provided by a loan broker in procuring possible business for a creditor if the fees are paid by the creditor.

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

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

- (1) is employed by a loan broker licensee and acts at the direction of, and subject to the supervision of, the loan broker licensee or a licensed principal manager employed by the loan broker licensee; and
- (2) performs solely clerical or support duties on behalf of the loan broker licensee, including any of the following activities with respect to a residential mortgage loan application received by the loan broker licensee:
 - (A) The receipt, collection, distribution, and analysis of information commonly used in the processing or underwriting of a residential mortgage loan.
 - (B) Communicating with a borrower or potential borrower to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include:
 - (i) offering or negotiating loan rates or terms; or
 - (ii) counseling borrowers or potential borrowers about residential mortgage loan rates or terms.

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

- (1) Acting as a real estate broker or salesperson for a buyer, seller, lessor, or lessee of real property.
- (2) Bringing together parties interested in the sale, lease, or exchange of real property.
- (3) Negotiating, on behalf of any party, any part of a contract concerning the sale, lease, or exchange of real property, other than in connection with obtaining or providing financing for the transaction.

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

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

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

(1) is an employee of:

(A) a depository institution;

(B) a subsidiary that is:

(i) owned and controlled by a depository institution; and

(ii) regulated by a federal financial institution regulatory agency (as defined in 12 U.S.C. 3350(6)); or

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

(2) is registered with and maintains a unique identifier with the Nationwide Mortgage Licensing System and Registry.

(r) As used in this chapter, "residential mortgage loan" means a loan that is secured by a mortgage, deed of trust, or other consensual security interest on real estate in Indiana on which there is located or intended to be constructed a dwelling (as defined in the federal Truth in Lending Act (15 U.S.C. 1602(v)) that is or will be used primarily for personal, family, or household purposes.

(s) As used in this chapter, "personal information" includes any of the following:

(1) An individual's first and last names or first initial and last name.

(2) Any of the following data elements:

(A) A Social Security number.

(B) A driver's license number.

(C) A state identification card number.

(D) A credit card number.

(E) A financial account number or debit card number in combination with a security code, password, or access code that would permit access to the person's account.

(3) With respect to an individual, any of the following:

(A) Address.

(B) Telephone number.

(C) Information concerning the individual's:

(i) income or other compensation;

(ii) credit history;

(iii) credit score;

(iv) assets;

(v) liabilities; or

(vi) employment history.

(t) As used in this chapter, personal information is "encrypted" if the personal information:

(1) has been transformed through the use of an algorithmic process into a form in which there is a low probability of

assigning meaning without use of a confidential process or key;
or

(2) is secured by another method that renders the personal information unreadable or unusable.

(u) As used in this chapter, personal information is "redacted" if the personal information has been altered or truncated so that not more than the last four (4) digits of:

- (1) a Social Security number;
- (2) a driver's license number;
- (3) a state identification number; or
- (4) an account number;

are accessible as part of the personal information.

(v) As used in this chapter, "depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(w) As used in this chapter, "state licensed mortgage loan originator" means any individual who:

- (1) is a mortgage loan originator;
- (2) is not an employee of:
 - (A) a depository institution;
 - (B) a subsidiary that is:
 - (i) owned and controlled by a depository institution; and
 - (ii) regulated by a federal financial institution regulatory agency (as defined in 12 U.S.C. 3350(6)); or
 - (C) an institution regulated by the Farm Credit Administration;
- (3) is licensed by a state or by the Secretary of the United States Department of Housing and Urban Development under Section 1508 of the S.A.F.E. Mortgage Licensing Act of 2008 (Title V of P.L.110-289); and
- (4) is registered as a mortgage loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(x) As used in this chapter, "unique identifier" means a number or other identifier that:

- (1) permanently identifies a mortgage loan originator; and
- (2) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the federal financial institution regulatory agencies to facilitate:
 - (A) the electronic tracking of mortgage loan originators; and
 - (B) the uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators.

As added by P.L.235-1985, SEC.1. Amended by P.L.247-1987, SEC.1; P.L.1-1990, SEC.242; P.L.8-1993, SEC.314; P.L.79-1998, SEC.22; P.L.230-1999, SEC.1; P.L.14-2000, SEC.52; P.L.115-2001, SEC.1; P.L.73-2004, SEC.12; P.L.230-2007, SEC.6; P.L.145-2008, SEC.10; P.L.1-2009, SEC.130; P.L.156-2009, SEC.1; P.L.35-2010, SEC.4.

IC 23-2-5-4

License to engage in loan brokerage business required; license to act as mortgage loan originator or principal manager required; unique identifier required; evidence of compliance; criminal background check

Sec. 4. (a) A person may not engage in the loan brokerage business in Indiana unless the person first obtains a loan broker license from the commissioner. Any person desiring to engage or continue in the loan brokerage business shall apply to the commissioner for a loan broker license under this chapter.

(b) An individual may not act as a mortgage loan originator in Indiana on behalf of a person licensed or required to be licensed as a loan broker under this chapter unless the individual first obtains a unique identifier from the Nationwide Mortgage Licensing System and Registry and a mortgage loan originator license from the commissioner. An individual desiring to act as a mortgage loan originator on behalf of a person licensed or required to be licensed as a loan broker under this chapter shall apply to the commissioner for a mortgage loan originator license under this chapter.

(c) An individual may not act as a principal manager on behalf of a person licensed or required to be licensed as a loan broker under this chapter unless the individual first obtains a unique identifier from the Nationwide Mortgage Licensing System and Registry and a principal manager license from the commissioner. Any individual desiring to act as a principal manager on behalf of a person licensed or required to be licensed as a loan broker under this chapter shall apply to the commissioner for a principal manager license under this chapter.

(d) The commissioner may request evidence of compliance with this section at any of the following times:

- (1) The time of application for an initial license.
- (2) The time of renewal of a license.
- (3) Any other time considered necessary by the commissioner.

(e) For purposes of subsection (d), evidence of compliance with this section must include a criminal background check, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation.

(f) A unique identifier obtained by an individual from the Nationwide Mortgage Licensing System and Registry under subsection (b) or (c) may not be used for purposes other than those set forth in the S.A.F.E. Mortgage Licensing Act of 2008 (Title V of P.L.110-289).

