

## Clearinghouse Rule 09-060

**PROPOSED ORDER OF THE STATE OF WISCONSIN,  
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF BANKING  
ADOPTING RULES**

The Wisconsin Department of Financial Institutions, Division of Banking proposes an order to repeal and recreate chs. DFI—Bkg 40, 41, 42 and 43; amend s. DFI—Bkg 44.01(1)(f) and create s. DFI—Bkg 44.01(1)(g); repeal ch. DFI—Bkg 45; and create ch. DFI—Bkg 47 relating to the transition from a registration system to a license system under subch. III, ch. 224, Stats., branch offices, mortgage broker agreements, surety bonds and trade names.

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**Analysis Prepared by the Department of Financial Institutions, Division of Banking**

Statute(s) interpreted: ss. 224.72(7)(bm)and (8); 224.725(4)(c), (5)(b) and (8); 224.73(3)(a), Stats.

Statutory authority: ss. 224.72(7)(bm)and (8); 224.725(4)(c), (5)(b) and (8); 224.73(3)(a); and 227.11(2), Stats.

Related statute or rule: None.

Explanation of agency authority: Pursuant to ss. 220.02(2) and (3), and subch. III, ch. 224, Stats., the division regulates mortgage banking.

Summary of proposed rule: The objective of the rule is to repeal and recreate chs. DFI—Bkg 40, 41, 42 and 43; amend s. DFI—Bkg 44.01; repeal ch. DFI—Bkg 45; and create ch. DFI—Bkg 47. The purpose of this rule is to bring these chapters into conformity with subch. III, ch. 224, Stats., as mandated and affected by 2009 Wisconsin Act 2 and the Secure and Fair Enforcement for Mortgage Licensing (“S.A.F.E.”) Act of 2008 regarding the transition from a registration system to a license system for mortgage bankers, mortgage brokers and mortgage loan originators. Primarily affected are provisions regarding terminology, and licensing requirements and procedures. Because of the numerous changes to terminology and deletion of text, the division proposes to repeal and recreate most of these chapters rather than extensively amend and renumber; otherwise the substance of the text remains largely the same. The purpose of the rule is also to provide clarification regarding branch offices, mortgage broker agreements, surety bonds and trade names.

Summary of and preliminary comparison with existing or proposed federal regulation: The requirements of 2009 Wisconsin Act 2 stem from the Secure and Fair Enforcement for Mortgage Licensing (“S.A.F.E.”) Act of 2008.

Comparison with rules in adjacent states: Illinois, Iowa and Michigan have all adopted or are in the process of adopting the S.A.F.E Act of 2008; Minnesota is not adopting this act.



(4) “Loan application fee” means a fee in whole or in part imposed by a licensee for services rendered by the licensee in connection with a residential mortgage loan application; a fee or charge imposed on behalf of a third party for services rendered by the third party incident to the processing of a residential mortgage loan application, such as a charge for a credit report or appraisal; or a fee or deposit in whole or in part imposed on behalf of any other licensee for that person’s services rendered in connection with a residential mortgage loan application.

(5) “Loan commitment” means a written statement signed by a lender, setting forth the terms and conditions upon which the lender is obligated to make a particular residential mortgage loan to a particular applicant.

(6) “Loan commitment fee” means a fee charged by a licensee to an applicant in exchange for a promise to make a loan pursuant to a loan commitment.

(7) “Person” means a natural person, corporation, company, limited liability company, partnership, or association. “Person” does not mean a state or other governmental body, subdivision or agency.

(8) “Trust account” means an account in a depository institution in which funds are held for the benefit of a third party. A trust account may also be known as a custodial or escrow account.

(9) “Trust funds” means all monies other than nonrefundable fees which a licensee 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. “Trust funds” does not mean loan application fees which a licensee has disclosed to a loan applicant as being nonrefundable, even though the licensee may actually refund all or part of these fees later.

