

**October 28, 2022**

**MORTGAGE LENDING AND FRAUD PREVENTION TASK FORCE LEGISLATIVE  
REPORT PURSUANT TO IC 4-23-30-6**

The following information is required by IC 4-23-30-6 to be placed into a Legislative Report and submitted to the Legislative Services Agency on or before November 1, 2022.

## **Overview**

The Mortgage Lending and Fraud Prevention Task Force (“Task Force”) held quarterly meetings during 2021 and 2022 corresponding with the state’s fiscal year. All meetings were held in-person. This report is for the time period July 1, 2021, to June 30, 2022, so that the report date complies with statute IC 4-23-30. Prior reports were for the time period September 1 through August 31. Representatives from the Indiana Department of Financial Institutions, the Indiana Office of the Attorney General, the Indiana Secretary of State, Securities Division, the Indiana Department of Insurance, the Indiana Real Estate Commission and the Real Estate Appraiser Licensure and Certification Board were in attendance. Each meeting included a public session followed by a closed executive session, as needed.

The duties of the Task Force were enacted by HEA 1526 (Pub. L. 158-2017) and are outlined in IC 4-23-30-4. The Task Force shall meet quarterly, with additional meetings scheduled as needed by the Task Force chair to coordinate the State of Indiana’s efforts to regulate the various participants involved in originating, issuing, and closing home loans. The Task Force will strive to enforce state laws and rules concerning mortgage industry practices and mortgage fraud and prevent fraudulent practices in the home loan industry. Information and resources will be shared among the agencies unless prohibited by law.

*Shared Knowledge and the RREAL IN Database* - Pursuant to IC 27-7-3-15.5, beginning January 1, 2010, all persons or entities that close certain real estate transactions are required to report detailed information regarding professionals, organizations and agencies involved in the transactions to the Residential Real Estate Acquisition of Licensee Information and Numbers (RREAL IN Database). Users are required to enter information into the database include lending institutions, title producers, mobile notaries, and attorneys who close qualifying transactions.

All required information must be entered into the RREAL IN Database within 20 business days of the transaction closing (signing) date. Currently, there are no exclusions for licensed professionals, companies, agencies, or institutions from providing the required information or being recorded as part of the transaction, if they participated in a professional capacity, associated with said transaction.

Information and user training material on the RREAL IN Database are available to potential users

online. Additionally, user training via live webinar and conference call is available to resident and non-resident licensees. Ongoing communication to all targeted licensees is necessary to help increase awareness of the RREAL IN Database and the subsequent reporting requirements.

The RREALIN Database makes information readily available to a variety of state agencies. Current state agencies that have established access to the RREALIN Database for research, investigative and reporting purposes include the Department of Insurance, Office of the Attorney General, the Department of Financial Institutions, the Secretary of State, the Indiana Professional Licensing Agency, the Real Estate Commission and the Real Estate Appraiser Licensure and Certification Board. With the assistance of information sharing across these agencies and data collected from the RREAL IN Database, cases of fraud and abuse continue to be identified, investigated to protect Indiana consumers.

Since the inception of the RREAL IN Database on January 1, 2010, an additional \$3,399,123.44 has been invested to improve functionality, enhance reporting capabilities, and add additional transaction forms and data fields in order to meet legislative changes to the initial reporting requirements, which went into effect January 1, 2012, with the passing of HEA 1273. To support the transactional data's integrity and security, an additional \$147.00 was invested monthly for database maintenance throughout the 2022 calendar year. Growth of the database and expansion of the reporting requirements has enabled the agencies comprising the Task Force to cast a wider net, focusing on additional transaction details that represent additional areas of fraud and abuse that are associated with qualifying residential transactions.

As a result of the July 1, 2021, through June 30, 2022 field audits/exams conducted by the Department of Financial Institutions and the Department of Insurance, many lending institutions, title agencies and other closers retroactively reported qualifying transactions.

**Current RREAL IN Database statistics:**

| Registered User Accounts | Transactions Submitted since Inception of the Database |
|--------------------------|--------------------------------------------------------|
| 3,405                    | 3,024,249                                              |

| User Inquiries | User Transaction Edits/Additions Request | User Password Resets | User Transactions Submitted |
|----------------|------------------------------------------|----------------------|-----------------------------|
| 593            | 540                                      | 86                   | 313,614                     |

For more information regarding the RREALIN database, please visit the website at: [http://in.gov/apps/in\\_rreal/Login.aspx](http://in.gov/apps/in_rreal/Login.aspx).

**(A) Information on the regulatory activities of each agency described in subsection (b), including a description of any:**

**(A) Disciplinary or Enforcement Actions Taken**

**The Office of the Indiana Attorney General**

The Office of the Indiana Attorney General's Professional Licensing Enforcement & Homeowner Protection Unit has jurisdiction to investigate and prosecute the following parties:

1. Professional licensees who violate the rules, regulations, and statutes governing their profession.
2. Non-licensees that engage in activities that require a professional license.
3. Persons that commit deceptive and/or unconscionable acts during the course of real estate transactions, mortgage transactions, or other consumer transactions.
4. Persons that engage in business transactions with Indiana citizens, or with regard to Indiana property, that otherwise violate the Home Loan Practices Act and/or Deceptive Consumer Sales Act.
5. Persons that violate the real property tax sale statute and the requirements found in Ind. Code § 6-1.1-24-7.5.
6. Out-of-state entities that transact business in the State of Indiana without first obtaining a certificate of authority from the Indiana Secretary of State, particularly those engaged in mortgage foreclosure rescue fraud.

Civil defendants, when prosecuted as detailed above, may face one or more of the following sanctions: imposition of civil penalties, imposition of consumer restitution, imposition of costs of prosecuting the lawsuit in question, and imposition of one or more injunctions related to the action taken against them. A knowing or intentional violation of the Home Loan Practices Act is a Class A misdemeanor.