As added by P.L.235-1985, SEC.1. Amended by P.L.230-1999, SEC.2; P.L.230-2007, SEC.7; P.L.145-2008, SEC.11; P.L.156-2009, SEC.2.

IC 23-2-5-5

Applications for licenses; contents; bond; expiration; service of process; criminal background checks; consumer reports; financial responsibility

Sec. 5. (a) An application for a loan broker license or renewal of a loan broker license must contain:

- (1) consent to service of process under subsection (g);
- (2) evidence of the bond required in subsection (d);
- (3) an application fee of two hundred dollars (\$200), plus one hundred dollars (\$100) for each ultimate equitable owner;
- (4) an affidavit affirming that none of the applicant's ultimate equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of:
 - (A) any felony within the previous seven (7) years; or
 - (B) an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment;unless such an affidavit is waived by the commissioner under subsection (h);
- (5) evidence that the applicant, if the applicant is an individual, has completed the education requirements under section 21 of this chapter;
- (6) the name and license number for each mortgage loan originator to be employed by the licensee;
- (7) the name and license number for each principal manager; and
- (8) for each ultimate equitable owner, the following information:
 - (A) The name of the ultimate equitable owner.
 - (B) The address of the ultimate equitable owner, including the home address of the ultimate equitable owner if the ultimate equitable owner is an individual.
 - (C) The telephone number of the ultimate equitable owner, including the home telephone number if the ultimate equitable owner is an individual.
 - (D) The ultimate equitable owner's Social Security number and date of birth, if the ultimate equitable owner is an individual.

(b) An application for licensure as a mortgage loan originator shall be made on a form prescribed by the commissioner. The application must include the following information for the individual that seeks to be licensed as a mortgage loan originator:

- (1) The name of the individual.
- (2) The home address of the individual.
- (3) The home telephone number of the individual.
- (4) The individual's Social Security number and date of birth.
- (5) The name of the:
 - (A) loan broker licensee; or
 - (B) applicant for loan broker licensure;for whom the individual seeks to be employed as a mortgage loan originator.
- (6) Consent to service of process under subsection (g).
- (7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.
- (8) An application fee of fifty dollars (\$50).

(9) All:

(A) registration numbers previously issued to the individual under this chapter, if the applicant was registered as an originator or a principal manager under this chapter before July 1, 2009; and

(B) license numbers previously issued to the individual under this chapter, if applicable.

(c) An application for licensure as a principal manager shall be made on a form prescribed by the commissioner. The application must include the following information for the individual who seeks to be licensed as a principal manager:

(1) The name of the individual.

(2) The home address of the individual.

(3) The home telephone number of the individual.

(4) The individual's Social Security number and date of birth.

(5) The name of the:

(A) loan broker licensee; or

(B) applicant for loan broker licensure;

for whom the individual seeks to be employed as a principal manager.

(6) Consent to service of process under subsection (g).

(7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.

(8) Evidence that the individual has at least three (3) years of experience in the:

(A) loan brokerage; or

(B) financial services;

business.

(9) An application fee of one hundred dollars (\$100).

(10) All:

(A) registration numbers previously issued to the individual under this chapter, if the applicant was registered as an originator or a principal manager under this chapter before July 1, 2009; and

(B) license numbers previously issued to the individual under this chapter, if applicable.

(d) A loan broker licensee must maintain a bond satisfactory to the commissioner, which must cover the activities of each licensed mortgage loan originator and licensed principal manager employed by the loan broker licensee. The bond must be in one (1) of the following amounts, depending on the total amount of residential mortgage loans originated by the loan broker in the previous calendar year:

(1) Fifty thousand dollars (\$50,000) if the total amount of residential mortgage loans originated by the loan broker in the previous calendar year was not greater than five million dollars (\$5,000,000).

(2) Sixty thousand dollars (\$60,000) if the total amount of residential mortgage loans originated by the loan broker in the previous calendar year was greater than five million dollars

(\$5,000,000) but not greater than twenty million dollars (\$20,000,000).

(3) Seventy-five thousand dollars (\$75,000) if the total amount of residential mortgage loans originated by the loan broker in the previous calendar year was greater than twenty million dollars (\$20,000,000).

The bond shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee or any licensed mortgage loan originator or licensed principal manager employed by the licensee.

(e) The commissioner shall issue a license and license number to an applicant for a loan broker license, a mortgage loan originator license, or a principal manager license if the applicant meets the applicable licensure requirements set forth in this chapter.

(f) Licenses issued by the commissioner under this chapter expire on December 31 of the year in which they are issued.

(g) Every applicant for licensure or for renewal of a license shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

(h) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

(i) Whenever an initial or a renewal application for a license is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

(j) At the time of application for an initial license under this chapter, the commissioner shall require each:

(1) equitable owner, in the case of an applicant for a loan broker license;

(2) individual described in subsection (a)(4), in the case of an applicant for a loan broker license; and

(3) applicant for licensure as:

(A) a mortgage loan originator; or

(B) a principal manager;

to submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the commissioner in determining whether the equitable owner, the individual described in subsection (a)(4), or the applicant should be denied licensure under this chapter for any reason set forth in section 10(c) or 10(d) of this chapter. The equitable owner, individual described in subsection (a)(4), or applicant shall pay any fees or costs associated with the fingerprints and background check required under this subsection. The commissioner may not release the results of a background check

described in this subsection to any private entity.

(k) Every three (3) years, beginning with the third calendar year following the calendar year in which an initial license is issued under this chapter, the commissioner shall require each:

- (1) equitable owner, in the case of a loan broker licensee;
- (2) individual described in subsection (a)(4), in the case of a loan broker licensee; and
- (3) licensed:
 - (A) mortgage loan originator; or
 - (B) principal manager;

to submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the commissioner in determining whether the equitable owner, the individual described in subsection (a)(4), or the licensee should be denied continued licensure under this chapter for any reason set forth in section 10(c) of this chapter. The equitable owner, individual described in subsection (a)(4), or licensee shall pay any fees or costs associated with the fingerprints and background check required under this subsection. The commissioner may not release the results of a background check described in this subsection to any private entity.