**DFI-Bkg 40.02 Source for financing a loan.** A person who provides funding for a loan must be licensed as a mortgage banker if the person is in the business of originating loans directly with loan applicants. However, if the person who provides funding engages the services of a licensed

mortgage banker or other lending institution which is lawfully engaged in the practice of originating loans, the person is not required to be licensed as a mortgage banker.

**DFI—Bkg 40.03 Branch offices.** (1) A residential address shall not be licensed as a valid branch location.

(2) A branch location shall not be licensed under two different licensees.

(3) Any of the following, if done by the branch, branch manager or employees of the branch, demonstrates that a license has been transferred or assigned to the branch:

(a) Assuming responsibility and liability for branch office leases, or signing rent or equipment leases for the branch location.

(b) Assuming responsibility and liability for utilities, advertising or other bills incurred by the branch.

(c) Paying for branch start up costs, including the cost of branch licenses, bank account deposits, license fees, security deposits, payroll fees or loan software fees.

(d) Signing agreements to pay monthly fees for using the mortgage banker's or mortgage broker's license.

**DFI—Bkg 40.04 Trade names.** (1) A licensee shall not conduct business under any name other than the name listed on the license.

(2) Before using any trade name or d/b/a designation, the licensee shall obtain written approval from the division for the use of such trade name or d/b/a designation.

(3) The combined total of trade names and d/b/a designations used by a licensee in Wisconsin shall not exceed five.

**DFI—Bkg 40.05 Surety bonds.** A mortgage banker or mortgage broker shall increase its surety bond by \$10,000 for each licensed branch location when the number of its branch locations exceed five.

**DFI—Bkg 40.06 Loan processors and underwriters.** An independent contractor shall not engage in the activities of a loan processor or underwriter unless he or she is licensed under s. 224.725, Stats., and has obtained a valid unique identifier issued by the Nationwide Mortgage Licensing System.

SECTION 2. Chapter DFI—Bkg 41 is repealed and recreated to read:

## **Chapter DFI—Bkg 41**

### **FEES AND RENEWALS**

**DFI—Bkg 41.01 License fee.** Except as provided in s. DFI—Bkg 47.06, the following nonrefundable fees shall be submitted with an application for a license or renewal of a license under subch. III of ch. 224, Stats.:

(1) Mortgage banker: \$1,000.

(2) Mortgage broker: \$750.

(3) Branch office: \$350.

(4) Mortgage loan originator: \$250.

**DFI—Bkg 41.02 Transfer fee.** The fee for a licensed mortgage loan originator to transfer association pursuant to s. 224.73(3)(a), Stats., is \$40.

**DFI—Bkg 41.03 NMLS Processing fee.** In addition to the fees set forth in this chapter, licensees shall pay any required service fees charged by the Nationwide Mortgage Licensing System.

**DFI—Bkg 41.04 Current information.** Licensees shall keep current and accurate all material information contained in the application or on file with the division and the Nationwide Mortgage

Licensing System. If the information changes in any material respect, the licensee shall notify the division and the Nationwide Mortgage Licensing System of the change within 10 days after the change. A licensee who fails to so notify the division and the Nationwide Mortgage Licensing System shall pay \$500 to the division upon the division's request.

**DFI—Bkg 41.05 License renewals.** For all licenses expiring on or after December 31, 2010, all of the following apply:

(1) All licenses expire on December 31 of each year.

(2) A licensee may apply for the renewal of a license by submitting to the Nationwide Mortgage Licensing System an application for renewal and the fee required under s. DFI—Bkg 41.01. The application and fee shall be received by the Nationwide Mortgage Licensing System between November 1 and December 31.

(3) The reinstatement period for a renewal application received by the Nationwide Mortgage Licensing System shall begin on January 1 and end on the last day of February of the year following the expiration date of the license. A renewal application received by the Nationwide Mortgage Licensing System during the reinstatement period shall be accompanied by an additional nonrefundable fee of \$100.

