

## **IC 24-9-4**

### Chapter 4. Additional Prohibitions for High Cost Home Loans

#### **IC 24-9-4-0.1**

##### **Chapter not applicable to loans made before January 1, 2005**

Sec. 0.1. Notwithstanding the addition of IC 24-9-3 and this chapter by P.L.73-2004, a person is not subject to a prohibition or requirement of IC 24-9-3 and this chapter, 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.401.*

#### **IC 24-9-4-1**

##### **Limitations and prohibited practices**

Sec. 1. The following additional limitations and prohibited practices apply to a high cost home loan:

(1) A creditor making a high cost home loan may not directly or indirectly finance any points and fees.

(2) This subdivision does not apply to a high cost home loan described in IC 24-9-3-6(b). Prepayment fees or penalties may not be included in the loan documents for a high cost home loan or charged to the borrower if the fees or penalties exceed in total two percent (2%) of the high cost home loan amount prepaid during the first twenty-four (24) months after the high cost home loan closing.

(3) This subdivision does not apply to a high cost home loan described in IC 24-9-3-6(b). A prepayment penalty may not be contracted for after the second year following the high cost home loan closing.

(4) This subdivision does not apply to a high cost home loan described in IC 24-9-3-6(b). A creditor may not include a prepayment penalty fee in a high cost home loan unless the creditor offers the borrower the option of choosing a loan product without a prepayment fee. The terms of the offer must be made in writing and must be initialed by the borrower. The document containing the offer must be clearly labeled in large bold type and must include the following disclosure:

**"LOAN PRODUCT CHOICE**

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty."

(5) A creditor shall not sell or otherwise assign a high cost home loan without furnishing the following statement to the purchaser or assignee:

"NOTICE: This is a loan subject to special rules under IC 24-9. Purchasers or assignees may be liable for all claims and defenses with respect to the loan that the borrower could assert against the lender."

(6) A mortgage or deed of trust that secures a high cost home loan at the time the mortgage or deed of trust is recorded must prominently display the following on the face of the instrument:

"This instrument secures a high cost home loan as defined in IC 24-9-2-8."

(7) A creditor making a high cost home loan may not finance, directly or indirectly, any life or health insurance.

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

#### **IC 24-9-4-2**

##### **Points and fees charged in certain refinance transactions; evasive division of home loans prohibited**

Sec. 2. A creditor may not knowingly or intentionally:

- (1) refinance a high cost home loan by charging points and fees on the part of the proceeds of the new high cost home loan that is used to refinance the existing high cost loan within four (4) years of the origination of the existing high cost home loan; or
- (2) divide a home loan transaction into multiple transactions with the effect of evading this article. Where multiple transactions are involved, the total points and fees charged in all transactions shall be considered when determining whether the protections of this section apply.

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

#### **IC 24-9-4-3**

##### **Balloon payments**

Sec. 3. Notwithstanding IC 24-4.5-3-402, a high cost home loan agreement may not require a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments under the high cost home loan agreement unless the payment becomes due and payable at least one hundred twenty (120) months after the date of the high cost home loan. This prohibition does not apply if:

- (1) the payment schedule is adjusted to account for the seasonal or irregular income of the borrower; or
- (2) the loan is a bridge loan connected with or related to the acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

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

#### **IC 24-9-4-4**

##### **Payment terms; collection of interest due**

Sec. 4. (a) Except as provided in subsection (b), a high cost home loan may not include payment terms under which the outstanding principal balance will increase at any time over the course of the high cost home loan because the regular periodic payments do not cover the full amount of interest due.

(b) This section does not apply to a temporary forbearance that is requested by a borrower regarding a high cost home loan.

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

#### **IC 24-9-4-5**

##### **Acceleration after default**

Sec. 5. A high cost home loan may not contain a provision that increases the interest rate after default. However, this section does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the high cost home loan documents if the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

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

#### **IC 24-9-4-6**

##### **Consolidated periodic payments paid from loan proceeds**

Sec. 6. A high cost home loan may not include terms under which more than two (2) periodic payments required under the high cost home loan are consolidated and paid in advance from the high cost home loan proceeds provided to the borrower.

