

1987 Assembly Bill 656

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1987 Wisconsin Act 359

AN ACT to repeal 452.01 (2) (c); to amend 138.052 (5) (a), 138.052 (12) (a), 221.49 (1), 234.01 (5k), 234.04 (2), 234.49 (2) (a) 4, 234.59 (1) (h), 452.01 (3) (intro.) and (a) to (e), 943.62 (1) and 943.62 (2m); and to create subchapter V of chapter 440, 138.052 (5m), 138.052 (7e), 138.052 (7m), 138.052 (7s) and 452.01 (3) (g) of the statutes, relating to the regulation of mortgage banking and residential home loans, granting rule-making authority and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 138.052 (5) (a) of the statutes is amended to read:

138.052 (5) (a) Except as provided in par. (b), a bank, credit union, mutual savings bank, savings and loan association or mortgage banker which originates a loan after January 31, 1983, and which requires an escrow to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow of not less than 5.25% per year, unless the escrow funds are held by a 3rd party in a noninterest-bearing account.

SECTION 2. 138.052 (5m) of the statutes is created to read:

138.052 (5m) (a) In this subsection, "escrow agent" means a person who receives escrow payments on behalf of itself or another person.

(b) 1. Except as provided in par. (e), if an escrow is required to assure the payment of property taxes, a bank, credit union, savings bank, savings and loan association or mortgage banker which originates a loan on or after the effective date of this subdivision [revisor inserts date], shall, before the loan closing, provide the borrower with a written notice clearly stating that the borrower may require the escrow agent to make payments in any manner specified in subd. 3 from the amount escrowed to pay property taxes and the responsibilities of the borrower and escrow agent as provided in subds. 4 and 5.

2. Except as provided in par. (e), if an escrow is required to assure the payment of property taxes for a loan originated before the effective date of this subdivision [revisor inserts date], the escrow agent shall send, by November 15, 1988, written notice to the borrower clearly stating that the borrower may require

the escrow agent to make payments in any manner specified in subd. 3 from the amount escrowed to pay property taxes and the responsibilities of the borrower and escrow agent as provided in subds. 4 and 5.

3. Except as provided in par. (e), a borrower may require an escrow agent who receives escrow payments to assure the payment of the borrower's property taxes to do any of the following, if the borrower notifies the escrow agent as provided in subd. 4 and if the borrower is current in his or her loan payments:

a. By December 18, send to the borrower a check in the amount of the funds held in escrow for the payment of property taxes, made payable to the borrower and the town, city or village treasurer authorized to collect the tax.

b. Pay the property taxes by December 31, if the escrow agent has received a tax statement for that property by December 20.

c. Pay the property taxes when due.

4. To require the escrow agent to make payments in any of the manners specified in subd. 3, the borrower shall send, by December 1, written notice to the escrow agent specifying the manner, from the 3 choices under subd. 3, that the borrower wants the escrow agent to make payments. Except as provided in subd. 5. b, once notified, the escrow agent shall annually make payments in that manner unless the borrower is not current in his or her loan payments or unless otherwise notified in writing by the borrower by December 1.

5. a. If the borrower chooses to receive payments as provided in subd. 3. a, the borrower shall annually, by March 31, send to the person to whom the borrower makes his or her loan payments a copy of the receipt for paid property taxes.

b. If the borrower fails to comply with subd. 5. a, the borrower loses the option of receiving payments that year in the manner specified in subd. 3. a. During the next year, the borrower may again receive payments under subd. 3. a if the borrower renotifies the escrow agent by sending written notice to the escrow agent by December 1 of the next year and if the borrower is current in his or her loan payments.

6. If the borrower sends the check received under subd. 3. a to the town, city or village treasurer after the county has assumed responsibility for collecting property taxes, the town, city or village treasurer shall accept the check and pay over to the county treasurer the amount of the check. If the amount of the check sent by the borrower to the town, city or village treasurer exceeds the amount of property taxes owed by the borrower, the town, city or village treasurer shall refund the excess amount to the borrower and, if the county has assumed responsibility for collecting property taxes, pay over to the county treasurer the remaining amount of the check.

