

### IC 24-4.4-3

#### Chapter 3. Administration

### IC 24-4.4-3-101

#### Short title

Sec. 101. This chapter shall be known and may be cited as the First Lien Mortgage Lending Act - Administration.

*As added by P.L.145-2008, SEC.20.*

### IC 24-4.4-3-102

#### Application

Sec. 102. This chapter applies to a person that engages as a creditor in first lien mortgage transactions in Indiana. The authority of this chapter remains in effect, whether a licensee, individual, or person subject to this article acts or claims to act under any licensing or registration law of Indiana or claims to act without such authority.

*As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.28.*

### IC 24-4.4-3-103

#### Powers of department; no liability for conforming act or omission

Sec. 103. (1) In addition to other powers granted by this article, the department within the limitations provided by law may:

- (a) receive and act on complaints, take action designed to obtain voluntary compliance with this article, or commence proceedings on the department's own initiative;
- (b) counsel persons and groups on their rights and duties under this article;
- (c) establish programs for the education of consumers with respect to credit practices and problems;
- (d) make studies appropriate to effectuate the purposes and policies of this article and make the results available to the public;
- (e) adopt, amend, and repeal rules, orders, policies, and forms to carry out the provisions of this article;
- (f) maintain more than one (1) office within Indiana; and
- (g) appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the department in court.

(2) Liability may not be imposed under this article for an act done or omitted in conformity with a rule, written notice, written opinion, written interpretation, or written directive of the department notwithstanding the fact that after the act is done or omitted the rule, written notice, written opinion, written interpretation, or written directive may be:

- (a) amended or repealed; or
- (b) determined by judicial or other authority to be invalid;

for any reason.

*As added by P.L.145-2008, SEC.20.*

#### **IC 24-4.4-3-104**

##### **Department's examination and investigatory authority; record retention; director's authority to control access to records; court order compelling compliance; confidentiality; examination of vendors**

Sec. 104. (1) In administering this article and in order to determine whether the provisions of this article are being complied with by persons engaging in acts subject to this article, the department may examine the records of persons and may make investigations of persons as may be necessary to determine compliance. Records subject to examination under this section include the following:

- (a) Training, operating, and policy manuals.
- (b) Minutes of:
  - (i) management meetings; and
  - (ii) other meetings.
- (c) Financial records, credit files, and data bases.
- (d) Other records that the department determines are necessary to perform its investigation or examination.

The department may also administer oaths or affirmations, subpoena witnesses, and compel the attendance of witnesses, including officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of licensees, and other individuals or persons subject to this article. The department may also adduce evidence and require the production of any matter that is relevant to an investigation. The department shall determine the sufficiency of the records maintained and whether the person has made the required information reasonably available. The records concerning any transaction subject to this article shall be retained for two (2) years after the making of the final entry relating to the first lien mortgage transaction, but in the case of a revolving first lien mortgage transaction the two (2) year period is measured from the date of each entry.

(2) The department's examination and investigatory authority under this article includes the following:

- (a) The authority to require a creditor to refund overcharges resulting from the creditor's noncompliance with the terms of a first lien mortgage transaction.
- (b) The authority to require a creditor to comply with the penalty provisions set forth in IC 24-4.4-2-201.
- (c) The authority to investigate complaints filed with the department by debtors.

(3) The department shall be given free access to the records wherever the records are located. In making any examination or investigation authorized by this article, the director may control access to any documents and records of the licensee or person under examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where the documents are usually kept. During the period of control, a licensee or person may not

remove or attempt to remove any of the documents and records except under a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensee or person have been, or are, at risk of being altered or destroyed for purposes of concealing a violation of this article, the licensee or person shall have access to the documents or records as necessary to conduct the licensee's or person's ordinary business affairs. If the person's records are located outside Indiana, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or the department's representative to examine the records where they are maintained. The department may designate comparable officials of the state in which the records are located to inspect the records on behalf of the department.

(4) Upon a person's failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice by the department to all affected persons, the department may apply to any civil court with jurisdiction for an order compelling compliance.

(5) The department shall not make public:

(a) the name or identity of a person whose acts or conduct the department investigates under this section; or

(b) the facts discovered in the investigation.

However, this subsection does not apply to civil actions or enforcement proceedings under this article.