Professional licensees, when prosecuted, may face one or more of the following sanctions pursuant to the Indiana Code:

**IC § 25-1-11-12 – Sanctions for Violations**

Sec. 12. (a) The board may impose any of the following sanctions, singly or in combination, if the board finds that a practitioner is subject to disciplinary sanctions under sections 5 through 9 of this chapter:

- (1) Permanently revoke a practitioner's license.
- (2) Suspend a practitioner's license.
- (3) Censure a practitioner.
- (4) Issue a letter of reprimand.
- (5) Place a practitioner on probation status and require the practitioner to:
  - a. report regularly to the board upon the matters that are the basis of probation;
  - b. limit practice to those areas prescribed by the board;

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- c. continue or renew professional education approved by the board until a satisfactory degree of skill has been attained in those areas that are the basis of the probation;
  - d. perform or refrain from performing any acts, including community restitution or service without compensation, that the board considers appropriate to the public interest or to the rehabilitation or treatment of the practitioner; or
  - e. satisfactorily complete a peer review specified by the board as a condition for termination of probationary status if the practitioner is a licensee (as defined in IC §25-2.1-1-8).
- (6) Assess a civil penalty against the practitioner for not more than one thousand dollars (\$1,000) for each violation listed in sections 5 through 9 of this chapter except for a finding of incompetency due to a physical or mental disability.
- (7) Order a practitioner to pay consumer restitution to a person who suffered damages as a result of the conduct or omission that was the basis for the disciplinary sanctions under this chapter.

(b) When imposing a civil penalty under subsection (a)(6), the board shall consider a practitioner's ability to pay the amount assessed. If the practitioner fails to pay the civil penalty within the time specified by the board, the board may suspend the practitioner's license without additional proceedings. However, a suspension may not be imposed if the sole basis for the suspension is the practitioner's inability to pay a civil penalty.

Additionally, when a licensee's actions do not rise to the level of prosecution, the Office of the Attorney General may resolve the consumer complaint with the issuance of a warning letter or a warning letter with conditions. A warning letter with conditions is an alternative way for a consumer complaint to be resolved for minor violations that would otherwise result in an administrative complaint being filed with the board. This resolution to the consumer complaint provides the Office of the Attorney General an alternative method of resolution to the issues addressed in the consumer complaint without formal action being reflected in the licensee's licensing file. The warning letter with conditions advises the licensee(s) of the potential violation(s) that may have occurred and further requires the licensee to typically complete additional education as a condition precedent to the closing of the consumer complaint. If the licensee does not complete the continuing education coursework within the specified timeframe, the Office of the Indiana Attorney General may file an administrative complaint before the appropriate board.

**Civil Complaints Filed, Assurances of Voluntary Compliance and Judgments Entered  
July 1, 2021 – June 30, 2022**

| <u>Case</u>                                                                                      | <u>Filing Date</u> | <u>County of Filing</u> | <u>Disposition</u>                                                                                                       | <u>Disposition Date</u> | <u>Brief Case Summary</u>                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------|--------------------|-------------------------|--------------------------------------------------------------------------------------------------------------------------|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| State of Indiana v. Aloft MGT, LLC, Fox Lake AHF, JPC Charities, et. al.<br>49D12-2107-PL-024280 | July 20, 2021      | Marion                  | Dismissed without prejudice due to sale of subject properties to a third party approved and monitored by mortgage holder | March 2, 2022           | The State of Indiana alleged that non-profit owner of two multi-family properties had engaged in deceptive acts in connection with real estate transactions by failing to maintain debt payments to utility providers and adequately maintain the properties in accordance with Indiana law. |

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|                                                                                                   |                   |                                 |                                                                                                                                                                           |                   |                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------------------------------------|-------------------|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| State of Indiana v. JPC Affordable Housing Foundation, et. al. 49D01-2204-PL-011996               | April 12, 2022    | Marion                          | settlement agreement requires sale of properties to bona fide third party and dissolution of defendant entities                                                           | <i>Pending</i>    | The State of Indiana alleged that non-profit owner of four multi-family properties had failed to fulfill nonprofit purpose by failing to pay creditors, maintain leased dwellings, and by allowing properties to become at risk of having utility services terminated.                      |
| State of Indiana v. Ashley Heindl 49D07-2108-PL-026148                                            | August 3, 2021    | Marion                          | <i>Pending</i>                                                                                                                                                            | <i>Pending</i>    | The State of Indiana filed a subpoena enforcement action in connection with multiple HPU investigations after respondent failed to appear or otherwise arrange to provide her oral testimony in compliance with lawfully issued subpoenas.                                                  |
| State of Indiana v. Joe D. Fall III 49D06-2205-MI-017874                                          | May 26, 2022      | Marion                          | <i>Pending</i>                                                                                                                                                            | <i>Pending</i>    | The State of Indiana filed a subpoena enforcement action in connection with multiple HPU investigations after respondent failed to appear or otherwise arrange to provide his oral testimony in compliance with lawfully issued subpoenas.                                                  |
| State of Indiana v. Lillie Reynolds 18C05-2105-PL-000054                                          | May 25, 2021      | Delaware                        | Consent Judgment Entered - \$1,500 in civil penalties and \$500 in consumer restitution, <i>paid in full</i>                                                              | May 18, 2022      | Defendant misrepresented the rights and remedies of a consumer vendee in connection with her attempts to collect payment in connection with a land contract. As a result of those misrepresentations, the consumer left the property and lost all rights and claims to equitable ownership. |
| State of Indiana v. Todd Hill 49D04-2005-PL-015729                                                | May 11, 2022      | Marion                          | Default judgment entered - consumer restitution of \$60,000; \$1050 in costs/expenses; \$20,000 in civil penalties; <i>referred to ARB for collection, remains unpaid</i> | August 30, 2021   | Defendant, a California resident, fraudulently recorded two warranty deeds in connection with real estate transactions in Indiana related to a suspended property management/development firm operated by defendant.                                                                        |
| State of Indiana v. Gene Fisher 49D06-2011-PL-041864 consolidated into cause 02D03-2011-PL-000489 | November 25, 2020 | Marion, consolidated into Allen | Default judgment entered - \$10,000 civil penalty, \$840 in costs, consumer restitution of \$10,000, court costs of \$157                                                 | August 31, 2021   | Defendant failed to disclose liens and encumbrances in connection with a land contract sale to consumer. Two liens attached to the property at the time of the contract that were not disclosed, resulting in significant losses to the consumer.                                           |
| State of Indiana v. Bittersweet Terrace HOA 49D06-2201-PL-000736                                  | January 10, 2022  | Marion                          | <i>Pending</i>                                                                                                                                                            | <i>Pending</i>    | The State of Indiana alleged that defendant HOA has not complied on multiple occasions with legal requirements to disclose financial information to HOA members.                                                                                                                            |
| State of Indiana v. Weston Ridge Property Owners Assn. 49D12-2112-PL-042553                       | December 27, 2021 | Marion                          | Consent judgment entered – civil penalties of \$250; agreed corrective action related to maintenance of minutes and disclosure of financial                               | February 28, 2022 | Defendant owners' association had, on multiple occasions, failed to properly respond to member requests for financial information.                                                                                                                                                          |