(c) A borrower may establish an escrow account required for the payment of taxes and insurance in a financial institution, as defined in s. 710.05 (1) (c), of the borrower's choice if the escrow agent fails to comply with par. (b) 3, unless the lender or person to whom the loan is sold or released demonstrates that the financial institution is incapable of servicing the escrow account.

(d) If a borrower establishes an escrow account under par. (c), the borrower shall annually, by March 31, send to the person to whom the borrower makes his or her loan payments verification of the amounts which the borrower deposited in the escrow account during the previous 12 months and copies of receipts for taxes and insurance paid during the previous 12 months.

(e) Paragraphs (b) to (d) do not apply to an escrow required in connection with a loan to assure the payment of property taxes, whether the loan is originated before, on or after the effective date of this paragraph [revisor inserts date], if it is the practice of the escrow agent to, by December 18, pay to the borrower the amount held in escrow for the payment of property taxes. If the escrow agent in any year chooses not to make the payment by December 18 for any reason other than because the borrower is not current in his or her loan payments, the escrow agent shall send, by November 15 of that year, written notice to the borrower clearly stating that the borrower may require the escrow agent to make payments in any manner specified in par. (b) 3 from the amount escrowed to pay property taxes and the responsibilities of the borrower and escrow agent as provided in par. (b) 4 and 5.

SECTION 3. 138.052 (7e) of the statutes is created to read:

138.052 (7e) A bank, credit union, savings bank, savings and loan association, mortgage banker or any

other lender which receives an application for a loan after the effective date of this subsection [revisor inserts date], shall do all of the following:

(a) If an application receives adverse action, provide a written statement of the reasons for the action when the action is communicated to the applicant, except that delivery of a notice of adverse action conforming to the requirements of 15 USC 1601 to 1693r and the regulations adopted under that law satisfies the requirements of this paragraph.

(b) Before accepting an application or fee in connection with a loan, deliver to the potential loan applicant a written disclosure which clearly states all of the following:

1. Whether an application fee or other charge paid by an applicant in connection with a loan application is refundable in whole or in part if the application is denied or the loan is not closed.

2. Whether the terms of the agreement to make the loan, including but not limited to the interest rate and any fees charged in connection with the loan, are fixed through the date of the loan closing.

3. If the lender may change the terms of the agreement to make the the loan if the loan is not closed on or before the date agreed upon, the specific terms which the lender may change.

SECTION 4. 138.052 (7m) of the statutes is created to read:

138.052 (7m) (a) A lender shall notify the borrower as provided in par. (b) if on or after the effective date of this paragraph [revisor inserts date], the payment, collection or other loan or escrow services related to the loan are sold or released.

(b) The notice required under par. (a) shall be in writing and shall include the name, address and telephone number of the party to whom servicing of the loan is sold or released. The lender shall deliver the notice to the borrower by mail or personal service within 15 working days after servicing of the loan is sold or released.

SECTION 5. 138.052 (7s) of the statutes is created to read:

138.052 (7s) A person who receives loan or escrow payments on behalf of itself or another person shall do all of the following:

(a) Respond to a borrower's inquiry within 15 days after receiving the inquiry.

(b) Consider that a loan payment by check, or other negotiable or transferable instrument, is made on the date on which the check or instrument is physically received, except that the person may charge back an uncollected loan payment.

SECTION 6. 138.052 (12) (a) of the statutes is amended to read:

138.052 (12) (a) Any lender violating sub. (2) (b), (5), (5m) (b) 1, (6) ~~or~~, (7), (7e), (7m) or (7s), or an escrow agent, as defined in sub. (5m) (a), violating

sub. (5m) (b) 2, is liable to the borrower for \$500 plus actual damages, costs and reasonable attorney fees.