(6) If a creditor contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the creditor and be subject to the department's routine examination procedures, the person that provides the service to the creditor shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any creditor that is licensed under this article and that receives services from the person refusing the examination to:

(a) discontinue receiving one (1) or more services from the person; or

(b) otherwise cease conducting business with the person.

*As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.29.*

#### **IC 24-4.4-3-104.5**

##### **Powers of director**

Sec. 104.5. To carry out the purposes of this section, the director may:

(a) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

- (b) enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing:
  - (i) resources;
  - (ii) standardized or uniform methods or procedures; and
  - (iii) documents, records, information, or evidence obtained under this section;
- (c) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate a licensee, an individual, or a person subject to this article;
- (d) accept and rely on examination or investigation reports made by other government officials within or outside Indiana; and
- (e) accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this article in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director.

*As added by P.L.35-2010, SEC.30.*

#### **IC 24-4.4-3-104.6**

##### **Prohibited acts**

Sec. 104.6. It is a violation of this article for a person or individual subject to this article to:

- (a) directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (b) engage in any unfair or deceptive practice toward any person;
- (c) obtain property by fraud or misrepresentation;
- (d) solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this article may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;
- (e) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- (f) conduct any business covered by this article without holding a valid license as required under this article, or assist or aid and abet any person in the conduct of business under this article without a valid license as required under this article;
- (g) fail to make disclosures as required by this article or regulation adopted under this article and any other applicable state or federal law regulation;
- (h) fail to comply with this article or rules adopted under this article, or fail to comply with any other state or federal law,

rule, or regulation, applicable to any business authorized or conducted under this article;

(i) make, in any manner, any false or deceptive statement or representation, with regard to the rates, points, or other financing terms or conditions for a mortgage transaction, or engage in bait and switch advertising;

(j) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the NMLSR or in connection with any investigation conducted by the director or another governmental agency;

(k) make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a mortgage transaction, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(l) collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this article;

(m) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(n) fail to account truthfully for money belonging to a party to a mortgage transaction; or

(o) knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information subject to examination under this article.

*As added by P.L.35-2010, SEC.31.*

#### **IC 24-4.4-3-105**

##### **Applicability of laws governing administrative orders and rules; venue; emergency rulemaking authority**

Sec. 105. Except as otherwise provided, IC 4-21.5-3 governs any action taken by the department under this chapter or IC 24-4.4-2-401 through IC 24-4.4-2-405. IC 4-22-2 applies to the adoption of rules by the department under this article. All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 shall be held in Marion County. However, if the department determines that an emergency exists, the department may adopt any rules authorized by this article under IC 4-22-2-37.1.

*As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.32.*

#### **IC 24-4.4-3-106**

##### **Cease and desist orders; judicial review or enforcement proceedings; record; appeal; unconscionable or fraudulent conduct subject to injunction**

Sec. 106. (1) After notice and hearing, the department may order

a creditor or a person acting on behalf of the creditor to cease and desist from engaging in violations of this article. In any civil court with jurisdiction:

- (a) a respondent aggrieved by an order of the department may obtain judicial review of the order; and
- (b) the department may obtain an order of the court for the enforcement of the department's order.

A proceeding for review or enforcement under this subsection shall be initiated by the filing of a petition in the court. Copies of the petition shall be served upon all parties of record.

(2) Not later than thirty (30) days after service of a petition for review upon the department under subsection (1), or within such further time as the court may allow, the department shall transmit to the court the original or a certified copy of the entire record upon which the order that is the subject of the review is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After conducting a hearing on the matter, the court may:

- (a) reverse or modify the order if the findings of fact of the department are clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record;
- (b) grant any temporary relief or restraining order the court considers just; and
- (c) enter an order:
  - (i) enforcing;
  - (ii) modifying;
  - (iii) enforcing as modified; or
  - (iv) setting aside;in whole or in part, the order of the department; or
- (d) enter an order remanding the case to the department for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the department in the interest of justice for the purpose of:

- (a) adducing additional specified and material evidence; and
- (b) seeking a finding upon such evidence;

upon good cause shown for the failure to previously adduce this evidence before the department.

