

IC 24-9-3

Chapter 3. Prohibited Lending Practices Generally

IC 24-9-3-0.1

Chapter not applicable to loans made before January 1, 2005

Sec. 0.1. Notwithstanding the addition of this chapter and IC 24-9-4 by P.L.73-2004, a person is not subject to a prohibition or requirement of this chapter and IC 24-9-4, both as added by P.L.73-2004, with respect to a loan made before January 1, 2005.

As added by P.L.220-2011, SEC.400.

IC 24-9-3-1

Financing of certain premiums, penalties, and fees prohibited

Sec. 1. (a) A creditor making a home loan may not finance, directly or indirectly, any:

- (1) credit life insurance;
- (2) credit disability insurance;
- (3) credit unemployment insurance;
- (4) credit property insurance; or
- (5) payments directly or indirectly for any cancellation suspension agreement or contract.

(b) Insurance premiums, debt cancellation fees, or suspension fees calculated and paid on a monthly basis are not considered to be financed by the creditor for purposes of this chapter.

As added by P.L.73-2004, SEC.33.

IC 24-9-3-2

Subsidized low rate loans

Sec. 2. (a) A creditor may not knowingly or intentionally replace or consolidate a zero (0) interest rate or other subsidized low rate loan made by a governmental or nonprofit lender with a high cost home loan within the first ten (10) years of the subsidized low rate loan unless the current holder of the loan consents in writing to the refinancing.

(b) For purposes of this section, a "subsidized low rate loan" is a loan that carries a current interest rate of at least two (2) percentage points below the current yield on treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped up rate, as appropriate, should be used instead of the current rate to determine whether a loan is a subsidized low rate loan.

(c) Each mortgage or deed of trust securing a zero (0) interest rate or other subsidized low rate loan executed after January 1, 2005, must prominently display the following on the face of the instrument:

"This instrument secures a zero (0) interest rate or other subsidized low rate loan subject to IC 24-9-3-2."

(d) A creditor may reasonably rely on the presence or absence of the statement described in subsection (c) on the face of an instrument executed after January 1, 2005, as conclusive proof of the existence

or nonexistence of a zero (0) interest rate or other subsidized low rate loan.

As added by P.L.73-2004, SEC.33.

IC 24-9-3-3

Default on existing loan

Sec. 3. A creditor may not recommend or encourage default on an existing loan or other debt before and in connection with the closing or planned closing of a home loan that refinances all or part of the existing loan or debt.

As added by P.L.73-2004, SEC.33.

IC 24-9-3-4

Date of payment

Sec. 4. A creditor shall treat each payment made by a borrower in regard to a home loan as posted on the same business day as the payment was received by the creditor, servicer, or creditor's agent, or at the address provided to the borrower by the creditor, servicer, or creditor's agent for making payments.

As added by P.L.73-2004, SEC.33.

IC 24-9-3-5

Loan acceleration

Sec. 5. (a) A home loan agreement may not contain a provision that permits the creditor, in the creditor's sole discretion, to accelerate the indebtedness without material cause.

(b) This section does not prohibit acceleration of a home loan in good faith due to the borrower's failure to abide by the material terms of the loan.

As added by P.L.73-2004, SEC.33.

IC 24-9-3-6

Fee prohibited for payoff statement or written release; prepayment penalty prohibited for adjustable rate home loans; short sale; acknowledgment of offer; acceptance or rejection; liability for failure to respond

Sec. 6. (a) A creditor may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a written release upon prepayment. A creditor must provide, in writing, a payoff balance not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the request is received by the creditor. A payoff statement provided by a creditor under this subsection must include the date the statement was prepared and the payoff amount as of that date, including an itemization of each fee, charge, or other sum included within the payoff amount. For purposes of this subsection, "fee" does not include actual charges incurred by a creditor for express or priority delivery of home loan documents to the borrower if such delivery is requested by the borrower.

(b) This subsection applies to a home loan, or the refinancing or

consolidation of a home loan, that:

- (1) is closed after June 30, 2009; and
- (2) has an interest rate that is subject to change at one (1) or more times during the term of the home loan.

A creditor in a transaction to which this subsection applies may not contract for and may not charge the borrower a prepayment fee or penalty.

(c) This subsection applies to a home loan with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than five (5) business days (excluding legal public holidays, Saturdays, and Sundays) after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days (excluding legal public holidays, Saturdays, and Sundays) after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a home loan is sold for an amount that is less than the amount of the borrower's outstanding obligation on the home loan. A creditor, a servicer, or a creditor's agent that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

As added by P.L.73-2004, SEC.33. Amended by P.L.145-2008, SEC.29; P.L.52-2009, SEC.6; P.L.89-2011, SEC.27.