(l) The commissioner shall require each applicant for licensure as:

- (1) a mortgage loan originator; or
- (2) a principal manager;

to submit written authorization for the commissioner or an agent of the commissioner to obtain a consumer report (as defined in IC 24-5-24-2) concerning the applicant.

(m) In reviewing a consumer report obtained under subsection (l), the commissioner may consider one (1) or more of the following in determining whether an individual described in subsection (l) has demonstrated financial responsibility:

- (1) Bankruptcies filed by the individual within the most recent ten (10) years.
- (2) Current outstanding civil judgments against the individual, except judgments resulting solely from medical expenses owed by the individual.
- (3) Current outstanding tax liens or other government liens or filings.
- (4) Foreclosure actions filed within the most recent three (3) years against property owned by the individual.
- (5) Any pattern of seriously delinquent accounts associated with the individual during the most recent three (3) years.

As added by P.L.235-1985, SEC.1. Amended by P.L.247-1987, SEC.2; P.L.113-1992, SEC.4; P.L.11-1996, SEC.18; P.L.230-1999, SEC.3; P.L.115-2001, SEC.2; P.L.230-2007, SEC.8; P.L.3-2008, SEC.167; P.L.145-2008, SEC.12; P.L.156-2009, SEC.3.

IC 23-2-5-5.5

Written examination; subject areas; passing and retaking examination

Sec. 5.5. (a) The commissioner shall require an applicant for licensure as:

(1) a mortgage loan originator under section 5(b) of this chapter; or

(2) a principal manager under section 5(c) of this chapter; to pass a written examination prepared and administered by the commissioner or an agent appointed by the commissioner and approved by the Nationwide Mortgage Licensing System and Registry.

(b) The written examination required by this section must measure the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(1) Ethics.

(2) Federal laws and regulations concerning the origination of residential mortgage loans.

(3) State laws and rules concerning the origination of residential mortgage loans.

(c) An individual who answers at least seventy-five percent (75%) of the questions on the written examination correctly is considered to have passed the examination.

(d) An individual who does not pass the written examination may retake the examination up to two (2) additional times, with each subsequent attempt occurring at least thirty (30) days after the individual last sat for the examination. If an individual fails three (3) consecutive examinations, the individual must wait to retake the examination until at least six (6) months after the individual sat for the third examination.

(e) If an individual who has been issued a mortgage loan originator license or a principal manager license under this chapter:

(1) allows the individual's license to lapse; or

(2) otherwise does not maintain a valid license under this chapter;

for a period of at least five (5) years, the individual must retake the written examination required by this section.

As added by P.L.156-2009, SEC.4.

IC 23-2-5-6

Renewal of licenses

Sec. 6. A loan broker licensee may not continue engaging in the loan brokerage business unless the licensee's license is renewed annually. A mortgage loan originator licensee or a principal manager licensee may not continue acting as:

(1) a mortgage loan originator; or

(2) a principal manager;

unless the licensee's license is renewed annually. A licensee under this chapter shall renew its license by filing with the commissioner, at least thirty (30) days before the expiration of the license, an application containing any information the commissioner may require to indicate any material change from the information contained in the applicant's original application or any previous

application.

As added by P.L.235-1985, SEC.1. Amended by P.L.11-1996, SEC.19; P.L.230-1999, SEC.4; P.L.115-2001, SEC.3; P.L.145-2008, SEC.13; P.L.156-2009, SEC.5.

IC 23-2-5-7

Loan broker regulation account

Sec. 7. (a) The loan broker regulation account is created in the state general fund. The money in the loan broker regulation account may be used only for the regulation of loan brokers, mortgage loan originators, and principal managers under this chapter. The loan broker regulation account shall be administered by the treasurer of state. The money in the loan broker regulation account does not revert to any other account within the state general fund at the end of a state fiscal year.

(b) Except as provided in subsection (c), all fees and funds accruing from the administration of this chapter shall be accounted for by the commissioner and shall be deposited with the treasurer of state who shall deposit them in the loan broker regulation account in the state general fund.

(c) All expenses incurred in the administration of this chapter shall be paid from appropriations made from the state general fund. However, costs of investigations incurred under this chapter shall be paid from, and civil penalties recovered under this chapter shall be deposited in, the securities division enforcement account created under IC 23-19-6-1(f). The funds in the securities division enforcement account shall be available, with the approval of the budget agency, to augment and supplement the funds appropriated for the administration of this chapter.

As added by P.L.235-1985, SEC.1. Amended by P.L.115-2001, SEC.4; P.L.27-2007, SEC.18; P.L.156-2009, SEC.6.

IC 23-2-5-8

Repealed

(Repealed by P.L.113-1992, SEC.10.)

IC 23-2-5-9

Statute of frauds; required statement

Sec. 9. (a) To be enforceable, every contract for the services of a loan broker shall be in writing and signed by the contracting parties.

(b) At the time a contract for the services of a loan broker is signed, the loan broker shall provide a copy of the signed contract to each of the other parties to the contract.

(c) Every contract for the services of a loan broker must include the following statement:

"No statement or representation by a loan broker is valid or enforceable unless the statement or representation is in writing."

(d) This section does not apply to a contract that provides for the payment of referral fees by a lender or a third party.

As added by P.L.235-1985, SEC.1. Amended by P.L.113-1992,

SEC. 5; P.L. 230-2007, SEC. 9.

IC 23-2-5-9.1

Real estate appraisals; improper influence; ownership interest in appraisal company

Sec. 9.1. (a) As used in this section, "appraisal company" means a business entity that:

- (1) performs real estate appraisals on a regular basis for compensation through one (1) or more owners, officers, employees, or agents; or
- (2) holds itself out to the public as performing real estate appraisals.

(b) As used in this section, "immediate family", with respect to an individual, refers to:

- (1) the individual's spouse who resides in the individual's household; and
- (2) any dependent child of the individual.

(c) As used in this section, "real estate appraiser" means a person who:

- (1) is licensed as a real estate broker under IC 25-34.1 and performs real estate appraisals within the scope of the person's license;
- (2) holds a real estate appraiser license or certificate issued under IC 25-34.1-3-8; or
- (3) otherwise performs real estate appraisals in Indiana.

(d) A person licensed under this chapter, or a person required to be licensed under this chapter, shall not knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate appraiser with respect to the value of any real estate offered as security for a residential mortgage loan.