SECTION 7. 221.49 (1) of the statutes is amended to read:

221.49 (1) Except as provided in sub. (2), no person engaged in business in this state, not subject to supervision and examination by the commissioner of banking, and not required to make reports to him the commissioner of banking by this chapter, ~~shall make~~ may use of the term "bank", in any form upon any office sign at the place where ~~such the~~ business is transacted, nor ~~shall such may the~~ person make use of or circulate any letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly written and partly printed paper ~~whatever~~ having thereon any artificial or corporate name, or other words, indicating that ~~such the~~ business is the business of a bank, but ~~members of the Mortgage Bankers Association of America mortgage bankers registered under s. 440.62~~ may use the designation "mortgage banker". Violations of this section are subject to s. 220.02 (2).

SECTION 8. 234.01 (5k) of the statutes is amended to read:

234.01 (5k) "Financial institution" means a bank, savings and loan association, credit union, insurance company, finance company, mortgage banker registered under s. 440.62, community development corporation, small business investment corporation, pension fund or other lender which provides commercial loans in this state.

SECTION 9. 234.04 (2) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

234.04 (2) The authority may make or participate in the making and enter into commitments for the making of long-term mortgage loans to eligible sponsors of housing projects for occupancy by persons and families of low and moderate income, or for the making of homeownership mortgage loans or housing rehabilitation loans to persons and families of low and moderate income, an applicant under s. 234.59 or other eligible beneficiaries as defined in s. 234.49. The loans may be made only upon the determination by the authority that they are not otherwise available from private lenders upon reasonably equivalent terms and conditions. The authority may not make a loan to a person if it receives a certification under s. 46.255 (7) that the person is delinquent in child support or maintenance payments. The authority may employ, for such compensation as it determines, the services of any financial institution ~~or mortgage banker~~ in connection with any loan.

SECTION 10. 234.49 (2) (a) 4 of the statutes is amended to read:

234.49 (2) (a) 4. To designate as an authorized lender the authority or any local government agency, housing authority under s. 59.075, 61.73, 66.395 or 66.40, bank, savings and loan institution, mortgage banker registered under s. 440.62 or credit union, if

the designee has a demonstrated history or potential of ability to adequately make and service housing rehabilitation loans.

SECTION 11. 234.59 (1) (h) of the statutes is amended to read:

234.59 (1) (h) "Mortgage banker" means a ~~person engaged in the business of making loans secured by a mortgage on real estate~~ mortgage banker registered under s. 440.62, but does not include a person licensed under s. 138.09.

SECTION 12. Subchapter V of chapter 440 of the statutes is created to read:

CHAPTER 440

SUBCHAPTER V

MORTGAGE BANKERS, LOAN ORIGINATORS AND LOAN SOLICITORS

440.61 Definitions. In this subchapter:

(1) (a) "Loan originator" means a person who is not excluded by par. (b) and who, on behalf of a mortgage banker, finds a loan or negotiates a land contract, loan or commitment for a loan.

(b) "Loan originator" does not include any of the following:

1. A bank, trust company, savings bank, savings and loan association, insurance company, or a land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law.

2. A credit union which negotiates loans secured by real estate mortgages or any licensee under ch. 138 which negotiates loans secured by real estate mortgages or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan, secured or to be secured by mortgage or other transfer of or encumbrance on real estate.

3. Employes of persons described in subds. 1 and 2 if the employe is performing his or her duties as an employe.

(2) (a) "Loan solicitor" means a person who is not excluded by par. (b) and who, on behalf of a loan applicant or an investor and for commission, money or other thing of value, finds a loan or negotiates a land contract, loan or commitment for a loan.

(b) "Loan solicitor" does not include any of the following:

1. A bank, trust company, savings bank, savings and loan association, insurance company, or a land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law.

2. A credit union which negotiates loans secured by real estate mortgages or any licensee under ch. 138 which negotiates loans secured by real estate mortgages or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan, secured or to be secured

by mortgage or other transfer of or encumbrance on real estate.