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|                                                                                                                      |                   |        |                                                                                                                                                                                        |                   |                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------------------------------------------------------------------------------------------------------|-------------------|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                      |                   |        | information to members.                                                                                                                                                                |                   |                                                                                                                                                                                                                                                                                                                                                                 |
| State of Indiana v. Joseph Boatwright<br>49D07-2112-PL-042631                                                        | December 28, 2021 | Marion | Default judgment – consumer restitution of \$475; costs and expenses of \$1050; civil penalty of \$10,000, <i>referred to ARB for collection</i> , remains unpaid                      | September 5, 2021 | Defendant engaged in a false real estate listing scam in which he unlawfully obtained money from an Indiana consumer under the guise of renting a property located in Indiana to the consumer.                                                                                                                                                                  |
| State of Indiana v. State Street Home Loans<br>49D04-2112-PL-042627                                                  | December 28, 2021 | Marion | Default judgment – consumer restitution of \$2,000; \$825 in costs; a civil penalty of \$10,000, <i>referred to ARB for collection</i> , remains unpaid                                | April 5, 2022     | Defendant entity scammed a consumer by marketing its ability to assist with a refinance transaction and collecting \$2,000 from the consumer without providing any services.                                                                                                                                                                                    |
| State of Indiana v. Paradise Lake Assn., Inc.<br>49D04-2010-PL-038609                                                | October 30, 2020  | Marion | Consent judgment - \$250 in civil penalties; corrective action required related to proxy voting procedures, meetings of members, and disclosure of financial information.              | January 10, 2022  | Defendant owners' association failed to provide members with financial records and failed to keep proper records related to proxy voting (including improper forms not containing a signed affirmation).                                                                                                                                                        |
| State of Indiana v. Home Sweet Developments, Inc., Matthew Jennings<br>49D05-2104-PL-011464                          | April 5, 2021     | Marion | Default judgment – consumer restitution of \$12,400; costs of \$1500; civil penalties of \$40,000; <i>referred to ARB for collection</i> , remains unpaid                              | September 1, 2022 | Defendant Jennings did not have an Indiana Manufactured Home Installer license and engaged in a transaction with consumers for the purchase and installation of a manufactured home in Muncie, Indiana. Defendants failed to perform, did not return the consumer deposit, and performed services for which a license was required in violation of Indiana law. |
| State of Indiana v. Karen Kealy, Kealy Law Center PLLC d/b/a Commonwealth Processing Center<br>49D03-2105-PL-0175230 | May 25, 2021      | Marion | Default judgment – consumer restitution of \$2500; costs of \$875; civil penalties of \$70,000; defendant Karen Kisch (formerly Karen Kealy) has appealed the judgment, <i>pending</i> | May 18, 2022      | Defendants engaged in unlawful activity as a mortgage foreclosure consultant, did not deliver services as promised or post a bond required by law, and kept \$3500 in consumer payments for unlawful services.                                                                                                                                                  |
|                                                                                                                      |                   |        |                                                                                                                                                                                        |                   |                                                                                                                                                                                                                                                                                                                                                                 |

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|                                                                        |                  |        |                                                             |                |                                                                                                                                                                                                                                                             |
|------------------------------------------------------------------------|------------------|--------|-------------------------------------------------------------|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| State of Indiana v. Aaron Ruemler<br>91C01-2108-PL-000017              | August 16, 2021  | White  | Consent judgment - \$1,000 in civil penalties; paid in full | June 20, 2022  | Defendant sold property he owned subject to a mortgage via land contract without a notice in writing to the purchaser that the property was subject to a lien or encumbrance as required by the Home Loan Practices Act.                                    |
| State of Indiana v. Themis Law, PLLC, David Maresca, and Sam Babbs III | October 25, 2021 | Marion | <i>Pending</i>                                              | <i>Pending</i> | The State of Indiana alleged that defendants engaged in an unlawful mortgage foreclosure consultant activities in the State of Indiana in violation of the Home Loan Practices Act, Deceptive Consumer Sales Act, and Mortgage Rescue Fraud Protection Act. |

**Consumer Protection Assistance Fund**

In 2011, the Indiana General Assembly passed legislation that created the Consumer Protection Assistance Fund (“CPAF”). CPAF provides relief to consumers who assist the Office of the Attorney General in bringing legal action against businesses preying on the financially vulnerable. The fund is comprised of: appropriations made by the general assembly; grants, gifts, and donations intended for deposit into the fund; and money recovered or received by the Office of the Attorney General for consumer protection purposes. Money in the fund may be used to make payments to qualifying individuals who file qualifying claims with the Office of the Attorney General in connection with a case involving civil actions brought by the State of Indiana, and the Professional Licensing Enforcement & Homeowner Protection Unit for violations of the Home Loan Practices Act, Mortgage Rescue Protection Act, and Credit Services Organization Act. During the fiscal year 2022, the Office of the Attorney General paid \$223,415.00 to consumers from the CPAF fund. The Office of the Attorney General continues to contact affected consumers to encourage them to file claims to seek recovery from CPAF. However, affected Indiana consumers are eligible to claim up to \$50,000.00 from judgments obtained during the relevant time period.