(e) Except as provided in subsection (f):

- (1) a person licensed under this chapter, or a person required to be licensed under this chapter;
- (2) a member of the immediate family of:
 - (A) a person licensed under this chapter; or
 - (B) a person required to be licensed under this chapter; or
- (3) a person described in subdivision (1) or (2) in combination with one (1) or more other persons described in subdivision (1) or (2);

may not own or control a majority interest in an appraisal company.

(f) This subsection applies to a person or combination of persons described in subsection (e) who own or control a majority interest in an appraisal company on June 30, 2007. The prohibition set forth in subsection (e) does not apply to a person or combination of persons described in this subsection, subject to the following:

- (1) The interest in the appraisal company owned or controlled by the person or combination of persons described in subsection (e) shall not be increased after June 30, 2007.
- (2) The interest of a person licensed under this chapter, or of a

person required to be licensed under this chapter, shall not be transferred to a member of the person's immediate family.

(3) If the commissioner determines that any person or combination of persons described in subsection (e) has violated this chapter, the commissioner may order one (1) or more of the persons to divest their interest in the appraisal company. The commissioner may exercise the remedy provided by this subdivision in addition to, or as a substitute for, any other remedy available to the commissioner under this chapter.

As added by P.L.230-2007, SEC.10. Amended by P.L.156-2009, SEC.7.

IC 23-2-5-10

Violations; investigation by commissioner; orders and notices; hearing; denial, suspension, or revocation of license; censure; summary orders; transfer or termination of license; change of material fact or statement

Sec. 10. (a) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or a practice constituting a violation of this chapter or a rule or an order under this chapter, the commissioner may investigate and may issue, with a prior hearing if there exists no substantial threat of immediate irreparable harm or without a prior hearing, if there exists a substantial threat of immediate irreparable harm, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter.

(b) Upon the issuance of an order or notice without a prior hearing by the commissioner under subsection (a), the commissioner shall promptly notify the respondent and, if the subject of the order or notice is a mortgage loan originator licensee or a principal manager licensee, the loan broker licensee for whom the mortgage loan originator or principal manager is employed:

- (1) that the order or notice has been issued;
- (2) of the reasons the order or notice has been issued; and
- (3) that upon the receipt of a written request the matter will be set for a hearing to commence not later than fifteen (15) business days after receipt of the request if the original order issued by the commissioner was a summary suspension, summary revocation, or denial of a license and not later than forty-five (45) business days after receipt of the request for all other orders unless the respondent consents to a later date.

If a hearing is not requested and not ordered by the commissioner, an order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(c) The commissioner may deny an application for an initial or a renewal license, and may suspend or revoke the license of a licensee if the applicant, the licensee, or an ultimate equitable owner of an applicant for a loan broker license or of a loan broker licensee:

(1) has, within the most recent ten (10) years:

(A) been the subject of an adjudication or a determination by:

(i) a court with jurisdiction; or

(ii) an agency or administrator that regulates securities, commodities, banking, financial services, insurance, real estate, or the real estate appraisal industry;

in Indiana or in any other jurisdiction; and

(B) been found, after notice and opportunity for hearing, to have violated the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal laws of Indiana or any other jurisdiction;

(2) except as provided in subsection (d)(1) with respect to the loan brokerage business, has:

(A) been denied the right to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry; or

(B) had the person's authority to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry revoked or suspended;

by Indiana or by any other state, federal, or foreign governmental agency or self regulatory organization;

(3) is insolvent;

(4) has violated any provision of this chapter;

(5) has knowingly filed with the commissioner any document or statement that:

(A) contains a false representation of a material fact;

(B) fails to state a material fact; or

(C) contains a representation that becomes false after the filing but during the term of a license as provided in subsection (j);

(6) has been convicted, within ten (10) years before the date of the application, renewal, or review, of any crime, other than a felony, involving fraud or deceit;

(7) if the person is a loan broker licensee or a principal manager, has failed to reasonably supervise the person's mortgage loan originators or employees to ensure their compliance with this chapter;

(8) is on the most recent tax warrant list supplied to the commissioner by the department of state revenue; or

(9) has engaged in dishonest or unethical practices in the loan brokerage business, as determined by the commissioner.

(d) The commissioner shall deny an application for an initial or a renewal license and shall revoke the license of a licensee if the applicant, the licensee, or an ultimate equitable owner of an applicant

for a loan broker license or of a loan broker licensee:

- (1) has had a:
 - (A) loan broker license issued under this chapter;
 - (B) mortgage loan originator license issued under this chapter;
 - (C) principal manager license issued under this chapter; or
 - (D) license that is:
 - (i) equivalent to a license described in clause (A), (B), or (C); and
 - (ii) issued by another jurisdiction;

revoked by the commissioner or the appropriate regulatory agency in another jurisdiction, whichever applies;

- (2) has been convicted of or pleaded guilty or nolo contendere to a felony in a domestic, foreign, or military court:

- (A) during the seven (7) year period immediately preceding the date of the application or review; or

- (B) at any time preceding the date of the application or review if the felony involved an act of fraud or dishonesty, a breach of trust, or money laundering;

- (3) fails to maintain the bond required under section 5(d) of this chapter;

- (4) fails to demonstrate the financial responsibility, character, and general fitness necessary to:

- (A) command the confidence of the community in which the applicant or licensee engages or will engage in the loan brokerage business; and

- (B) warrant a determination by the commissioner that the applicant or licensee will operate honestly, fairly, and efficiently within the purposes of this chapter;

- (5) has failed to meet the education requirements set forth in section 21 of this chapter;

- (6) has failed to pass the written examination required by section 5.5 of this chapter; or

- (7) fails to:

- (A) keep or maintain records in accordance with section 18 of this chapter; or

- (B) allow the commissioner or an agent appointed by the commissioner to inspect or examine a loan broker licensee's books and records to determine compliance with section 18 of this chapter.

- (e) The commissioner may do either of the following:

- (1) Censure:

- (A) a licensee;

- (B) an officer, a director, or an ultimate equitable owner of a loan broker licensee; or

- (C) any other person;

who violates or causes a violation of this chapter.