IC 24-9-3-7

Mortgage transactions and real estate transactions; prohibited acts; land contracts; written notice of encumbrances

Sec. 7. (a) As used in this section, "mortgage transaction" includes the following:

- (1) A home loan subject to this article.
- (2) To the extent allowed under federal law, a loan described in IC 24-9-1-1 that is secured by a mortgage (or another equivalent consensual security interest) on real estate in Indiana on which there is located or will be located a structure or structures:
 - (A) designed primarily for occupancy of one (1) to four (4) families; and

- (B) that is or will be occupied by a borrower as the borrower's principal dwelling.
 - (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 land:
 - (A) that is located in Indiana; and
 - (B) upon which there is constructed or intended to be constructed a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.
 - (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 land:
 - (A) that is located in Indiana; and
 - (B) upon which there is constructed or intended to be constructed a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.
 - (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 constructed or intended to be constructed 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 constructed or intended to be constructed a dwelling that is purchased by or through the borrower for investment or other business purposes.
- (7) A reverse mortgage transaction that is secured by real estate in Indiana on which there is located a structure that is occupied by a borrower as the borrower's principal dwelling.

The term does not include a land contract.

(b) As used in this section, "real estate transaction" means the sale or lease of any legal or equitable interest in real estate:

- (1) that is located in Indiana;
- (2) upon which there is constructed or intended to be constructed a dwelling; and
- (3) that is classified as residential for property tax purposes.

(c) A person may not do any of the following:

- (1) Divide a home loan transaction into separate parts with the intent of evading a provision of this article.
- (2) Structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the home loan would be a high cost home loan if the home loan had been structured as a closed-end loan.
- (3) Engage in a deceptive act in connection with a mortgage transaction or a real estate transaction.

(4) Engage in, or solicit to engage in, a real estate transaction or a mortgage transaction without a permit or license required by law.

(5) With respect to a real estate transaction or a mortgage transaction, represent that:

(A) the transaction has:

(i) certain terms or conditions; or

(ii) the sponsorship or approval of a particular person or entity;

that it does not have and that the person knows or reasonably should know it does not have; or

(B) the real estate or property that is the subject of the transaction has any improvements, appurtenances, uses, characteristics, or associated benefits that it does not have and that the person knows or reasonably should know it does not have.

(6) Maintain or offer to maintain an account for the receipt of funds for the payment of real estate taxes and insurance unless the person is any of the following:

(A) Any of the following that is chartered under the laws of a state or the United States:

(i) A bank.

(ii) A savings and loan association.

(iii) A credit union.

(iv) A savings bank.

(B) The creditor in a mortgage transaction.

(C) A mortgage servicer acting on behalf of the creditor in a mortgage transaction.

(D) A closing agent (as defined in IC 27-7-3.7-1).

(7) Fail to provide the notice required under subsection (d), within the time specified in subsection (d), if the person is a seller in a real estate transaction described in subsection (d).

(d) This subsection applies to a real estate transaction that involves a land contract between the seller and the buyer in the transaction. If the real estate that is the subject of the transaction is subject to any encumbrance, including any tax lien, foreclosure action, legal judgment, or other encumbrance affecting the title to the real estate, the seller must provide written notice by certified mail, return receipt requested, of the encumbrance to the buyer:

(1) not later than the time the land contract is executed, if the encumbrance is created before or at the time the land contract is executed; or

(2) not later than ten (10) business days after the encumbrance is created, if the encumbrance is created after the land contract is executed.

As added by P.L.73-2004, SEC.33. Amended by P.L.141-2005, SEC.5; P.L.52-2009, SEC.7; P.L.105-2009, SEC.8; P.L.114-2010, SEC.18; P.L.89-2011, SEC.28.

Intimidation, coercion, and harassment prohibited

Sec. 8. A person seeking to enforce section 7(c)(3), 7(c)(4), or 7(c)(5) of this chapter may not knowingly or intentionally intimidate, coerce, or harass another person.

As added by P.L.73-2004, SEC.33. Amended by P.L.52-2009, SEC.8; P.L.105-2009, SEC.9.

IC 24-9-3-9

Prohibited discrimination

Sec. 9. It is unlawful for a creditor to discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age, if the applicant has the ability to contract.

As added by P.L.73-2004, SEC.33.