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TITLE 710 SECURITIES DIVISION

LSA Document #05-81(F)

DIGEST

Adds 710 IAC 1-22 to establish definitions, phrases, and standards for loan brokers. Effective 30 days after filing with the Secretary of State.

710 IAC 1-22

SECTION 1. 710 IAC 1-22 IS ADDED TO READ AS FOLLOWS:

Rule 22. Loan Broker Regulations

710 IAC 1-22-1 Originators

Authority: IC 23-2-1-15

Affected: IC 23-2

Sec. 1. (a) As used in this rule, “loan broker” includes a company that:

- (1) utilizes the Internet to collect information from potential borrowers; and**
- (2) submits that information to lenders for the purpose of considering whether the lender wishes to make a loan to the potential borrower or borrowers.**

(b) As used in this rule, “originator” includes any person who utilizes the information referred to in subsection (a) in connection with the loan application or process.

(c) Origination activities do not include the following:

- (1) Filing or collation of paperwork, including loan paperwork.**
- (2) Duties in which no loan terms or conditions are communicated either to or with borrowers or prospective borrowers.**

(d) An originator must be an employee of a licensee as the term “employee” is defined in 26 U.S.C. 3121(d). Originators may not be independent contractors of a licensee.

(e) A licensee may not pay, either directly or indirectly, any:

- (1) compensation;**
- (2) commission;**
- (3) fee;**
- (4) points; or**
- (5) other remuneration or benefits;**

to an originator other than an employee, as defined by this rule, of the licensee. This prohibition does not include the following:

- (A) arrangements in which the compensation of a branch manager is based upon the net profit of the branch; or**
- (B) licensees working in a co-broker relationship to the extent permitted by federal law.**

(f) Upon submission of an initial license application, and with each subsequent license renewal application, a licensee must submit a separate registration form for each originator employed by that licensee. An originator may not be simultaneously registered by more than one (1) licensee for more than five (5) business days. A licensee must maintain, at its principal office, the original registration document issued to each of that licensee’s originators.

(g) If the employment of an originator is terminated, the licensee must return the originator’s original registration

document to the securities division within five (5) business days after the termination. *(Securities Division; 710 IAC 1-22-1; filed Jan 19, 2006, 12:19 p.m.: 29 IR 1924)*

710 IAC 1-22-2 Loan broker licensing and originator licensing

Authority: IC 23-2-1-15

Affected: IC 23-2-5-5

Sec. 2. The commissioner may require the licensee to conduct and file with the securities division an FBI criminal background check on each individual the licensee applies to register as an originator under IC 23-2-5-5(c)(6). *(Securities Division; 710 IAC 1-22-2; filed Jan 19, 2006, 12:19 p.m.: 29 IR 1924)*

710 IAC 1-22-3 Branches and exemptions

Authority: IC 23-2-1-15

Affected: IC 23-2-5-19

Sec. 3. (a) If an exempt branch of a nonexempt loan broker loses its exemption, that branch must apply for a loan broker license.

(b) A loan broker or a branch of a loan broker that no longer qualifies for an exemption under IC 23-2-5-19 must obtain a license to conduct loan broker business in Indiana. *(Securities Division; 710 IAC 1-22-3; filed Jan 19, 2006, 12:19 p.m.: 29 IR 1924)*

710 IAC 1-22-4 Educational requirements

Authority: IC 23-2-1-15

Affected: IC 23-2-5-21

Sec. 4. (a) Only live instruction courses shall be acceptable for the purposes of the initial academic instruction requirement for loan broker licensing and originator registration.

(b) The following are required during the academic instruction courses completed by each applicant for an initial license or certificate of registration:

(1) At least one (1) hour of Indiana loan broker law, including, but not limited to, the following:

- (A)** Licensing and originator registration procedures.
- (B)** Bona fide third party fees.
- (C)** Advance fees.
- (D)** The Loan Broker Act, including the penalties for violation.
- (E)** Loan broker regulations.

(2) At least two (2) hours of federal loan broker law, including, but not limited to, the following:

- (A)** The Real Estate Settlement Procedures Act (RESPA).
- (B)** The Equal Credit Opportunity Act (ECOA).
- (C)** The Truth in Lending Act (TILA).
- (D)** Penalties for violating the above.

(c) Credit time for academic instruction shall be:

- (1)** based upon a fifty (50) minute hour; and
- (2)** awarded only for actual time of instruction.