- (2) Permanently bar any person described in subdivision (1) from being:

- (A) licensed under this chapter; or

(B) employed by or affiliated with a person licensed under this chapter;

if the person violates or causes a violation of this chapter.

(f) The commissioner may not enter a final order:

(1) denying, suspending, or revoking the license of an applicant or a licensee; or

(2) imposing other sanctions;

without prior notice to all interested parties, opportunity for a hearing, and written findings of fact and conclusions of law. However, the commissioner may by summary order deny, suspend, or revoke a license pending final determination of any proceeding under this section or before any proceeding is initiated under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that the summary order has been entered, of the reasons for the summary order, and that upon receipt by the commissioner of a written request from a party, the matter will be set for hearing to commence not later than forty-five (45) business days after receipt of the request. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

(g) IC 4-21.5 does not apply to a proceeding under this section.

(h) If a mortgage loan originator licensee or a principal manager licensee seeks to transfer the licensee's license to another loan broker licensee who desires to have the mortgage loan originator licensee or principal manager licensee act as a mortgage loan originator or as a principal manager, whichever applies, the mortgage loan originator licensee or principal manager licensee shall, before the mortgage loan originator licensee or principal manager licensee acts as a mortgage loan originator or as a principal manager for the new employer, submit to the commissioner, on a form prescribed by the commissioner, a license application, as required by section 5 of this chapter.

(i) If the employment of a mortgage loan originator licensee or principal manager licensee is terminated, whether:

(1) voluntarily by the mortgage loan originator licensee or principal manager licensee; or

(2) by the loan broker licensee employing the mortgage loan originator licensee or principal manager licensee;

the loan broker licensee that employed the mortgage loan originator licensee or principal manager licensee shall, not later than five (5) days after the termination, notify the commissioner of the termination and the reasons for the termination.

(j) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the commissioner of the change. The commissioner may deny, revoke, or refuse to renew a

license applied for or held by any person who:

- (1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or
- (2) would not qualify for licensure under this chapter as a result of the change in a material fact or statement.

As added by P.L.235-1985, SEC.1. Amended by P.L.11-1996, SEC.20; P.L.230-1999, SEC.5; P.L.14-2000, SEC.53; P.L.270-2003, SEC.3; P.L.48-2006, SEC.7; P.L.230-2007, SEC.11; P.L.145-2008, SEC.14; P.L.156-2009, SEC.8.

IC 23-2-5-11

Powers and duties of commissioner; use immunity for witnesses; certificate of compliance or noncompliance; authority to compel compliance; multistate automated licensing system and repository

Sec. 11. (a) The commissioner may do the following:

- (1) Adopt rules under IC 4-22-2 to implement this chapter.
- (2) Make investigations and examinations:
 - (A) in connection with any application for licensure under this chapter or with any license already granted; or
 - (B) whenever it appears to the commissioner, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public.
- (3) Charge as costs of investigation or examination all reasonable expenses, including a per diem prorated upon the salary of the commissioner or employee and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination if the party has violated this chapter.
- (4) Issue notices and orders, including cease and desist notices and orders, after making an investigation or examination under subdivision (2). The commissioner shall notify the person that an order or notice has been issued, the reasons for it, and that a hearing will be set not later than fifteen (15) business days after the commissioner receives a written request from the person requesting a hearing if the original order issued by the commissioner was a summary suspension, summary revocation, or denial of a license and not later than forty-five (45) business days after the commissioner receives a written request from the person requesting a hearing for all other orders.
- (5) Sign all orders, official certifications, documents, or papers issued under this chapter or delegate the authority to sign any of those items to a deputy.
- (6) Hold and conduct hearings.
- (7) Hear evidence.
- (8) Conduct inquiries with or without hearings.
- (9) Receive reports of investigators or other officers or

employees of the state of Indiana or of any municipal corporation or governmental subdivision within the state.

(10) Administer oaths, or cause them to be administered.

(11) Subpoena witnesses, and compel them to attend and testify.

(12) Compel the production of books, records, and other documents.

(13) Order depositions to be taken of any witness residing within or without the state. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner.

(14) Order that each witness appearing under the commissioner's order to testify before the commissioner shall receive the fees and mileage allowances provided for witnesses in civil cases.

(15) Provide interpretive opinions or issue determinations that the commissioner will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. The commissioner may adopt rules to establish fees for individuals requesting an interpretive opinion or a determination under this subdivision. A person may not request an interpretive opinion or a determination concerning an activity that:

(A) occurred before; or

(B) is occurring on;

the date the opinion or determination is requested.

(16) Subject to subsection (f), designate a multistate automated licensing system and repository, established and operated by a third party, to serve as the sole entity responsible for:

(A) processing applications for:

(i) licenses under this chapter; and

(ii) renewals of licenses under this chapter; and

(B) performing other services that the commissioner determines are necessary for the orderly administration of the division's licensing system.

A multistate automated licensing system and repository described in this subdivision may include the Nationwide Mortgage Licensing System and Registry established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The commissioner may take any action necessary to allow the division to participate in a multistate automated licensing system and repository.

(b) If a witness, in any hearing, inquiry, or investigation conducted under this chapter, refuses to answer any question or produce any item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item.

If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use immunity to the witness. Upon written request of the commissioner, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

- (1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and
- (2) the witness must answer the questions asked and produce the items requested.

A grant of use immunity does not prohibit evidence that the witness gives in a hearing, investigation, or inquiry from being used in a prosecution for perjury under IC 35-44-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

(c) In any prosecution, action, suit, or proceeding based upon or arising out of this chapter, the commissioner may sign a certificate showing compliance or noncompliance with this chapter by any person. This shall constitute prima facie evidence of compliance or noncompliance with this chapter and shall be admissible in evidence in any action at law or in equity to enforce this chapter.

(d) If:

- (1) a person disobeys any lawful:
 - (A) subpoena issued under this chapter; or
 - (B) order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this chapter; or
- (2) a witness refuses to:
 - (A) appear when subpoenaed;
 - (B) testify to any matter about which the witness may be lawfully interrogated; or
 - (C) take or subscribe to any oath required by this chapter;

the circuit or superior court of the county in which the hearing, inquiry, or investigation in question is held, if demand is made or if, upon written petition, the production is ordered to be made, or the commissioner or a hearing officer appointed by the commissioner, shall compel compliance with the lawful requirements of the subpoena, order, or demand, compel the production of the necessary or required books, papers, records, documents, and other evidence and information, and compel any witness to attend in any Indiana county and to testify to any matter about which the witness may lawfully be interrogated, and to take or subscribe to any oath required.