**Final Orders for Civil Complaints and Assurances of Voluntary Compliance/Consent Judgments Entered (Civil, IREC Board, Appraiser Board, and Manufactured Home Installers Board)**

**July 1, 2021 – June 30, 2022**

| <b>Fiscal Year</b> | <b>Total Number of Cases with Final Order</b> | <b>Consumer Restitution Ordered</b> | <b>Costs Ordered</b> | <b>Civil Penalties Ordered</b> |
|--------------------|-----------------------------------------------|-------------------------------------|----------------------|--------------------------------|
| 2021               | 14                                            | \$116,829.28                        | \$16,277.50          | \$427,500.00                   |
| <b>2022</b>        | <b>22</b>                                     | <b>\$156,388.02</b>                 | <b>\$9,844.86</b>    | <b>\$236,800.00</b>            |

**Real Estate Broker Administrative Litigation Cases  
July 1, 2021 – June 30, 2022**

| <b>Total Number of Cases Filed</b> | <b>Cease &amp; Desist Ordered</b> | <b>Revocation Ordered</b> | <b>Suspension Ordered</b> | <b>Probation Ordered</b> | <b>Letter of Reprimand Issued</b> | <b>Dismissal Ordered</b> |
|------------------------------------|-----------------------------------|---------------------------|---------------------------|--------------------------|-----------------------------------|--------------------------|
| 55                                 | 6                                 | 3                         | 4                         | 12                       | 12                                | 20                       |

**Real Estate Appraiser Administrative Litigation Cases  
July 1, 2021 – June 30, 2022**

| <b>Total Number of Cases Filed</b> | <b>Cease &amp; Desist Ordered</b> | <b>Revocation Ordered</b> | <b>Suspension Ordered</b> | <b>Probation Ordered</b> | <b>Letter of Reprimand Issued</b> | <b>Dismissal Ordered</b> |
|------------------------------------|-----------------------------------|---------------------------|---------------------------|--------------------------|-----------------------------------|--------------------------|
| 1                                  | 1                                 | 0                         | 0                         | 1                        | 0                                 | 1                        |

| <b>Consumer Restitution Ordered – Real Estate Broker &amp; Appraiser matters</b> | <b>Civil Penalties Ordered - Real Estate Broker &amp; Appraiser matters</b> |
|----------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| \$76,609.69                                                                      | \$12,700.00                                                                 |

The Indiana Office of the Attorney General actively uses the RREAL IN database administered by the Indiana Department of Insurance. The data is used to assist the Office of the Indiana Attorney General in on-going investigations.

The Indiana Office of the Attorney General actively uses the MyLicense Office database administered by the Indiana Professional Licensing Agency. The data is used to assist the Office of the Indiana Attorney General in ongoing investigations. The database is currently insufficient for those purposes, including adequately providing a publicly available source of information about licensing litigation related to licensed professionals.

## **Criminal Prosecutions Pursued**

At least four matters resulted in criminal referrals for prosecution. As charges have not been officially filed in any of those matters, information regarding those referrals will remain confidential in this report.

## **(B) Policies Issued (Rules, Bulletins, Consumer Advisories)**

### **The Office of the Indiana Attorney General**

The Office of the Indiana Attorney General dedicates a considerable amount of resources to educate and alert consumers, including those practicing within the real estate industry.

*Foreclosure Prevention and Awareness Efforts* – The Office of the Indiana Attorney General continues its mission to educate Hoosiers about foreclosure consultants, credit services organizations, and loan modification schemes. Furthermore, the Office of the Indiana Attorney General takes every opportunity to provide consumers with information concerning legitimate foreclosure assistance. One of those legitimate avenues of assistance is housed within the Professional Licensing Enforcement & Homeowner Protection Unit, who has dedicated staff

to mediate loan-servicing issues for struggling Indiana consumers. Those issues include, but are not limited to, loan modifications, escrow issues, misapplied payment issues or concerns, and the home buying/home owning process. Numerous members of the Office of the Indiana Attorney General staff have spoken to groups of individuals inside and outside the real estate industry about these topics.

*Consumer Education* - The Office of the Indiana Attorney General utilizes every means possible to reach out to consumers and warn them of emerging topics and trends. Those means of communication include press releases, the Office of the Indiana Attorney General website, Facebook, Twitter, speaking engagements, and other outreach programs dedicated to educating and assisting the underserved population of Indiana.

*Representative News Releases*

- [Attorney General Todd Rokita sues Aloft Mgt, Fox Lake over dangerous and unlawful conditions](#)
- [AG Todd Rokita: Investigation and lawsuit spur prospective remedies to dangerous conditions at apartment complexes](#)
- [Attorney General Todd Rokita secures \\$7.25 million in relief in connection with Aloft Mgt., Fox Lake/Lakeside Pointe lawsuit](#)
- [Attorney General Todd Rokita warns Hoosiers of dangers of rent to own](#)
- [Attorney General Todd Rokita persists in fight against dangerous and unlawful conditions at apartment complexes](#)
- [Attorney General Todd Rokita warns consumers of rise in crypto-related real estate scams](#)

## **(C) Legislative Recommendations Made**

### **The Office of the Indiana Attorney General**

In preparation for the upcoming legislative session, the Professional Licensing Enforcement & Homeowner Protection Unit examined and studied all the laws within its purview and the cases that the Professional Licensing Enforcement & Homeowner Protection Unit litigated utilizing these laws. The purpose of this study was to ascertain whether any legislative changes needed to be made to better enforce those laws.

At this time, the Homeowner Protection Unit of the Indiana Attorney General's Office has no formal recommendations for legislation needed to address mortgage lending or deceptive acts in connection with mortgage lending.

### **Indiana Department of Insurance**

The Title Insurance (“Division”) of the Indiana Department of Insurance (“Department”) examines the business practices of resident and non-resident title insurance agents, agencies, and underwriters who conduct business in the State of Indiana. The Division also investigates consumer complaints related to title insurance policies, the closing of real estate transactions, and the disbursement of real estate transaction funds. Typically, a resolution is attained wherein consumer monies are recovered without the Department taking administrative action. The total amount of monies the Title Division participated in recovering for consumers is outlined below.

The Department also assists in the detection of mortgage fraud through enforcing the compliance of title agencies by conducting on-site agency examinations, conducting desk agency examinations, and assuring the integrity of the RREAL IN Database. The increased quality and quantity of the data submitted and available in the RREAL IN Database serve to enhance the investigative abilities of member agencies in pursuit of fraudulent and deceptive practices.