3. Employes of persons described in subds. 1 and 2 if the employe is performing his or her duties as an employe.

(3) (a) "Mortgage banker" means a person who is not excluded by par. (b) and who does any of the following:

1. Originates loans for itself, as payee on the note evidencing the loan, or for another person.

2. Sells loans or interests in loans to another person.

3. Services mortgage loans or land contracts or provides escrow services, for another person and for commission, money or other thing of value.

(b) "Mortgage banker" does not include any of the following:

1. A bank, trust company, savings bank, savings and loan association, insurance company, or a land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law.

2. A credit union which negotiates loans secured by real estate mortgages or any licensee under ch. 138 which negotiates loans secured by real estate mortgages or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan, secured or to be secured by mortgage or other transfer of or encumbrance on real estate.

3. Employes of persons described in subds. 1 and 2 if the employe is performing his or her duties as an employe.

440.62 Registration of mortgage bankers, loan originators and loan solicitors. (1) **REGISTRATION REQUIRED.** A person may not act as a mortgage banker, loan originator or loan solicitor, use the title "mortgage banker", "loan originator" or "loan solicitor", or advertise or otherwise portray himself or herself as a mortgage banker, loan originator or loan solicitor, unless the person has been issued a certificate of registration from the department.

(2) **APPLYING FOR REGISTRATION.** A person desiring to act as a mortgage banker, loan originator or loan solicitor shall apply for a certificate of registration to the department on forms prescribed by the department and shall pay the application fee set by the department under s. 440.73. An application shall satisfy all of the following:

(a) *Verified.* The applicant shall verify the application, and if the applicant is a partnership or corporation, the application shall be verified as follows:

1. By at least 2 partners of the partnership.

2. By at least 2 officers of the corporation who have authority to verify the application.

(b) *Identity of partner or officer.* If the applicant is a partnership or corporation, the application shall identify each partner or officer who will use the title

"mortgage banker", "loan originator" or "loan solicitor".

(3) **ADDITIONAL REQUIREMENT FOR LOAN ORIGINATOR APPLICANT.** In addition to the requirements of sub. (2), an applicant for registration as a loan originator shall include in the application the name of the mortgage banker who will employ the loan originator.

(4) **ADDITIONAL REQUIREMENT FOR MORTGAGE BANKER APPLICANT.** In addition to the requirements of sub. (2), an applicant for registration as a mortgage banker shall do one of the following:

(a) *Approval by federal agency.* Submit evidence which shows, to the department's satisfaction, that the federal department of housing and urban development has approved the applicant as a mortgagee.

(b) *File a bond.* File with the department a bond which is in the amount of \$100,000, is furnished by a surety company authorized to do business in this state and is approved by the department.

(5) **COMPLETION OF REGISTRATION.** (a) *Loan originator and loan solicitor.* Upon receiving a properly completed application for registration as a loan originator or loan solicitor and the application fee, the department shall issue to the applicant a certificate of registration as a loan originator or loan solicitor.

(b) *Mortgage banker.* 1. Upon receiving a properly completed application for registration as a mortgage banker, the application fee and satisfactory evidence of approval as a mortgagee or a bond, as required under sub. (4), the department shall issue to the applicant a temporary certificate of registration as a mortgage banker. A temporary certificate of registration is valid for 6 months after the date of issuance.

2. If within 6 months after the date of issuance of a temporary certificate of registration under subd. 1 the holder of the temporary certificate of registration notifies the department that he or she is acting as a mortgage banker, the department shall issue to the person a certificate of registration as a mortgage banker.

(6) **EXPIRATION OF REGISTRATION.** Except as provided in sub. (5) (b) 1, a certificate of registration as a loan originator, loan solicitor or mortgage banker expires on December 31 of the even-numbered year after issuance.

(7) **RENEWAL OF REGISTRATION.** A loan originator, loan solicitor or mortgage banker shall renew a certificate of registration by submitting to the department a renewal application and the renewal fee set by the department under s. 440.73, on or before December 31 of the even-numbered year after issuance of the certificate. An applicant for renewal of a certificate of registration as a mortgage banker shall, as part of the application, refile a bond which satisfies sub. (4) (b) or resubmit evidence to the department's satisfaction that the federal department of housing and urban development has approved that person as a mortgagee.