(4) A mortgage loan originator must satisfy the annual continuing education requirements under s. 224.755(2), Stats., by December 31, even if the renewal application is received by the Nationwide Mortgage Licensing System during the reinstatement period.

(5) A licensee whose application for renewal is not received by the Nationwide Mortgage Licensing System before March 1 shall submit an application for a new license, and no business for which the license is required shall be conducted after the license expires and before a new license is issued by the division.

SECTION 3. Chapter DFI—Bkg 42 is repealed and recreated to read:

**Chapter DFI-Bkg 42**

**TRUST ACCOUNTS**

**DFI-Bkg 42.01 General Requirements for trust accounts. (1) TYPE OF ACCOUNT.** A licensee shall deposit all trust funds received by the licensee or the licensee's employees in a trust account in a depository institution. The account shall be identified as a trust account. The division may prohibit a licensee from establishing or maintaining a trust account in a financial institution if the division believes that the financial institution is operating in an unsafe or unsound manner.

**(2) TIME OF DEPOSIT.** A licensee shall deposit all trust funds received by the licensee or the licensee's employees in a trust account within 48 hours of receipt of such trust funds. If funds are received on a day prior to a holiday or other day when the depository institution is closed, the licensee shall deposit the funds on the next business day of the depository institution. A licensee may satisfy this requirement by mailing trust funds to the depository institution within 48 hours after receipt of the trust funds.

**(3) DEPOSIT OF LOAN APPLICATION FEE BY MORTGAGE BROKER.** A licensed mortgage broker who receives a loan application fee from an applicant for a residential mortgage loan shall make a good faith estimate of that portion of the loan application fee which will be needed to pay for services rendered by a third party incident to the processing of the residential mortgage loan application, such as a fee or a charge for a credit report or a real estate appraisal. The mortgage broker shall follow either one of the following 2 procedures relating to that portion of the loan application fee which is needed to pay for the services rendered by a third party or which is imposed on behalf of any other person:

(a) Deposit that portion of the loan application fee in a trust account and disburse it from the trust account to pay for the services rendered by a third party.

(b) Direct the applicant to make payment directly to the third party.

**(4) STATEMENT OF ACCOUNT.** Upon reasonable notice, a licensee shall promptly provide a statement of account to all parties to a mortgage transaction.

**(5) COMMINGLING OF FUNDS.** A licensee may deposit only trust funds in the licensee's trust account and may not commingle personal funds in a trust account, except that a licensee may deposit and keep in an account an amount of personal funds which is necessary to cover customary advances or service charges relating to the account.

**(6) RESPONSIBILITY OF EMPLOYEES.** An employee of a licensee who receives trust funds shall promptly submit the funds to the licensee.

**DFI—Bkg 42.02 Duty to notify the division about trust accounts.** Upon request by the division, the licensee shall provide the division with the name and number of every trust account maintained by the licensee in a depository institution and the name and address of the depository institution in which the licensee holds each account.

**DFI—Bkg 42.03 Authorization to examine trust accounts.** Upon the division's request, a licensee shall obtain the certification of every depository institution in which a licensee maintains a trust account, attesting to the existence of the account and consenting to the examination and audit of the account by a duly authorized representative of the division. The licensee shall have sufficient documentation from the trust account available to make an adequate examination.

**DFI—Bkg 42.04 Disbursement of trust funds. (1) WITHDRAWAL OF FEES AND COMMISSIONS.** A licensee shall withdraw fees or commissions from trust accounts maintained by the licensee within 24 hours after the fees or commissions are payable or in accordance with

any written agreement or contract, except that fees relating to the servicing of monthly mortgage payments shall be withdrawn from trust accounts within 60 days after monthly payments are received.