(e) If a person fails, refuses, or neglects to comply with a court order under this section, the person shall be punished for contempt of court.

(f) The commissioner's authority to designate a multistate

automated licensing system and repository under subsection (a)(16) is subject to the following:

(1) The commissioner may not require any person that is not required to be licensed under this chapter, or any employee or agent of a person that is not required to be licensed under this chapter, to:

(A) submit information to; or

(B) participate in;

the multistate automated licensing system and repository.

(2) The commissioner may require a person required under this chapter to submit information to the multistate automated licensing system and repository to pay a processing fee considered reasonable by the commissioner.

As added by P.L.235-1985, SEC.1. Amended by P.L.230-1999, SEC.6; P.L.48-2006, SEC.8; P.L.145-2008, SEC.15; P.L.156-2009, SEC.9; P.L.114-2010, SEC.6.

IC 23-2-5-11.5

Authority of commissioner to bring civil action to enjoin violations and enforce compliance; remedies; bond not required; penalties

Sec. 11.5. (a) If the commissioner believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may maintain an action in the circuit or superior court in the county where the investigation or inquiry in question is being conducted to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

(b) In an action under this section and on a proper showing, the court may:

(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator;

(B) ordering a receiver or conservator appointed under clause (A) to:

(i) take charge and control of a respondent's property, including investment accounts and accounts in a depository institution, rents, and profits;

(ii) collect debts; and

(iii) acquire and dispose of property;

(C) imposing a civil penalty of up to ten thousand dollars (\$10,000) per violation and an order of rescission,

restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter; and

(D) ordering the payment of prejudgment and postjudgment interest; or

(3) order such other relief as the court considers appropriate.

(c) The commissioner may not be required to post a bond in an action or proceeding under this chapter.

(d) Penalties collected under this section shall be deposited in the securities division enforcement account created under IC 23-19-6-1(f).

As added by P.L.114-2010, SEC.7.

IC 23-2-5-12

Certified copies of statements, documents, or records; admissibility

Sec. 12. Copies of any statement or document filed with the commissioner, and copies of any records of the commissioner, certified to by the commissioner or any deputy are admissible in any prosecution, action, suit, or proceeding based upon, or arising out of or under, the provisions of this chapter to the same effect as the original of the statement, document, or record would be if actually produced.

As added by P.L.235-1985, SEC.1.

IC 23-2-5-13

Court to compel obedience to subpoena, order, or demand

Sec. 13. Upon:

(1) disobedience on the part of any person to any lawful subpoena issued under this chapter, or to any lawful order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this chapter; or

(2) the refusal of any witness to appear when subpoenaed, to testify to any matter regarding which the witness may be lawfully interrogated, or to take or subscribe to any oath required by this chapter;

it shall be the duty of the circuit or superior court of the county in which the hearing or inquiry or investigation in question is being or is to be held, where demand is made, or where the production is ordered to be made, upon written petition of the commissioner, to compel obedience to the lawful requirements of the subpoena, order, or demand.

As added by P.L.235-1985, SEC.1. Amended by P.L.230-1999, SEC.7.

IC 23-2-5-14

Civil penalty; actions to enforce penalties

Sec. 14. (a) If the commissioner determines, after a hearing, that a person has violated this chapter, the commissioner may, in addition

to all other remedies, impose a civil penalty upon the person in an amount not to exceed ten thousand dollars (\$10,000) for each violation.

(b) The commissioner may bring an action in the circuit or superior court of Marion County to enforce payment of any penalty imposed under this section.

As added by P.L.235-1985, SEC.1. Amended by P.L.230-1999, SEC.8.

IC 23-2-5-15

Violation; liability for damages, interest, and attorney's fees; contract void

Sec. 15. Any person who violates this chapter or any rule or regulation adopted under this chapter, in connection with a contract for the services of a loan broker, is liable to any person damaged by the violation, for the amount of the actual damages suffered, interest at the legal rate, and attorney's fees. If a person violates any provision of this chapter, or any rule or regulation adopted under this chapter, in connection with a contract for loan brokering services, the contract is void, and the prospective borrower is entitled to receive from the loan broker all sums paid to the loan broker.

As added by P.L.235-1985, SEC.1. Amended by P.L.230-1999, SEC.9; P.L.230-2007, SEC.12.

IC 23-2-5-16

Violations; felonies

Sec. 16. (a) Except as provided in subsection (b), a person who knowingly violates this chapter commits a Class C felony.

(b) A person who knowingly violates this chapter commits a Class B felony if the person damaged by the violation is at least sixty (60) years of age.

(c) A person commits a Class C felony if the person knowingly makes or causes to be made:

(1) in any document filed with or sent to the commissioner or the securities division; or

(2) in any proceeding, investigation, or examination under this chapter;

any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

As added by P.L.235-1985, SEC.1. Amended by P.L.230-2007, SEC.13; P.L.156-2009, SEC.10.

IC 23-2-5-17

Rescission of transaction; limitations

Sec. 17. (a) If a transaction for which a loan broker has charged any fee is rescinded by any person under the provisions of the Truth-in-Lending Act (15 U.S.C. 1601-1667e) within twenty (20) calendar days after a notice of the rescission has been delivered to the creditor, the loan broker shall return to the person any consideration that has been given to the loan broker other than bona

vide third party fees.

(b) For purposes of calculating the time period during which a person may avoid a contract under IC 24-5-10-8 or IC 24-4.5-2-502, a contract with a loan broker shall be considered to be a sale of services that occurs on the date on which the person signs the written contract required by section 9 of this chapter.

As added by P.L.247-1987, SEC.4. Amended by P.L.3-1990, SEC.82; P.L.113-1992, SEC.6.

IC 23-2-5-18

Account numbers; records; retention; breach of security of records; disclosure requirements; disposal of personal information

Sec. 18. (a) Each loan broker agreement shall be given an account number. Each person licensed as a loan broker or required to be licensed as a loan broker under this chapter shall keep and maintain the following records or their electronic equivalent:

(1) A file for each borrower or proposed borrower that contains the following:

(A) The name and address of the borrower or any proposed borrower.