The Department has increased efforts to educate the Indiana title insurance industry on title insurance fraud prevention, wire transfer scams involving real estate transactions, real estate escrow misappropriation, violations of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601, *et seq.*), and violations related to Marketing Service Agreements, and compliance with Title 27. These efforts include departmental speaking engagements at the Indiana Land Title Association Annual Convention and Annual Lobby Day events, quarterly meetings with Indiana Land Title Association leadership and industry leaders and speaking to licensed title producers through educational seminars and webinars.

Wire fraud has become the fastest growing real estate cybercrime in the United States. Indiana is similarly facing this challenge and the Task Force has noted an increase in cybercriminals attempting to breach the email accounts of real estate transaction closers and escrow agents. The breach attempts take place during activities to consummate the real estate transactions, and/or during activities to ensure consideration has been passed. In each case noted, attempts took place before all proceeds were accepted and disbursed. In order to educate Indiana real estate transaction closers and escrow agents on this challenge, the Department of Insurance conducted Business E-mail Compromise (BEC) wire fraud webinars, agency individual training sessions, and agency frequently asked question sessions.

**Title Insurance Administrative Actions and Monies****Recovered July 1, 2021 – June 30, 2022**

| <b>Final Orders Issued</b> | <b>RREAL<br/>IN Fines</b> | <b>Suspension</b> | <b>Fines collected</b> | <b>Consumer Monies<br/>Recovered</b> |
|----------------------------|---------------------------|-------------------|------------------------|--------------------------------------|
| 12                         | \$14,530                  | 0                 | \$29,356               | \$15,376                             |

**Title Insurance Agency Examinations July 1, 2021 – June 30, 2022**

| <b>Title Insurance Agency<br/>Examinations Initiated</b> | <b>Title Insurance Agency<br/>Examinations Completed</b> |
|----------------------------------------------------------|----------------------------------------------------------|
| 95                                                       | 88                                                       |

| <b>Title Insurance Agency<br/>Investigations Completed</b> |
|------------------------------------------------------------|
| 20                                                         |

### **Indiana Professional Licensing Agency**

The Indiana Professional Licensing Agency (“agency”), which staffs and administers the Indiana Real Estate Commission (“Commission”), is charged with maintaining the agency’s licensing information database. This database makes enforcement actions, disciplinary decisions, and practitioner profiles easily accessible to the public. The database is a one-stop-shop for the public to view all accessible information about professionally licensed individuals.

Transparency is fundamental to the agency. All administrative actions discussed and taken by the Commission are publicly available at the Indiana Professional Licensing Agency. With this module, one can easily decipher whether a practitioner has been disciplined and find out the current status of the practitioner’s license. The agency also has dedicated staff to answer questions from the public and to provide them with information, if requested. The agency regularly evaluates ways to make information more readily available and easier to navigate for the public.

The Commission continues to communicate with other states regarding reciprocity agreements. Currently, the only agreement on record is with Illinois. However, the Commission handles applicants from all other states on a case-by-case basis depending on the type and level of the credential provided to the committee. Entering into agreements with other states will open interstate dialogue which will help in the regulation of the profession nationwide.

The Commission is in the process of updating and revising technical aspects of relevant administrative functions. No substantive changes to rulemaking are current in process for the Commission.

The licensing system to track continuing education hours is in use for licensees. Each continuing education provider can utilize the system to register each licensee who has participated in a course.

**Real Estate Broker Administrative Cases  
July 1, 2021 through June 30, 2022**

| <b>Total Number of Cases Filed</b> | <b>Cease &amp; Desist Ordered</b> | <b>Revocation Ordered</b> | <b>Suspension Ordered</b> | <b>Probation Ordered</b> | <b>Letter of Reprimand Issued</b> | <b>Dismissal Ordered</b> | <b>Warning Letter with Conditions* Issued</b> |
|------------------------------------|-----------------------------------|---------------------------|---------------------------|--------------------------|-----------------------------------|--------------------------|-----------------------------------------------|
| 52                                 | 1                                 | 0                         | 4                         | 18                       | 7                                 | 13                       | 0                                             |

**Real Estate Appraiser Administrative Cases  
July 1, 2021 through June 30, 2022**

| <b>Total Number of Cases Filed</b> | <b>Cease &amp; Desist Ordered</b> | <b>Revocation Ordered</b> | <b>Suspension Ordered</b> | <b>Probation Ordered</b> | <b>Letter of Reprimand Issued</b> | <b>Dismissal Ordered</b> | <b>Warning Letter with Conditions* Issued</b> |
|------------------------------------|-----------------------------------|---------------------------|---------------------------|--------------------------|-----------------------------------|--------------------------|-----------------------------------------------|
| 0                                  | 0                                 | 0                         | 0                         | 0                        | 0                                 | 1                        | 0                                             |

| <b>Consumer Restitution Ordered</b> | <b>Civil Penalties Ordered</b> |
|-------------------------------------|--------------------------------|
| \$3,481                             | \$945.27                       |

\*A warning letter with conditions is an alternative way for a consumer complaint to be resolved for minor violations that would otherwise result in an administrative complaint being filed with the board or commission. This resolution to the consumer complaint provides the Office of the Attorney General an alternative method of resolution to the issues addressed in the consumer complaint without formal action being reflected in their licensing file. The warning letter with conditions advises the licensee(s) of the potential violation(s) that may have occurred and further requires the licensee to typically complete additional education as a condition precedent to the closing of the consumer complaint. If the licensee does not complete the continuing education coursework within the specified timeframe, the Office of the Indiana Attorney General may file an administrative complaint before the appropriate board or commission.