440.63 Relationship between loan originator and mortgage banker. (1) **RESPONSIBILITY FOR LOAN ORIGINATOR.** A mortgage banker is responsible for, and shall supervise the acts of, a loan originator who registers under s. 440.62 (3) as an employe of the mortgage banker or a loan originator or any other person who otherwise acts on behalf of the mortgage banker.

(2) **RESTRICTION ON LOAN ORIGINATOR.** If the department suspends or revokes a mortgage banker's certificate of registration, a loan originator may not act on behalf of that mortgage banker during the period of suspension or revocation.

(3) **TRANSFER BY LOAN ORIGINATOR.** A registered loan originator may at any time apply, on forms prescribed and provided by the department, to transfer employment to another registered mortgage banker. The fee for transfer shall be set by the department under s. 440.73 and is payable when the loan originator files the application.

440.64 Department's review of the operations of a loan solicitor, loan originator or mortgage banker. (1) **AUDIT OF MORTGAGE BANKER'S OR LOAN SOLICITOR'S OPERATIONS.** A mortgage banker or loan solicitor shall submit a copy of an annual audit of the mortgage banker's or loan solicitor's operations to the department within 20 days after the audit is completed.

(2) **EXAMINATION.** (a) *Conduct of examination and preparation of report.* The department may at any time, on its own motion or upon complaint, examine the books of account, records, condition and affairs of a mortgage banker, loan originator or loan solicitor registered under this subchapter. The department shall prepare a report of each examination conducted under this section. As part of the examination or preparation of the report, the department may examine under oath any of the members, officers, directors, agents, employes or customers of the mortgage banker, loan originator or loan solicitor. The department may require a mortgage banker, loan originator or loan solicitor who is examined under this paragraph to pay to the department a fee for the costs of conducting the examination. If the department requires a fee under this paragraph, the department shall establish the amount of the fee by rule under s. 440.73.

(b) *Confidentiality.* Examination reports and correspondence regarding the reports are confidential, except that the secretary may release examination reports and correspondence in connection with a disciplinary proceeding conducted by the department, a liquidation proceeding or a criminal investigation or proceeding.

440.65 Record-keeping requirements for mortgage bankers and loan solicitors. (1) **REQUIRED RECORDS; LOAN DOCUMENTS.** (a) *Fee record system.* A mortgage banker or loan solicitor shall establish and maintain a record system which shows all fees which a mortgage banker charged a mortgage loan applicant and the application or disposition of those fees.

(b) *Loan application record system.* A mortgage banker or loan solicitor shall establish and maintain a record system containing all of the following information for each mortgage loan application:

1. The application date.
2. The name of the applicant.
3. The address of the property to be mortgaged.
4. The disposition of the application and the reason for the particular disposition.
5. The type of loan.

(c) *Loan application documents.* A mortgage banker or loan solicitor shall maintain for each mortgage loan application all of the following documents, if used by the mortgage banker or loan solicitor in connection with the mortgage loan application file:

1. The completed loan application.
2. The loan commitment.
3. The disclosure statement required by 15 USC 1601 to 1693r and regulations adopted under that law.
4. The loan closing statement.
5. A copy of the mortgage note or bond.
6. A copy of the letter rejecting the application.
7. The appraisal report.
8. The credit report.
9. Any other documents, records or forms shown to or signed by a loan applicant.

(2) **PERIOD OF RECORD RETENTION.** A mortgage banker or loan solicitor shall keep for at least 25 months copies of all deposit receipts, canceled checks, trust account records, the records which a mortgage banker or loan solicitor maintains under sub. (1) (c) and other relevant documents or correspondence received or prepared by the mortgage banker or loan solicitor in connection with a loan or loan application. The retention period begins on the date the loan is closed or, if the loan is not closed, the date of loan application. The mortgage banker or loan solicitor shall make the records available for inspection and copying by the department. If the records are not kept within this state, the mortgage banker or loan solicitor shall, upon request of the department, promptly send exact and complete copies of requested records to the department.