(B) A copy of the signed loan broker agreement.

(C) A copy of any other papers or instruments used in connection with the loan broker agreement and signed by the borrower or any proposed borrower.

(D) If a loan was obtained for the borrower, the name and address of the creditor.

(E) If a loan is accepted by the borrower, a copy of the loan agreement.

(F) The amount of the loan broker's fee that the borrower has paid. If there is an unpaid balance, the status of any collection efforts.

(2) All receipts from or for the account of borrowers or any proposed borrowers and all disbursements to or for the account of borrowers or any proposed borrowers, recorded so that the transactions are readily identifiable.

(3) A general ledger that shall be posted at least monthly, and a trial balance sheet and profit and loss statement prepared within thirty (30) days of the commissioner's request for the information.

(4) A sample of:

(A) all advertisements, pamphlets, circulars, letters, articles, or communications published in any newspaper, magazine, or periodical;

(B) scripts of any recording, radio, or television announcement; and

(C) any sales kits or literature;

to be used in solicitation of borrowers.

(5) A report that lists all residential mortgage loans, including pending loans and loans that were not closed, originated by the loan broker. The report required by this subdivision must be

searchable by, or organized according to, the borrower's last name and must include the following information for each residential mortgage loan listed:

- (A) The name and address of the borrower or potential borrower.
- (B) The name of the creditor.
- (C) The name of the mortgage loan originator.
- (D) The loan amount.
- (E) The status of the loan, including the date of closing or denial by the creditor.
- (F) The interest rate for the loan.

The report required by this subdivision may be prepared or produced by or through the loan broker's loan origination software or other software used by the loan broker in its loan brokerage business.

(b) The records listed in subsection (a) shall be kept for a period of two (2) years in the office of the loan broker in which the loan was originated and must be separate or readily identifiable from the records of any other business that is conducted in the office of the loan broker. If the office in which any records are required to be kept under this subsection is located outside Indiana, the records must be:

- (1) made available at a location that is:
 - (A) located in Indiana; and
 - (B) accessible to the securities division; or
 - (2) maintained electronically and made available to the securities division not later than ten (10) business days after a request by the securities division to inspect or examine the records.
- (c) If a breach of the security of any records:
- (1) maintained by a loan broker under this section; and
 - (2) containing the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers;

occurs, the loan broker is subject to the disclosure requirements under IC 24-4.9-3, unless the loan broker is exempt from the disclosure requirements under IC 24-4.9-3-4.

(d) A person who is licensed or required to be licensed under this chapter may not dispose of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers without first shredding, incinerating, mutilating, erasing, or otherwise rendering the information illegible or unusable.

As added by P.L.247-1987, SEC.5. Amended by P.L.113-1992, SEC.7; P.L.230-1999, SEC.10; P.L.145-2008, SEC.16; P.L.156-2009, SEC.11.

IC 23-2-5-18.5

Possession of funds belonging to others; duties to prospective borrower

Sec. 18.5. Whenever a person licensed under this chapter, or a person required to be licensed under this chapter, has possession of

funds belonging to others, including money received by or on behalf of a prospective borrower, the person licensed under this chapter, or required to be licensed under this chapter, shall:

- (1) upon request of the prospective borrower, account for any funds handled for the prospective borrower;
- (2) follow any reasonable and lawful instructions from the prospective borrower concerning the prospective borrower's funds; and
- (3) return any unspent funds of the prospective borrower to the prospective borrower in a timely manner.

As added by P.L.230-2007, SEC.14. Amended by P.L.156-2009, SEC.12.

IC 23-2-5-18.7

Reports of condition

Sec. 18.7. Each loan broker licensee shall submit, at such times as the commissioner may require, reports of condition to:

- (1) the commissioner; and
- (2) the Nationwide Mortgage Licensing System and Registry.

A report required by this section shall be in such form and contain such information as the commissioner may require.

As added by P.L.156-2009, SEC.13.

IC 23-2-5-19

Repealed

(Repealed by P.L.156-2009, SEC.25.)

Revisor's Note: See also P.L.230-2007, SEC.26, for the period beginning 7-1-2007, and ending 6-30-2008.

IC 23-2-5-20

Prohibited acts

Sec. 20. (a) A person shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:

- (1) Employ any device, scheme, or artifice to defraud.
- (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.
- (3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.
- (4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a residential mortgage loan until the loan has been closed.
- (5) Receive any funds if the person knows that the funds were generated as a result of a fraudulent act.
- (6) File or cause to be filed with a county recorder any document that the person knows:

(A) contains:

- (i) a misstatement; or

(ii) an untrue statement;
of a material fact; or

(B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.

(7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers, unless the personal information is used in an activity authorized by the borrower or prospective borrower under one (1) or more of the following circumstances:

(A) The personal information is:

- (i) included on an application form or another form; or
- (ii) transmitted as part of an application process or an enrollment process.

(B) The personal information is used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit.

(C) The personal information is used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate appraiser with respect to the value of any real estate offered as security for a residential mortgage loan, as prohibited by section 9.1(d) of this chapter.

(10) Violate any of the following:

(A) The federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

(B) The federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

(C) The federal Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).

(D) Any other federal law or regulation concerning residential mortgage lending.

(b) A person who commits an act described in subsection (a) is subject to sections 10, 11.5, 14, 15, and 16 of this chapter.

As added by P.L.247-1987, SEC.7. Amended by P.L.113-1992, SEC.9; P.L.230-1999, SEC.12; P.L.115-2001, SEC.5; P.L.145-2008, SEC.18; P.L.156-2009, SEC.14; P.L.114-2010, SEC.8.

IC 23-2-5-20.5

Employment by loan broker; license required; licensed principal manager required at each location; supervision of employees; representation to the public

Sec. 20.5. (a) A person licensed or required to be licensed as a loan broker under this chapter shall not employ a person to act as a mortgage loan originator unless the person is licensed as a mortgage loan originator or a principal manager under this chapter. The license of a mortgage loan originator or a principal manager is not effective during any period in which the mortgage loan originator or principal manager is not employed by a loan broker licensed under this chapter.