**(2) RELEASE OF TRUST FUNDS.** A licensee shall release trust funds:

(a) Within 30 calendar days after payment of the residential mortgage loan in full; or,

(b) If a residential mortgage loan or the transfer thereof is not consummated, within 30 calendar days after such determination, to the person who furnished the money held in trust.

**DFI—Bkg 42.05 After closing escrow agreements.** If a licensee requires or permits funds to be placed in escrow until some future occurrence, such as repair or completion escrows, and the parties request that the licensee hold these funds, a written agreement to that effect shall be prepared by the parties or an attorney. If the licensee holds these funds, the licensee shall place the funds in the licensee's trust account.

**DFI—Bkg 42.06 Advance deposits in escrow accounts.** In any transaction, in connection with a residential mortgage loan, in which a licensee requires a borrower or prospective borrower to deposit a sum of money in a tax or insurance escrow account for the purpose of assuring payment of taxes, insurance premiums or other charges with respect to the property, the licensee shall comply with 12 USC 2601 et seq., as amended, and all regulations related thereto if the transaction involves a "federally related mortgage loan," as the phrase is defined in 12 USC 2602, as amended.

SECTION 4. Chapter DFI—Bkg 43 is repealed and recreated to read:

#### **Chapter DFI-Bkg 43**

**ETHICAL AND COMPETENT PRACTICE BY MORTGAGE BANKERS, MORTGAGE  
BROKERS AND MORTGAGE LOAN ORIGINATORS**

**DFI-Bkg 43.01 Improper, fraudulent or dishonest dealing.** The following conduct, without limitation because of enumeration, constitutes improper, fraudulent or dishonest dealing by a mortgage banker, mortgage loan originator or mortgage broker prohibited by s. 224.77(1)(m), Stats.:

(1) Using or permitting the use of any document which contains erroneous or false information.

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

**DFI-Bkg 43.02 Incompetency to act as a mortgage banker, mortgage loan originator or mortgage broker.** The following conduct, without limitation because of enumeration, demonstrates a lack of competency to act as a mortgage banker, mortgage loan originator, or mortgage broker in a way which safeguards the interest of the public prohibited by s. 224.77(1)(i), Stats.:

(1) Failing to make reasonable efforts to process residential mortgage loan applications promptly.

(2) Failing to promptly advise applicants of approval or disapproval of residential mortgage loan applications.

(3) Failing to close residential mortgage loans and disburse monies in a timely manner.

(4) Failing to ensure that all agreements, disclosures, representations and promises to perform services under subch. III of ch. 224, Stats., are in writing.

(5) Failing to deliver promptly copies of all agreements, disclosures, representations and promises to perform services under ch. 224, subch. III, Stats., to all parties directly affected.

(6) Issuing checks upon business or trust accounts which contain insufficient funds.

(7) Being convicted of a crime, the circumstances of which substantially relate to the practice of a mortgage banker, a mortgage loan originator or a mortgage broker.

**(8)** Failing to notify the division of any criminal conviction. A certified copy of a judgment of a court of record showing such conviction, within this state or another state, records from the Consolidated Court Automation Program, or records from the department of justice crime information bureau shall be presumptive evidence of conviction.

**(9)** Rendering services while the ability of the licensee to competently perform the services is impaired by mental or emotional disorder, drugs or alcohol.

**(10)** Giving or receiving referral fees in violation of 12 USC 2607, and regulations relating to it, to the extent that the section is applicable to a licensee.

**(11)** Before the acceptance of a residential mortgage loan application or loan application fee, failing to disclose in writing the following information to an applicant:

(a) The amount of any such fee, labeled to indicate the general purpose of the fee;

(b) Whether all or any part of the application fee or related charges are refundable;

(c) The terms and conditions for a refund, if all or any part of the fee or related charges are refundable; and,

(d) Whether the fee, terms and conditions of the application, including the rate of interest, will remain constant or are subject to change prior to or at closing.