(3) **CONTENTS OF CREDIT AND APPRAISAL REPORTS.** (a) *Credit report.* If a mortgage banker or loan solicitor charges a loan applicant a separate fee for a credit report, the credit report shall consist, at a minimum, of a written statement indicating the name of the credit reporting agency which investigated the credit history of the applicant.

(b) *Appraisal report.* If a mortgage banker or loan solicitor charges a loan applicant a separate fee for an appraisal report, the appraisal report shall consist, at a minimum, of a written statement indicating the appraiser's opinion of the value of the property appraised for mortgage loan purposes, the basis for that opinion and the name of the person who conducted the appraisal.

(4) **RESPONSIBILITY FOR FORMS.** A mortgage banker or loan solicitor is responsible for the preparation and correctness of all entries on forms, documents and records which are under the mortgage banker's or loan solicitor's control and which are not dependent on information provided by the loan applicant or a 3rd party.

(5) **ACCOUNTING PRACTICES.** A mortgage banker or loan solicitor shall maintain its books and records in accordance with generally accepted accounting principles.

440.66 Mortgage banker, loan originator and loan solicitor trust accounts. A mortgage banker, loan originator or loan solicitor shall deposit in one or more trust accounts all funds other than nonrefundable fees which it receives on behalf of any person, pending disbursement of the funds in accordance with instructions from the person on whose behalf the funds are deposited. A mortgage banker or loan solicitor may maintain trust accounts in a bank, savings bank, savings and loan association or credit union which is authorized to do business in this state or which is federally chartered. The mortgage banker or loan solicitor shall notify the department of the location of its trust accounts and shall authorize the department to examine and audit any trust account as the department considers it necessary.

440.67 Discipline of mortgage bankers, loan originators and loan solicitors. (1) **PROHIBITED CONDUCT.** The department may revoke, suspend or limit the certificate of registration of a mortgage banker, loan originator or loan solicitor, or reprimand a mortgage banker, loan originator or loan solicitor, if it finds that the mortgage banker, loan originator or loan solicitor did any of the following:

(a) Made a material misstatement in an application for registration, or in information furnished to the department.

(b) Made a substantial misrepresentation in the course of practice injurious to one or more of the parties to a transaction.

(c) Made a false promise that influences, persuades or induces a client to act to his or her injury or damage.

(d) Pursued a continued and flagrant course of misrepresentation, or made false promises, whether directly or through agents or advertising.

(e) Acted for more than one party in a transaction without the knowledge and consent of all parties on whose behalf the mortgage banker, loan originator or loan solicitor is acting.

(f) Accepted a commission, money or other thing of value for performing an act as a loan originator unless the payment is from a mortgage banker who is registered under s. 440.62 (3) as employing the loan originator.

(g) As a loan originator, represented or attempted to represent a mortgage banker other than the mort-

gage banker who is registered under s. 440.62 (3) as employing the loan originator.

(h) Failed, within a reasonable time, to account for or remit any moneys coming into the mortgage banker's, loan originator's or loan solicitor's possession which belong to another person.

(i) Demonstrated a lack of competency to act as a mortgage banker, loan originator or loan solicitor in a way which safeguards the interests of the public.

(j) Paid or offered to pay a commission, money or other thing of value to any person for acts or services in violation of this subchapter.

(k) Violated any provision of this subchapter, ch. 138 or any federal or state statute, rule or regulation which relates to practice as a mortgage banker, loan originator or loan solicitor.

(L) Engaged in conduct which violates a standard of professional behavior which, through professional experience, has become established for mortgage bankers, loan originators or loan solicitors.

(m) Engaged in conduct, whether of the same or a different character than specified elsewhere in this section, which constitutes improper, fraudulent or dishonest dealing.