(b) A person licensed or required to be licensed as a loan broker under this chapter shall not operate any principal or branch office of a loan brokerage business without employing a licensed principal manager at that location.

(c) The licensed principal manager employed at a principal or branch office of a loan brokerage business shall supervise all employees at that location. If a licensed mortgage loan originator works from a location that is not a principal or branch office of a loan brokerage business, the mortgage loan originator shall be supervised by the principal manager employed at the principal or branch office at which the mortgage loan originator's loan files are sent.

(d) An individual that acts solely as a loan processor or underwriter shall not represent to the public through:

- (1) advertising; or
- (2) other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items;

that the individual may or will perform mortgage loan origination activities or otherwise act as a mortgage loan originator.

As added by P.L.230-2007, SEC.16. Amended by P.L.156-2009, SEC.15.

IC 23-2-5-21

Academic instruction requirements

Sec. 21. (a) A person applying for an initial license must provide to the commissioner evidence that during the twenty-four (24) month period immediately preceding the application that the person completed at least twenty (20) hours of academic instruction, acceptable to the commissioner and approved by the Nationwide Mortgage Licensing System and Registry. The education hours required under this subsection must include the following:

- (1) Three (3) hours of federal law and regulations concerning residential mortgage lending.
- (2) Three (3) hours of ethics, including instruction on fraud, consumer protection, and fair lending practices.
- (3) Two (2) hours of training concerning lending standards for nontraditional residential mortgage loan products.

(4) Two (2) hours of state law and rules concerning residential mortgage lending.

(b) To maintain a license under this chapter, a person must provide to the commissioner evidence that the person has completed at least eight (8) hours of academic instruction that is acceptable to the commissioner, and approved by the Nationwide Mortgage Licensing System and Registry, during each calendar year after the year in which the license was initially issued. The education hours required under this subsection must include the following:

(1) Three (3) hours of federal law and regulations concerning residential mortgage lending.

(2) Two (2) hours of ethics, including instruction on fraud, consumer protection, and fair lending practices.

(3) Two (2) hours of training concerning lending standards for nontraditional residential mortgage loan products.

(c) In determining the acceptability of academic instruction the commissioner shall give consideration to approval of a licensee's internal academic instruction programs completed by employees.

(d) In determining the acceptability of an education course, the commissioner may require a fee, in an amount prescribed by the commissioner by rule or order, for the commissioner's review of the course.

As added by P.L.230-1999, SEC.13. Amended by P.L.230-2007, SEC.17; P.L.156-2009, SEC.16.

IC 23-2-5-22

Appeals; service on commissioner; transcript

Sec. 22. (a) An appeal may be taken by:

(1) any person whose application for an initial or a renewal license under this chapter is granted or denied, from any final order of the commissioner concerning the application;

(2) any applicant for initial or renewed licensure as a principal manager or a mortgage loan originator, from any final order of the commissioner affecting the application;

(3) any person against whom a civil penalty is imposed under section 14(a) of this chapter, from the final order of the commissioner imposing the civil penalty; or

(4) any person who is named as a respondent, from any final order issued by the commissioner under section 10 or 11 of this chapter;

to the Marion circuit court or to the circuit or superior court of the county where the person taking the appeal resides or maintains a place of business.

(b) Not later than twenty (20) days after the entry of the order, the commissioner shall be served with:

(1) a written notice of the appeal stating the court to which the appeal will be taken and the grounds upon which a reversal of the final order is sought;

(2) a demand in writing from the appellant for a certified transcript of the record and of all papers on file in the

commissioner's office affecting or relating to the order; and
(3) a bond in the penal sum of five hundred dollars (\$500) to the state of Indiana with sufficient surety to be approved by the commissioner, conditioned upon the faithful prosecution of the appeal to final judgment and the payment of all costs that are adjudged against the appellant.

(c) Not later than ten (10) days after the commissioner is served with the items listed in subsection (b), the commissioner shall make, certify, and deliver to the appellant the transcript, and the appellant shall, not later than five (5) days after the date the appellant receives the transcript, file the transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal serves as the appellant's complaint. The commissioner may appear and file any motion or pleading and form the issue. The cause shall be entered on the trial calendar for trial de novo and given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent oral or written evidence concerning the order of the commissioner from which the appeal is taken. If the order of the commissioner is reversed, the court shall in its mandate specifically direct the commissioner as to the commissioner's further action in the matter. The commissioner is not barred from revoking or altering the order for any proper cause that accrues or is discovered after the order is entered. If the order is affirmed, the appellant is not barred after thirty (30) days from the date the order is affirmed from filing a new application if the application is not otherwise barred or limited. During the pendency of the appeal, the order from which the appeal is taken is not suspended but remains in effect unless otherwise ordered by the court. An appeal may be taken from the judgment of the court on the same terms and conditions as an appeal is taken in civil actions.

As added by P.L.48-2006, SEC.9. Amended by P.L.145-2008, SEC.19; P.L.156-2009, SEC.17.

IC 23-2-5-23

Documents; license number required

Sec. 23. A loan broker agreement that is delivered or required to be delivered by a person licensed or required to be licensed under this chapter to a borrower or prospective borrower must contain:

- (1) the license number of the loan broker; and
- (2) the license number of each:
 - (A) mortgage loan originator; or
 - (B) principal manager;who had contact with the file.

As added by P.L.230-2007, SEC.18. Amended by P.L.156-2009, SEC.18.

IC 23-2-5-24

Cooperation with department of financial institutions

Sec. 24. In the securities divisions' investigative, examination, and

regulatory activities related to licensees under this article, the securities division may cooperate with the Indiana department of financial institutions in the regulation of a licensee that conducts:

- (1) business under this article; and
- (2) business that requires licensure under IC 24-4.4.

As added by P.L.156-2009, SEC.19.

IC 23-2-5-25

Reporting by commissioner

Sec. 25. Subject to IC 5-14-3, the commissioner is required to regularly report:

- (1) violations of this chapter; and
- (2) enforcement actions and other relevant information;

to the Nationwide Mortgage Licensing System and Registry.

As added by P.L.156-2009, SEC.20.

IC 23-2-5-26

Process to challenge information reported

Sec. 26. The commissioner shall establish a process by which a mortgage loan originator may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.

As added by P.L.156-2009, SEC.21.