## **Indiana Department of Financial Institutions**

### **LICENSING and EXAMINATION SUMMARY:**

#### **Mortgage Lending License:**

Approved Licenses from July 1, 2021 to June 30, 2022 - 47

Current Active Licenses – 435

Examinations completed during the reporting period – 127

License Surrenders from July 1, 2021 to June 30, 2022 - 11

License Surrenders from July 1, 2022 to September 30, 2022(Q1) - 10

#### **Mortgage Loan Originator (“MLO”):**

Approved licenses from July 1, 2021 to June 30, 2022 - 7,372

Current Active MLO Licenses – 24,665

While not included in the data provided for the 2021-2022 fiscal year, the DFI has noted an increase in Mortgage License Surrenders in recent months. The Department has experienced nearly the same number of licenses surrendered in the first quarter of this fiscal year as were received in the entirety of the prior fiscal year. Additionally, the Department anticipates a high number of Licensees choosing not to renew their license on January 1, 2023, due to current market conditions. We believe there are several factors affecting this increase, including:

- A volatile housing market due to low supply pitted against high demand
- New construction slowed due to delays in the supply chain for raw materials
- An aggressive approach to interest rate increases by the Fed to curb inflation

### **COMMON MORTGAGE EXAMINATION ERRORS:**

Routine examinations of mortgage lenders in 2021/2022 resulted in the DFI finding some instances where closing agents were not entering the information in the RREAL IN database as required by IC 27-7-3-15.5. Creditors, including state-chartered depositories and licensed mortgage lenders, are advised during the examination and in the DFI written examination report of the need for full compliance with this provision. Instances were noted where no evidence was found that consumers were provided the “Indiana Property Tax Benefits” form required by IC 6-1.1-12-43 and IC 24-4.5-3-701 and/or the “Notice to Borrower/Perspective Borrower” required by the Office of the Attorney General under IC 24-5-23.5-8. For the second year in a row, compliance in these areas continues to improve.

Additionally, examinations revealed violations of Federal Regulation Z. Common violations include:

- Fees (generally title service fees) were not disclosed under the appropriate heading on closing disclosures.
- Required disclosures were missing when triggering terms were included in website advertisements.

- Historical and minimum payment examples were based on out-of-date information on loan program disclosures.

Finally, an additional issue of concern has been noted regularly during exams. There is a troubling lack of adherence to the company's own stated procedures regarding independent reviews of its BSA/AML policies and procedures. An example of such a finding is included here:

### AML POLICY

The licensee has a written AML policy that includes a designated compliance officer, internal controls, and ongoing employee training.

#### Failure to Provide for Independent Review of the AML Program

31 CFR, Sec. 1029.210

31 CFR § 1029.210(b)(4) requires a creditor to include independent testing to monitor and maintain an adequate AML program, including testing to determine compliance of the company's agents and brokers with its obligations under the program. The scope and frequency of the testing must be commensurate with the risks posed by the company's products and services. Such testing may be conducted by a third party or by any officer or employee of the loan or finance company, other than the person designated as the AML Compliance Officer.

The licensee's AML written policy states in pertinent part,

Annual testing of XXXXXXXX's AML Program will be performed either by a qualified independent third party or by a qualified member of XXXXXXXX's staff other than the AML Compliance Officer. The annual testing will include an audit of XXXXXXXX's compliance with its AML program.

The licensee has not conducted any independent testing of its AML program or established an internal audit process.

It is the Department's intention to provide additional training for examiners to facilitate a more robust review of these policies and how they are implemented. We plan to ensure that Licensees have clarity of the Department's expectations in that implementation to help them avoid future violations and maintain compliance.

### EXAMINATION PROCEDURES

As companies began re-evaluating work processes in the changing landscape following the pandemic, the Department took steps monitor those processes and evaluate the risk they pose to consumers. Changing remote working conditions, as well as concerns about adequate staffing to ensure consumer access were among the priorities for review.

Our review was an extension of the additional examination procedures that were implemented in April 2020. The areas of review included operations, consumer access, and financial condition. The findings for most mortgage lenders were:

- Many employees continue remote operations
- Increased virtual accessibility was maintained for consumers' convenience
- Financial conditions remained strong enough to sustain business operations

2021 saw a surge in mortgage activity due to low interest rates. To lessen the regulatory burden on the Industry, the Department developed procedures for accepting other state and federal examinations as its own. To date the Department has accepted 45 other agency examinations in 2021.

Over the past year, the Department agreed to participate in 1 multi-state examination. Multi-state examinations focus on mortgage servicing, escrow accounts, financial condition, credit reporting, and reverse mortgages. In continuing to participate in multi-state examinations, it is the Department's goal to continue adapting examination procedures to mitigate risk to consumers, increase efficiencies, and lessen the regulatory burden on the industry.

## LEGISLATIVE AND RULE CHANGES

Governor Holcomb signed SEA 383, the financial institutions and consumer credit bill (commonly known as the "DFI Omnibus Bill"), authored by Senator Bassler, and sponsored by Representative Carbaugh, on March 7, 2022. The Department had proposed amended language regarding the notice that is provided for change of control to provide clarity that mortgage companies must seek approval for change of control 120 days prior to the change becoming effective. However, during the legislative process, the Mortgage Brokers Association objected to the change and the language was removed from the DFI bill. No other amendments were proposed that would have affected Mortgage Licensees.

The Members readopted the MLO rule in whole in September 2021. No changes were made to the rule at that time, but the rule was readopted to comply with LSA requirements to review and readopt rules every 7 years.

## DISCIPLINARY ACTION

The Department issued a subpoena to one individual and his businesses for suspected unlicensed mortgage activity. The individual agreed to cease issuing mortgages without a license and changed business models to a rental model to comply with the relevant statutes.

## **Indiana Secretary of State – Securities Division**

### **(A) Disciplinary or Enforcement Actions Taken**

The Indiana Secretary of State, Securities Division (“Division”) has jurisdiction concerning administrative enforcement of the Indiana Loan Broker Act (IC 23-2.5) (“Act”). The Act gives the Securities Commissioner the authority to deny, suspend, or revoke the license of any licensee and issue orders such as cease and desist orders, orders requiring loan brokers to appear for a hearing, and other notices. After the opportunity for a hearing, the Commissioner may order other remedies including a civil penalty up to ten thousand dollars (\$10,000), restitution for victims, and other remedies to recoup financial losses for victims if the Commissioner determines that a person has violated the Act.