(4) The jurisdiction of the court is exclusive and the court's final judgment or decree is subject to review on appeal in the same manner and form and with the same effect as in appeals from a final judgment or decree. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated not later than thirty (30) days after a copy of the order of the department is received. If a proceeding is not initiated within the time set forth in this subsection, the department may obtain a decree of a civil court with jurisdiction for enforcement of the department's

order upon a showing that:

- (a) the order was issued in compliance with this section;
- (b) a proceeding for review was not initiated within the thirty (30) day period prescribed by this subsection; and
- (c) the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by a respondent, the department may not issue an order under this section but may bring a civil action for an injunction under section 111 of this chapter.

*As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.33.*

#### **IC 24-4.4-3-107**

##### **Assurance of discontinuance of conduct; failure to comply**

Sec. 107. If it is claimed that a person has engaged in conduct subject to an order by:

- (a) the department under section 106(1) of this chapter; or
- (b) a court under sections 108 through 110 of this chapter;

the department may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with the terms of the assurance, the assurance is evidence that before the assurance was issued the person engaged in the conduct described in the assurance.

*As added by P.L.145-2008, SEC.20.*

#### **IC 24-4.4-3-108**

##### **Civil action by department to restrain violation**

Sec. 108. The department may bring a civil action to restrain a person from violating this article or other state or federal law, rule, or regulation and for other appropriate relief.

*As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.34.*

#### **IC 24-4.4-3-109**

##### **Civil action by department to enjoin deceptive act**

Sec. 109. (1) As used in this section, "deceptive act" means an act or a practice in which a person knowingly or intentionally:

- (a) makes a material misrepresentation concerning;
- (b) conceals material information regarding the terms or conditions of;

a first lien mortgage transaction.

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

(3) The department may bring a civil action to enjoin a deceptive act performed in connection with a first lien mortgage transaction.

*As added by P.L.145-2008, SEC.20.*

#### **IC 24-4.4-3-110**

##### **Department's application to court for temporary relief or restraining order**

Sec. 110. With respect to an action brought under:

(a) section 108 of this chapter to enjoin violations of this article; or

(b) section 109 of this chapter to enjoin deceptive acts;

the department may apply to the court for appropriate temporary relief against a respondent, pending final determination of the proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in the conduct sought to be restrained, the court may grant any temporary relief or restraining order the court considers appropriate.

*As added by P.L.145-2008, SEC.20.*

#### **IC 24-4.4-3-111**

##### **Civil action by department for willful violation; imposition of civil penalty by department; restitution**

Sec. 111. (1) The department may bring a civil action against a creditor or a person acting on behalf of the creditor to recover a civil penalty for willfully violating this article. If the court finds that the defendant has engaged in a course of repeated and willful violations of this article, the court may assess a civil penalty of not more than five thousand dollars (\$5,000). A civil penalty may not be imposed under this subsection:

(a) for violations of this article occurring more than two (2) years before the action is brought; or

(b) for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

(2) If the department determines, after notice and an opportunity to be heard, that a person has violated this article, the department may, in addition to or instead of all other remedies available under this section, impose upon the person a civil penalty not greater than ten thousand dollars (\$10,000) per violation.

(3) If the department determines, after notice and opportunity to be heard, that a person has willfully violated this article, the department may, in addition to or instead of all other remedies available under this section, order restitution against the person subject to this article for a violation of this article.

*As added by P.L.145-2008, SEC.20. Amended by P.L.35-2010, SEC.35.*

#### **IC 24-4.4-3-112**

##### **Repealed**

*(Repealed by P.L.35-2010, SEC.209.)*

#### **IC 24-4.4-3-113**

##### **Rights of debtors not affected**

Sec. 113. The grant of powers to the department under this article does not affect remedies available to debtors under this article or under other principles of law or equity.

*As added by P.L.145-2008, SEC.20.*

**IC 24-4.4-3-114**

**Actions brought by department; venue**

Sec. 114. The department may bring an action or a proceeding in a court in a county:

- (1) in which an act on which the action or proceeding is based occurred;
- (2) in which the respondent resides or transacts business; or
- (3) in which the action or proceeding is otherwise authorized by rule or venue laws.

*As added by P.L.145-2008, SEC.20.*

**IC 24-4.4-3-115**

**"Civil court"**

Sec. 115. As used in this article, "civil court" means any court in Indiana having jurisdiction of civil cases.

*As added by P.L.145-2008, SEC.20.*