

IC 24-5-23.5

Chapter 23.5. Real Estate Appraisals

IC 24-5-23.5-1

"Appraisal"

Sec. 1. (a) As used in this chapter, "appraisal" means an estimation that:

(1) represents the final opinion of the value of real property that is the subject of a real estate transaction; and

(2) serves as the basis for the extension of credit, in the case of a real estate transaction involving the making, refinancing, or consolidation of a mortgage loan.

(b) The term may include any of the following:

(1) The results of an automated valuation model.

(2) A broker's price opinion.

(3) A desktop evaluation.

As added by P.L.52-2009, SEC.2.

IC 24-5-23.5-2

"Appraisal company"

Sec. 2. As used in this chapter, "appraisal company" means a sole proprietorship, firm, corporation, partnership, limited liability company, limited liability partnership, joint venture, trust, or other business unit or association that:

(1) performs 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 appraisals.

As added by P.L.52-2009, SEC.2.

IC 24-5-23.5-3

"Creditor"

Sec. 3. (a) As used in this chapter, "creditor" means a person:

(1) that regularly engages in Indiana in the extension of mortgage loans that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

(2) to whom the obligation arising from a mortgage loan is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

(b) The term does not include a person described in:

(1) IC 24-9-2-6(a)(2) if the person described in IC 24-9-2-6(a)(2) is not the person extending the credit in the transaction; or

(2) IC 24-9-2-6(b).

As added by P.L.52-2009, SEC.2.

IC 24-5-23.5-3.7

"Land contract"

Sec. 3.7. As used in this chapter, "land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

As added by P.L.89-2011, SEC.20.

IC 24-5-23.5-4

"Mortgage loan"

Sec. 4. (a) As used in this chapter, "mortgage loan" means a loan in which a mortgage (or another equivalent consensual security interest) that constitutes a lien is created or retained against an interest in real property in Indiana.

(b) The term includes the following:

(1) A home loan subject to IC 24-9.

(2) A loan described in IC 24-9-1-1, to the extent allowed under federal law.

(3) A first lien mortgage transaction (as defined in IC 24-4.4-1-301) subject to IC 24-4.4.

(4) A consumer credit sale subject to IC 24-4.5-2 in which a mortgage (or another equivalent consensual security interest) that constitutes a lien is created or retained against an interest in real property in Indiana.

(5) A consumer credit loan subject to IC 24-4.5-3 in which a mortgage (or another equivalent consensual security interest) that constitutes a lien is created or retained against an interest in real property in Indiana.

(6) A loan in which a mortgage (or another equivalent consensual security interest) that constitutes a lien is created or retained against land:

(A) that is located in Indiana;

(B) upon which there is a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes; and

(C) that is classified as residential for property tax purposes.

The term includes a loan that is secured by land in Indiana upon which there is a dwelling that is purchased by or through the borrower for investment or other business purposes.

(c) The term does not include a land contract.

As added by P.L.52-2009, SEC.2. Amended by P.L.35-2010, SEC.88; P.L.89-2011, SEC.21.

IC 24-5-23.5-5

"Real estate appraiser"

Sec. 5. As used in this chapter, "real estate appraiser" means a person who prepares the appraisal for a real estate transaction in Indiana, regardless of whether the person is licensed or certified, or required to be licensed or certified, under the real estate appraiser licensure and certification program established under IC 25-34.1-3-8.

As added by P.L.52-2009, SEC.2.

IC 24-5-23.5-6

"Real estate transaction"

Sec. 6. As used in this chapter, "real estate transaction" means a transaction that involves one (1) or both of the following:

- (1) The sale or lease of any legal or equitable interest in real estate located in Indiana.
- (2) The making, refinancing, or consolidation of a mortgage loan.

As added by P.L.52-2009, SEC.2.

IC 24-5-23.5-7

Prohibition against corrupting or improperly influencing a real estate appraiser or an appraisal

Sec. 7. A person shall not corrupt or improperly influence, or attempt to corrupt or improperly influence:

- (1) the independent judgment of a real estate appraiser with respect to the value of the real estate that is the subject of a real estate transaction; or
- (2) the development, reporting, result, or review of an appraisal prepared in connection with a real estate transaction;

through bribery, coercion, extortion, intimidation, collusion, or any other manner.

As added by P.L.52-2009, SEC.2.

IC 24-5-23.5-8

Creditor's duty to provide notice concerning homeowner protection unit's contact information and borrower's right to inspect settlement statement before closing; unit to prescribe form of notice; promotion of unit's contact information; information sharing; exemption from liability for disclosing suspected violation; report to legislative council of complaints received

Sec. 8. (a) This subsection applies with respect to a completed application for a mortgage loan that is received by a creditor after December 31, 2009. A creditor shall, not later than three (3) business days after receiving a completed written application for a mortgage loan from a borrower or prospective borrower, provide to the borrower or prospective borrower a notice, on a form prescribed by the homeowner protection unit under subsection (b), that includes the following:

- (1) Contact information for the homeowner protection unit established by the attorney general under IC 4-6-12, including:
 - (A) an electronic mail address for the homeowner protection unit; and
 - (B) the toll free telephone number described in IC 4-6-12-3.5.
- (2) A statement that the borrower or prospective borrower may contact the homeowner protection unit to report:
 - (A) a suspected violation of section 7 of this chapter; or
 - (B) other information about suspected fraudulent residential real estate transactions, as authorized by IC 4-6-12-3.5(b).