(o) In the course of practice as a mortgage banker, loan originator or loan solicitor, except in relation to housing designed to meet the needs of elderly individuals, treated a person unequally solely because of sex, race, color, handicap, sexual orientation, as defined in s. 111.32 (13m), religion, national origin, age or ancestry, the person's lawful source of income, or the sex or marital status of the person maintaining a household.

(p) Intentionally encouraged or discouraged any person from purchasing or renting real estate on the basis of race.

(q) Because of the age or location of the property or the race of the loan applicant, rather than because of the credit worthiness of the applicant and the condition of the property securing the loan:

1. Refused to negotiate, to offer or to attempt to negotiate a land contract, loan or commitment for a loan, or refused to find a loan.

2. Found a loan or negotiated a loan on terms less favorable than are usually offered.

(2) **CONDUCT OF OFFICERS, DIRECTORS AND OTHERS.** The department may revoke, suspend or limit a certificate of registration issued under this subchapter or reprimand a mortgage banker or loan solicitor registered under this subchapter, if a director, officer, trustee or partner of the mortgage banker or loan solicitor or a person who has a financial interest in or is in any way connected with the operation of the mortgage banker's or loan solicitor's business is guilty of an act or omission which would be cause for refusing to issue a certificate of registration to that individual.

(3) **ORDERS OF THE DEPARTMENT.** (a) *Orders to prevent or correct actions.* The department may issue gen-

eral and special orders necessary to prevent or correct actions by a mortgage banker, loan originator or loan solicitor that constitute cause under this section for revoking, suspending or limiting a certificate of registration.

(b) *Types of special orders.* Special orders may direct a mortgage banker, loan originator or loan solicitor to cease and desist from engaging in a particular activity or may direct the mortgage banker, loan originator or loan solicitor to refund or remit to a loan applicant or borrower amounts that the mortgage banker, loan originator or loan solicitor got from actions which constitute cause under this section for revoking, suspending or limiting a certificate of registration.

(c) *Judicial review.* Orders of the department are subject to review as provided in ch. 227.

(4) **PERIOD OF DISCIPLINARY ACTION; INELIGIBILITY FOR REGISTRATION.** (a) *Period.* Except as provided in par. (b), the department shall determine in each case the period that a revocation, suspension or limitation of a certificate of registration is effective.

(b) *Ineligibility.* 1. Except as provided in subd. 2, if the department revokes a certificate of registration under sub. (1), the person is not eligible for a certificate of registration until the expiration of a period which may not exceed 2 years after the effective date of the revocation.

2. If the department revokes a certificate of registration under sub. (1) (p) or (q), the person is not eligible for a certificate of registration until 5 years after the effective date of the revocation.

(5) **PENALTIES FOR CERTAIN DISCRIMINATORY CONDUCT.** (a) *Mandatory revocation or suspension.* Notwithstanding sub. (1) (intro.) and (4), if the department finds that a mortgage banker, loan originator or loan solicitor has violated sub. (1) (p) or (q), the department shall:

1. For the first offense, suspend the registration of the mortgage banker, loan originator or loan solicitor for not less than 90 days.

2. For the 2nd offense, revoke the registration of the mortgage banker, loan originator or loan solicitor.

(b) *Other penalties.* The penalty under par. (a) may be imposed in addition to any penalty imposed under s. 66.432, 101.22 or 440.70.

440.68 Fee splitting. A mortgage banker, loan originator or loan solicitor may not pay a person who is not registered under this subchapter a commission, money or other thing of value for performing an act as a mortgage banker, loan originator or loan solicitor.

440.69 Investigation of unregistered practice. The department may conduct investigations, hold hearings and make findings as to whether a person who is not registered under this subchapter has acted as a mortgage banker, loan originator or loan solicitor. The findings are subject to review as provided in ch. 227. During the review any additional material evidence not previously presented may be considered. If there

is reason to believe that a person is acting as a mortgage banker, loan originator or loan solicitor without a certificate of registration under this subchapter and that the continuation of that activity might cause injury to the public interest, the department may, instead of holding a hearing, petition the appropriate circuit court for a temporary restraining order, an injunction or a writ of ne exeat as provided in ch. 813.