#### **Loan Broker and Originator Cases Filed July 1, 2021 – June 30, 2022**

| <b>Total Number of Cases Filed</b> | <b>Revocation of Licenses</b> | <b>Denials of Licenses</b> | <b>Cease &amp; Desist Orders<sup>1</sup></b> | <b>Orders to Show Cause<sup>2</sup></b> | <b>Consent Agreements<sup>3</sup></b> | <b>Other Orders</b> | <b>Civil Penalties Ordered</b> |
|------------------------------------|-------------------------------|----------------------------|----------------------------------------------|-----------------------------------------|---------------------------------------|---------------------|--------------------------------|
| 1                                  | 0                             | 0                          | 0                                            | 0                                       | 0                                     | 1                   | \$0                            |

### **(B) Criminal Prosecutions Pursued**

The Division created the Prosecution Assistance Unit (“PAU”) in 2004, as a unit of investigators and attorneys with law enforcement experience. These investigators and attorneys investigate violations of the Indiana Uniform Securities Act and Loan Broker Act with a goal of presenting those cases for criminal prosecution to county prosecutors or United States Department of Justice. Most violations

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<sup>1</sup> Cease and Desist Orders are orders issued by the Securities Commissioner for the Respondent to immediately cease and desist from violating the Indiana Loan Broker Act.

<sup>2</sup> Order to Show Cause is an order issued by the Securities Commissioner for the Respondent to appear at a hearing and show cause why a loan broker or originator license should not be revoked or why civil penalties should not be levied against the Respondent.

<sup>3</sup> Consent Agreement is an order signed by the Securities Commissioner outlining an agreement between the Securities Division and a Respondent in response to potential violations; frequently includes civil penalties from the Respondent.

of the Loan Broker Act are a Level 5 felony, but it is a Level 4 felony if the violation occurs against an individual over the age of sixty (60).

The Division hired a new PAU Attorney in December, 2018. This highly experienced person brought an increased level of capability to the Unit, as well as service and assistance to any county in Indiana that needs it.

| <b>Defendant Name</b> | <b>Prosecuting Agency</b> | <b>Indictment Date</b> | <b>Case Status</b> | <b>Sentence</b> |
|-----------------------|---------------------------|------------------------|--------------------|-----------------|
| N/A                   | N/A                       | N/A                    | N/A                | N/A             |

### **(C) Policies Issued (Rules, Bulletins, Consumer Advisories)**

On October 1, 2019, the Division issued a Statement of Policy Regarding Employment Transition of Mortgage Loan Originators. This is commonly referred to as Temporary Authority under federal Public Law 115-174 passed by Congress in 2018. On July 13, 2020, The Division issued a Statement of Policy Regarding Abandoned Applications Under the Indiana Loan Broker Act and Collection Agency Act. Through the Nationwide Mortgage Licensing System (“NMLS”), Division personnel are able to evaluate information submitted with an application for licensure and designate the license status such as “Approved-Deficient” or “Pending-Deficient”. In the case where an applicant has not responded to the Division’s requests for additional information in a timely manner or has not corrected the deficiencies in the application within a specified time frame, the Division may designate the application as “Withdrawn-Application Abandoned”.

Because of the COVID-19 pandemic, the Division sought to provide guidance for licensees whose operations may have been impacted by the pandemic. Accordingly, the Division issued two (2) COVID-19 Compliance Alerts. On March 24, 2020, the Division issued the “Indiana Securities Division Response to the COVID-19 Outbreak” and “Remote Working for a Loan Broker/Collection Agency in Response to the COVID-19 Outbreak” to assist licensees navigating these turbulent times. These continued into and throughout 2021 as well.

In addition, the Division modified its Loan Broker Examination procedures by temporarily discontinuing the onsite portion of exams. Instead, the onsite face-to-face portion of exams was conducted via Microsoft Teams video conferencing. This worked extremely well as a substitute and by and large, no major issues or problems were encountered. The decision has since been made and approved to continue the practice of conducting the onsite face-to-face portion of exams via Microsoft Teams video conferencing indefinitely until further notice.

All loan brokers, principal managers, and mortgage loan originators are licensed through the NMLS. The Division has prepared periodic updates to all licensed individuals describing recent changes in state law, federal law, and the industry as a whole.

The Division hired an experienced Loan Broker Examiner, from the industry side, in December 2018 to evaluate and create a new process for examining licensed Loan Brokers. To date, the results have been very positive and well received by the loan broker community. From July 1, 2021 – June 30, 2022, thirteen (13) examinations were completed. This has helped the Division ensure all Loan Brokers are complying with state and federal mortgage laws.

Most common Loan Broker Exam deficiencies identified during exams:

- Missing Affiliated Business Arrangement Disclosure
- Incomplete Compliance Program Policies and Procedures as required by the Consumer Finance Protection Bureau (“CFPB”).
- Missing or unsigned Rate-Lock Agreement
- Incomplete or wrong Loan Broker Agreement

During 2020, the Loan Broker Examiner developed the “Loan Broker Post-Closing File Checklist”. It was approved and posted to the Securities Portal in July, 2020. The checklist was created to assist Loan Brokers and industry with Compliance. It was very well received by the loan broker community and is paying dividends to both them and the Division.

During 2021, the Loan Broker Examiner developed the “New Loan Broker Welcome Letter” and an attachment of key loan broker regulatory documents. It was approved by the Securities Commissioner. The Loan Broker Examiner sends this letter and packet to all newly licensed loan brokers in Indiana to assist them in creating a compliant loan brokerage operation from inception. Again, this was very well received by the loan broker community and is paying dividends to both them and the Division.

#### **(D) Indiana Licensed Loan Broker Statistics**

As of June 30, 2022:

- 292 Total Licensed Approved-Active Loan Brokers
- 32 Total License Approved-Active Loan Broker Branches
- 109 Licensed Approved-Active Loan Brokers domiciled in Indiana
- 577 Total Licensed Approved-Active Mortgage Loan Originators (MLO’s)
- 320 Total Licensed Approved-Active Principal Managers
- 25 Total Licensed Approved-Inactive Principal Managers
- 19 Total Registered Approved-Active Loan Processing Companies

Due to the COVID-19 pandemic, and the fact that the entire Secretary of State Securities Division worked remote from March 17, 2020 to July 19, 2021, the Division did not host and present a Loan Broker Conference in 2020, 2021 and 2022. We hope to resume this annual event sometime in the future.