No credit shall be given for testing time or break time.

(d) Each person applying for a license or certificate of registration must successfully pass all tests required by the academic instruction courses submitted by the applicant to the commissioner for the purposes of license application or registration.

(e) A particular loan broker academic instruction course may not be taken more than once in any twelve (12) month period. This prohibition shall not apply to courses designed to refresh previous academic instruction by presenting changes in the following:

- (1)** Rules.

- (2) Laws.
- (3) Regulations.
- (4) Other similar areas.

(f) To be given credit for academic instruction time for a course not currently approved by the commissioner, the license or registration applicant must request approval from the commissioner by submitting a detailed:

- (1) syllabus;
- (2) table of contents; or
- (3) course outline;

including a time line for the course.

(g) Prospective vendors who wish to have their academic instruction courses approved must submit to the commissioner the following:

- (1) A completed application form.
- (2) The instructor's edition, bound and paginated, of the materials used for the course.
- (3) A course time line.

(h) Any academic instruction course approval issued by the commissioner shall remain valid for one (1) year from the date of the commissioner's approval letter. In order to obtain a renewal of course approval, the vendor shall submit:

- (1) a renewal application; and
- (2) any updated course materials;

to the commissioner. The course materials must be bound and paginated.

(i) Approved academic instruction course vendors shall maintain records of attendees for two (2) years after completion of the course.

(j) The commissioner, or any representative thereof, may attend an academic instruction course for the purpose of monitoring the course materials and instruction, and ensuring that each is presented as outlined in the course registration materials. (*Securities Division; 710 IAC 1-22-4; filed Jan 19, 2006, 12:19 p.m.: 29 IR 1924*)

710 IAC 1-22-5 Forms

Authority: IC 23-2-1-15

Affected: IC 23-2-5-18

Sec. 5. Within three (3) business days of the time an application for a loan is made to a licensee, the licensee must have entered into a separate, signed, and written loan broker agreement with the potential borrower. A copy of the agreement shall be given to the potential borrower, and the original shall be placed in the file of the borrower or proposed borrower required under IC 23-2-5-18(a)(1)(B). The agreement shall contain, at a minimum, the following:

- (1) The name of the licensee.
- (2) The Indiana loan broker license number of the licensee.
- (3) The name of the prospective borrower.
- (4) The date of the agreement and the period for which it shall remain in effect.
- (5) A statement that the licensee is not the credit provider.
- (6) A complete description of the services the licensee undertakes to perform for the prospective borrower.
- (7) A specific statement that the licensee cannot solicit or collect any fee, other than a bona fide third party fee, prior to the loan closing.
- (8) An estimate of the costs of the licensee's services, which may be expressed as a specific dollar amount or percentage or as a range, disclosing the factors used in determining the fee within that range, together with the maximum cost of services, along with a statement that the amounts are not due unless and until the loan closes. The amounts shall include all compensation paid to the licensee whether paid directly or indirectly, including any applicable yield-spread premium.
- (9) The following disclosure in clear and legible print:

(Name of licensee) IS LICENSED UNDER THE LAWS OF THE STATE OF INDIANA AND BY STATE LAW IS SUBJECT TO THE REGULATORY OVERSIGHT BY THE INDIANA SECRETARY OF STATE'S SECURITIES DIVISION. ANY CONSUMER WISHING TO FILE A COMPLAINT AGAINST OR INQUIRY REGARDING THE REGISTRATION STATUS OF (Name of licensee) SHOULD CONTACT THE SECURITIES DIVISION THROUGH

ONE OF THE MEANS LISTED BELOW:

BY U.S. MAIL:

**302 W. WASHINGTON ST.
ROOM E-111
INDIANAPOLIS, IN 46204**

BY TELEPHONE:

1-800-223-8791

BY INTERNET:

<http://www.in.gov/sos/securities/index.html>

(Securities Division; 710 IAC 1-22-5; filed Jan 19, 2006, 12:19 p.m.: 29 IR 1925)

710 IAC 1-22-6 Fees

Authority: IC 23-2-1-15

Affected: IC 23-2

Sec. 6. In connection with the application for credit and on behalf of the borrower, the following fees, subject to the limitations enumerated in this section, may be collected before the closing of the loan:

(1) Property appraisal fees, if applicable, shall be limited to the following:

(A) The amount paid to a licensed appraiser for the appraisal.