440.70 Penalties and private cause of action. (1) **PENALTIES.** A person who violates s. 440.62 (1) may be fined not more than \$1,000 or imprisoned for not more than 6 months or both. The district attorney of the county where the violation occurs shall enforce the penalty under this subsection on behalf of the state.

(2) **PRIVATE CAUSE OF ACTION.** A person who is aggrieved by an act which is committed by a mortgage banker, loan originator or loan solicitor and which is described in s. 440.67 (1) may recover all of the following in a private action:

(a) An amount equal to the greater of the following:

1. Twice the amount of the cost of loan origination connected with the transaction, except that the liability under this subdivision may not be less than \$100 nor greater than \$1,000 for each violation.

2. The actual damages, including any incidental and consequential damages, which the person sustained because of the violation.

(b) The aggregate amount of costs and expenses which the court determines were reasonably incurred by the person in connection with the action, together with reasonable attorney fees, notwithstanding s. 814.04 (1).

440.71 Limitation on actions for commissions and other compensation. A person who is engaged in the business or acting in the capacity of a mortgage banker, loan originator or loan solicitor in this state may not bring or maintain an action in this state to collect a commission, money or other thing of value for performing an act as a mortgage banker, loan originator or loan solicitor without alleging and proving that the person was registered under this subchapter as a mortgage banker, loan originator or loan solicitor when the alleged cause of action arose.

440.72 Compensation presumed. In a prosecution arising from a violation of this subchapter, proof that a person acted as a mortgage banker, loan originator or loan solicitor is sufficient, unless rebutted, to establish that compensation was received by, or promised to, that person.

440.73 Fees. Notwithstanding s. 440.05, the department shall, by rule, establish the amount of the fees required under ss. 440.62 (2) and (7), 440.63 (3) and 440.64 (2) (a). The fees shall be based on the approximate cost of the regulation.

SECTION 13. 452.01 (2) (c) of the statutes is repealed.

SECTION 14. 452.01 (3) (intro.) and (a) to (e) of the statutes are amended to read:

452.01 (3) (intro.) “Broker” does not include any of the following:

(a) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under the judgment or order of any court;

(b) Public officers while performing their official duties;

(c) Any bank, trust company, savings and loan association, insurance company, or any land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law;

(d) Employees of persons enumerated in pars. (a) to (c) and (f) when engaged in the specific performance of their duties as such employees;

(e) Any custodian, janitor, employe or agent of the owner or manager of a residential building who exhibits a residential unit therein to prospective tenants, accepts applications for leases and furnishes such prospective tenants with information relative to the rental of such unit, terms and conditions of leases required by the owner or manager, and similar information;

SECTION 15. 452.01 (3) (g) of the statutes is created to read:

452.01 (3) (g) A person registered as a mortgage banker under s. 440.62 who does not engage in activities described under sub. (2).

SECTION 16. 943.62 (1) of the statutes is amended to read:

943.62 (1) In this section, “escrow agent” means a state or federally chartered bank, savings bank, savings and loan association or credit union located in this state.

SECTION 17. 943.62 (2m) of the statutes is amended to read:

943.62 (2m) This section does not apply to a savings and loan association, credit union, bank, savings bank, or a mortgage banker ~~licensed~~, loan originator or loan solicitor registered under ch. 452 s. 440.62.

SECTION 18. **Effective date.** This act takes effect on the first day of the 6th month beginning after publication, except as follows:

(1) The treatment of section 138.052 (5) (a), (5m) (a), (b) 3 to 6, (c), (d) and (e), (7m) and (12) (a) of the statutes takes effect on the day after publication.

(2) The treatment of section 138.052 (5m) (b) 1 and 2 of the statutes takes effect on the first day of the 2nd month beginning after publication.