### **(E) Legislative Recommendations Made**

On July 1, 2022, Indiana House Enrolled Act No. 1092 (“HEA 1092”) went into effect. Amendments to the law impacting loan brokers included:

- **Section 1** amended IC23-2.5-4-6(b)(1) to move the annual renewal deadline for loan brokers, principal managers, and mortgage loan originators to December 31.
- **Section 2** amended IC23-2.5-5-2 to clarify that loan processors are not required to have licenses, and so requires them to provide NMLS unique identifiers as opposed to ‘license’ numbers
- **Section 3** amended IC 23-2.5-5-3 to move the annual deadline to file a loan processing company notice filing to December 31.
- **Section 4** amended IC 23-2.5-8-1 to set out new requirements for loan brokers who are contractually obligated to procure loans exclusively from one lender.
- **Section 5 (3:7 – 3:15)** amended IC 23-2.5-5-4 to correctly outline the examination, education, and NMLS registration requirements for an employee of a loan processing company.

**(B) Description of Any Challenges Encountered by the Task Force This Year or That Are Anticipated by the Task Force in the Current Fiscal Year**

1. Despite the diverse economic challenges in response to the COVID-19 pandemic from March 2020 through the present, the mortgage industry continues to grow at a rapid pace in large part due to sustained, historically low interest rates. Due to the volatility and unpredictability of the continued rapid growth of the industry as of the time of publication of this report, it is anticipated that both the rapid growth as well as an eventual and perhaps significant market slowdown in the future may provide opportunities and avenues for mortgage-related fraud. The Task Force intends to remain diligent in monitoring the status of the mortgage industry and related market as time progresses.
2. The Task Force expects to see new and different attempts to “beat the system” of prudent underwriting of loans and safeguards to ensure all parties are not acting in a concerted, fraudulent scheme to defraud the lender, the customer, the regulator, or all of the above. As regulators of various participants in the mortgage system, all members of the Task Force will require adaptation to these new schemes and determine the best way to identify and prevent abuses.
3. We continue to face challenges, as in previous years, with obtaining for harmed consumers the consumer restitution awarded by the civil courts, boards, or commissions. To address this issue regarding civil actions brought by the OAG concerning the Home Loan Practices Act, the Mortgage Rescue Protection Fraud Act, and the Credit Services Organizations Act, the General Assembly created the Consumer Protection Assistance Fund. As detailed in Section I (A) above, this Fund has paid out over \$1,640,685 to consumers for real estate related violations since its creation in 2011. For the 2022 fiscal year \$223,415 was paid out in restitution from the consumer protection division.
4. Over the review period, the Task Force became aware of the need to clarify how Indiana’s laws read in relation to the Federal Real Estate Settlement Procedures Act (RESPA) - 12 U.S.C § 2601, et seq., and how they apply present-day Settlement Service Providers marketing practices. The Department of Insurance

noted an increase in the solicitations of title insurance companies from other industry professionals (i.e. real estate brokers, real estate salespeople, mortgage

brokers, and residential builders) to pay or contribute towards products, services, advertising/ marketing, and sponsorships. As a result, the Department of Insurance, in conjunction with the Indiana Land Title Association and other industry real estate closing professionals, developed a Frequently Asked Questions document for industry settlement service providers. This Frequently Asked Questions document, which expands on the Department of Insurance Bulletin 158, addresses numerous industry hypothetical scenarios. A few noteworthy scenarios addressed in the document include direct payments for business, open houses, job fairs, holiday parties, golf outings, office rentals, tickets to sporting and other events, continuing education events, advertising cost, and promotions for listed houses.

5. In 2019, the CFPB's Office of Research issued an article noting the growing size of Non-Depository Mortgage Servicers in the market.<sup>1</sup> Since that time, the DFI has witnessed a continuing trend of large Mortgage Servicers and Sub-Servicers consolidating into larger and fewer entities.<sup>2</sup> These entities are responsible for maintaining, preserving, and disbursing escrow accounts for a growing majority of Hoosier Homeowners, holding those funds and ensuring the timely payment of homeowners' insurance and state property taxes. The consolidation of these entities is predictable, as management of Mortgage Servicing Rights (MSRs) is only profitable when applied to a large portfolio of loans. So long as the housing industry remains strong and defaults are low, the MSR business remains lucrative. However, as these companies grow and consolidate, their risk of liquidity problems in the event of an economic downturn increases exponentially.

Under current Indiana Statute, the Department of Financial Institutions has no jurisdiction to license or regulate Mortgage Servicers and Sub-Servicers that do not also originate loans in the state. We are not aware of any other state regulatory authority with jurisdiction over these entities. This lack of state oversight could create a higher risk to Hoosier homeowners than to consumers in other states that engage in regulation of servicing entities. Should the industry experience a critical downturn resulting in severe liquidity problems, those consumers in states with oversight will be at a lower risk to their escrow accounts, as the entities struggle to cover losses and remain liquid.

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<sup>1</sup> "At the end of 2018 six of the ten largest servicers were non-depositories" *Data Point: Servicer Size in the Mortgage Market*, CFPB Office of Research, November 2019.

<sup>2</sup> A recent example of this trend involves Select Portfolio Servicing Inc. (SPS) acquiring Rushmore Loan Management Services (Rushmore). With this acquisition, SPS will grow its servicing capacity by an estimated 33%.

## **(C) Recommendations by the Task Force for Legislation Necessary to Assist the Task Force in Carrying Out the Duties Set Forth in IC 4-23-30-4**

**Land sale contracts.** As documented in the March 2019 Indiana Lawyer article “Legislation aims to tame “Wild West” nature of land contracts”<sup>[1]</sup>, Hoosier consumers have little protection in private land sale contracts compared with traditional mortgage transactions. HB195 was a bipartisan bill that passed with wide support in the Indiana House but did not get called to the floor for a vote on the last day of session in the Senate. Complaints regarding rent-to-own and land sale contracts remain common in the Attorney General’s Homeowner Protection Unit. Land contract cases are extremely difficult to investigate, consume significant state investigative resources, and disputes are often borne of poorly drafted contracts, title issues, unrecorded contracts, or undisclosed property defects. The Task Force maintains broad agreement that this issue requires the attention of state legislators.

Respectfully Submitted,

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<sup>[1]</sup> <https://www.theindianalawyer.com/articles/49604-legislation-aims-to-tame-wild-west-nature-of-land-contracts>