(B) Those amounts that are customary and reasonable.

(2) Credit report fees, if applicable, shall be limited to the actual cost of the report, the amount of which was paid to a third party. The amounts shall be customary and reasonable.

(3) Title examination fees or title insurance, or both, if applicable, shall be limited to those amounts actually expended for such purposes. The amounts shall be customary and reasonable.

(4) Returned check charges, if applicable, may be assessed to consumers, provided the amounts of the charges are customary and reasonable for checks that are returned unpaid.

(5) Other bona fide third party fees actually paid or incurred on behalf of the borrower. Such other fees shall:

(A) not be incurred without the express permission of the borrower; and

(B) be limited to amounts actually paid or incurred.

Additionally, all such amounts must be customary and reasonable.

(6) Fees associated with the commitment of a specific interest rate, to be held for a specified period of time, may be collected in accordance with a signed rate lock agreement, provided the fees are payable to the lender.

(Securities Division; 710 IAC 1-22-6; filed Jan 19, 2006, 12:19 p.m.: 29 IR 1926)

710 IAC 1-22-7 Deceitful practices

Authority: IC 23-2-1-15

Affected: IC 23-2-5-20

Sec. 7. The following conduct, without limitation because of enumeration, constitutes a deceitful practice upon a person by a loan broker prohibited by IC 23-2-5-20(3):

(1) Using or permitting the use of any document that a loan broker knows contains erroneous or false information concerning or potentially affecting a prospective borrower's eligibility for a loan.

(2) Making or causing to be made any false, deceptive, or misleading statement or representation in regard to services being offered by the loan broker.

(Securities Division; 710 IAC 1-22-7; filed Jan 19, 2006, 12:19 p.m.: 29 IR 1926)

710 IAC 1-22-8 Material facts

Authority: IC 23-2-1-15

Affected: IC 23-2-5-21

Sec. 8. As used in IC 23-2-5, "material fact" includes, but is not limited to, the following:

(1) The address of the following:

(A) A principal place of business.

(B) Any branch office.

(2) The type of business entity the loan broker is registered with the securities division.

(3) Criminal convictions of the licensee's ultimate equitable owners, directors, managers, officers, or originators.

(4) Information pertaining to education courses to fulfill the necessary academic instruction requirement of IC 23-2-5-21.
(Securities Division; 710 IAC 1-22-8; filed Jan 19, 2006, 12:19 p.m.: 29 IR 1926)

710 IAC 1-22-9 Record maintenance

Authority: IC 23-2-1-15

Affected: IC 23-2-5-18

Sec. 9. Any licensee who procures a residential mortgage loan shall include in the file of the borrower or potential borrower, in addition to the requirements set forth in IC 23-2-5-18(a)(1), the following to the extent the documents are originated by the licensee:

- (1) The initial loan application, signed and dated by the loan originator.**
- (2) The initial and any subsequent good faith estimate provided by the licensee.**
- (3) A credit report, if obtained.**
- (4) Verification of the borrower's income and employment as required by the initial lender.**
- (5) Any Truth in Lending Act disclosure.**
- (6) A HUD-1 or HUD 1A Settlement Statement signed by the borrower or borrowers and the initial lender or settlement agent, if applicable.**
- (7) Affiliated business arrangement disclosure statements provided to the borrower.**
- (8) A servicing transfer disclosure statement.**
- (9) A right to receive appraisal disclosure, if applicable.**
- (10) A right of rescission notice, if applicable.**
- (11) An appraisal or appraisals of the property obtained by the broker.**
- (12) Any commitment or rate lock-in agreements, if applicable.**
- (13) Copies of all notes or correspondence in whatever format, including electronic and facsimile transmissions, with the following:**
 - (A) Borrowers.**
 - (B) Third party settlement service providers, including the following:**
 - (i) Appraisers.**
 - (ii) Title agents.**
 - (iii) Credit reporting agencies.**
 - (C) Lenders.**
- (14) A record of all charges or fees assessed to the borrower's account reflecting the following:**
 - (A) Amount of the charge or fee.**
 - (B) Purpose.**
 - (C) Date imposed.**

(Securities Division; 710 IAC 1-22-9; filed Jan 19, 2006, 12:19 p.m.: 29 IR 1926)

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