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

#### **IC 24-9-4-7**

##### **Counseling agency contact information**

Sec. 7. A creditor may not make a high cost home loan without first providing the borrower information to facilitate contact with a nonprofit counseling agency certified by:

- (1) the United States Department of Housing and Urban Development; or
- (2) the Indiana housing and community development authority under IC 5-20-1-4(g);

at the same time as the good faith estimates are provided to the borrower in accordance with the requirements of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended.

*As added by P.L.73-2004, SEC.33. Amended by P.L.1-2006, SEC.415.*

#### **IC 24-9-4-8**

##### **Repayment ability; commercially reasonable practices to determine debt to income ratio**

Sec. 8. (a) A creditor may not make a high cost home loan without regard to repayment ability.

(b) If a creditor presents evidence that the creditor followed commercially reasonable practices in determining the borrower's debt to income ratio, there is a rebuttable presumption that the creditor made the high cost home loan with due regard to repayment ability. For purposes of this section, there is a rebuttable presumption that the borrower's statement of income provided to the creditor is true and complete.

(c) Commercially reasonable practices include the use of:

- (1) the debt to income ratio:
  - (A) listed in 38 CFR 36.4337(c)(1); and
  - (B) defined in 38 CFR 36.4337(d); and
- (2) the residual income guidelines established under:
  - (A) 38 CFR 36.4337(e); and

(B) United States Department of Veterans Affairs form  
26-6393.

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

#### **IC 24-9-4-9**

##### **Payments to home improvement contractors**

Sec. 9. A creditor may not pay a contractor under a home improvement contract from the proceeds of a high cost home loan unless:

- (1) the creditor is presented with a signed and dated completion certificate showing that the home improvements have been completed; and
- (2) the instrument is payable to the borrower or jointly to the borrower and the contractor or, at the election of the borrower, through a third party escrow agent under a written agreement signed by the borrower, the creditor, and the contractor before the disbursement.

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

#### **IC 24-9-4-10**

##### **Modification, renewal, extension, amendment, or deferral of loan terms; fees and charges prohibited**

Sec. 10. A creditor may not charge a borrower any fees or other charges to modify, renew, extend, or amend a high cost home loan or to defer a payment due under the terms of a high cost home loan.

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

#### **IC 24-9-4-11**

##### **Notice to borrower**

Sec. 11. A creditor may not make a high cost home loan unless the creditor has given the following notice, in writing, to the borrower not later than the time that notice is required under 12 CFR 226.31(c):

"NOTICE TO BORROWER  
YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD COMPARE LOAN RATES, COSTS, AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED, AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE, COSTS, AND FEES COULD ALSO VARY BASED ON WHICH CREDITOR OR BROKER YOU SELECT.  
IF YOU ACCEPT THE TERMS OF THIS LOAN, THE CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU HAVE PAID IF YOU DO NOT MEET YOUR

PAYMENT OBLIGATIONS UNDER THE LOAN.

YOU SHOULD CONSULT AN ATTORNEY AND A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISER REGARDING THE RATE, FEES, AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED COUNSELORS IS AVAILABLE FROM THE INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY.

YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR CREDITOR ABOUT THESE SERVICES.

ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS."

*As added by P.L.73-2004, SEC.33. Amended by P.L.1-2006, SEC.416.*

**IC 24-9-4-12**

**High cost home loan agreements; unconscionable and void provisions**

Sec. 12. Without regard to whether a borrower is acting individually or on behalf of others similarly situated, a provision of a high cost home loan agreement that:

- (1) requires arbitration of a claim or defense;
- (2) allows a party to require a borrower to assert a claim or defense in a forum that is:
  - (A) less convenient;
  - (B) more costly; or
  - (C) more dilatory;for the resolution of the dispute than an Indiana court in which the borrower may otherwise bring a claim or defense; or
- (3) limits in any way any claim or defense the borrower may have;

is unconscionable and void.

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