(3) A statement that the borrower in a real estate transaction that involves the making, refinancing, or consolidation of a mortgage loan has the right to inspect the HUD-1 or HUD-1A settlement statement during the business day immediately preceding settlement, as provided by the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

The creditor shall provide the notice required by this subsection by delivering it to the borrower or prospective borrower or placing it in the United States mail to the borrower or prospective borrower within the time prescribed by this subsection.

(b) Not later than September 1, 2009, the home owner protection unit established by the attorney general under IC 4-6-12 shall prescribe the form required under subsection (a) for use by creditors who receive completed written applications for mortgage loans after December 31, 2009.

(c) The homeowner protection unit established by the attorney general under IC 4-6-12, in cooperation with the real estate appraiser licensure and certification board created by IC 25-34.1-8-1, shall publicize and promote awareness of the availability of the:

- (1) electronic mail address; and
- (2) toll free telephone number;

described in subsection (a)(1) to accept complaints from real estate appraisers, creditors, borrowers, potential borrowers, and other persons concerning suspected violations of section 7 of this chapter.

(d) A creditor may share any information obtained concerning a suspected violation of section 7 of this chapter with the homeowner protection unit established by the attorney general under IC 4-6-12. The homeowner protection unit may, in turn, share any information received from a creditor under this subsection with the following:

(1) Federal, state, and local law enforcement agencies and federal regulatory agencies in accordance with IC 4-6-12-3(a)(4).

(2) Any entity listed in IC 4-6-12-4 that may have jurisdiction over any person who is suspected of violating section 7 of this chapter, including any entity that may have jurisdiction over the creditor or an agent of the creditor if the homeowner protection unit suspects that the creditor or an agent of the creditor has violated section 7 of this chapter. However, the homeowner protection unit and any entity listed in IC 4-6-12-4 that receives information under this subdivision shall treat the information, including information concerning the identity of the complainant, as confidential and shall exercise all necessary caution to avoid disclosure of the information, except as otherwise permitted or required by law.

(e) Any:

(1) real estate appraiser, creditor, borrower, potential borrower, or other person that makes, in good faith, a voluntarily disclosure of a suspected violation of section 7 of this chapter to the homeowner protection unit under this section or

otherwise; and

(2) director, officer, manager, employee, or agent of a person described in subdivision (1) who makes, or requires another person to make, a disclosure described in subdivision (1);

is not liable to any person under any law or regulation of the United States, under any constitution, law, or regulation of any state or a political subdivision of any state, or under any contract or other legally enforceable agreement, including an arbitration agreement, for a disclosure described in subdivision (1) or for failing to provide notice of a disclosure described in subdivision (1) to any person who is the subject of the disclosure.

(f) Beginning in 2009, the report provided by the mortgage lending and fraud prevention task force to the legislative council under P.L.145-2008, SECTION 35, must include the following information:

(1) The total number of complaints or reports:

(A) received by the homeowner protection unit during the most recent state fiscal year; and

(B) concerning a suspected violation of section 7 of this chapter.

(2) From the total number of complaints or reports reported under subdivision (1), a breakdown of the sources of the complaints or reports, classified according to the complainants' interest in or relationship to the real estate transactions upon which the complaints or reports are based.

(3) A description of any:

(A) disciplinary or enforcement actions taken; or

(B) criminal prosecutions pursued;

by the homeowner protection unit or any entity listed in IC 4-6-12-4 and having jurisdiction in the matter, as applicable, in connection with the complaints or reports reported under subdivision (1).

The homeowner protection unit shall make available to the mortgage lending and fraud prevention task force any information necessary to provide the information required under this subsection in the task force's report to the legislative council.

As added by P.L.52-2009, SEC.2.

IC 24-5-23.5-9

Violation a Class A misdemeanor and a deceptive act; action for injunctive relief by attorney general; civil penalty; cumulative enforcement procedures

Sec. 9. (a) A person that knowingly or intentionally violates section 7 of this chapter commits:

(1) a Class A misdemeanor; and

(2) an act that is:

(A) actionable by the attorney general under IC 24-5-0.5; and

(B) subject to the penalties listed in IC 24-5-0.5.

(b) The attorney general may maintain an action in the name of

the state of Indiana to enjoin a person from violating section 7 of this chapter. A court in which the action is brought may:

- (1) issue an injunction;
- (2) order the person to make restitution;
- (3) order the person to reimburse the state for the attorney general's reasonable costs of investigating and prosecuting the violation; and
- (4) impose a civil penalty of not more than ten thousand dollars (\$10,000) per violation.

(c) A person that violates an injunction issued under this section is subject to a civil penalty of not more than ten thousand dollars (\$10,000) per violation. The court that issues the injunction retains jurisdiction over a proceeding seeking the imposition of a civil penalty under this subsection.

(d) A civil penalty imposed and collected under this section shall be deposited in the investigative fund established by IC 25-34.1-8-7.5.

(e) The enforcement procedures established by this section are cumulative and an enforcement procedure available under this section is supplemental to any other enforcement procedure available under:

- (1) this section; or
- (2) any other state or federal law, rule, or regulation;

for a violation of section 7 of this chapter.

As added by P.L.52-2009, SEC.2.