**(12)** Before the acceptance of a loan commitment fee, failing to disclose in writing the following information to a prospective borrower:

(a) The amount of any commitment fee charged as a separate fee;

(b) Whether all or any part of the commitment fee is refundable; and,

(c) The terms and conditions of the refund, if all or any part of the commitment fee is refundable.

**(13)** (a) Failing to provide or disclose in writing to the prospective borrower, at the time of or prior to the issuance of a residential mortgage loan commitment, a good faith estimate of all charges and

information that is required by 12 USC 2601 et seq and any regulations promulgated under those sections.

(b) Failing to disclose in writing to the borrower any time period established by a licensee for the borrower to accept a residential mortgage loan commitment.

(c) Failing to clearly state in all commitments which terms and conditions of the commitment, including the rate of interest and fees, will remain the same as represented in the commitment or are subject to change prior to or at closing.

**(14)** (a) Except as provided in par. (b), in any transaction in which a licensee enters into an agreement or contract with a prospective borrower for the purpose of finding a residential mortgage loan or negotiating a residential mortgage loan or commitment for a residential mortgage loan, including a provision or otherwise disclosing that a fee or deposit in whole or in part imposed on behalf of any other licensee for that person's services rendered in connection with a residential mortgage loan application is not refundable.

(b) Paragraph (a) does not apply to a mortgage banker or mortgage loan originator who finds a residential mortgage loan or negotiates a residential mortgage loan or commitment for a residential mortgage loan which will be originated by the mortgage banker or the mortgage loan originator's mortgage banker employer.

**(15)** Failing to maintain in force the surety bond required under s. 224.72(4)(a)2., Stats.

**(16)** Failing to maintain the minimum net worth required by s. 224.72(4)(a)4., Stats.

SECTION 5. Section DFI—Bkg 44.01(1)(f) is amended to read:

**DFI—Bkg 44.01(1)(f).** The ~~signatures~~ signature of the applicant ~~and interviewer, the title of the interviewer~~ and the date the agreement was signed.

SECTION 6. Section DFI—Bkg 44.01(1)(g) is created to read:

**DFI—Bkg 44.01(1)(g).** The name and signature of the mortgage loan originator and the date the agreement was signed.

SECTION 7. Chapter DFI—Bkg 45 is repealed.

SECTION 8. Chapter DFI—Bkg 47 is created to read:

**CHAPTER DFI—BKG 47**

**TRANSITION TO LICENSE SYSTEM**

**DFI – Bkg 47.01 Authority and intent.** (1) This chapter is adopted pursuant to s. 9117 of 2009 Wisconsin Act 2.

(2) The intent of the division in adopting this chapter is to implement an orderly and efficient transition from the registration system under subch. III of ch. 224, 2007 Stats., to the license system under subch. III of ch. 224 as affected by 2009 Wisconsin Act 2.

**DFI – Bkg 47.02 Acceptance of applications for certificate of registration.** (1) The division shall not accept any new mortgage banker or mortgage broker applications for a certificate of registration under subch. III of ch. 224, 2007 Stats., after October 30, 2009.

(2) The division shall not accept any new mortgage loan originator applications for a certificate of registration under subch. III of ch. 224, 2007 Stats., after December 11, 2009.

(3) The division shall not approve any new applications for a certificate of registration under subch. III of ch. 224, 2007 Stats., after December 31, 2009.

**DFI – Bkg 47.03 Expiration.** (1) The certificate of registration or license for any new application approved between September 1, 2009 and December 31, 2010 shall expire on December 31, 2010.

(2) The certificate of registration or license for any approved renewal application submitted for the renewal of certificates expiring between September 1, 2009 and December 1, 2010 shall expire on December 31, 2010.

**DFI – Bkg 47.04 Fees. (1)** The fee for new applications approved between September 1, 2009 and December 31, 2010 are as follows:

Date approved	Mortgage Loan Originator Fee	Mortgage Banker Fee	Mortgage Broker Fee
9/1/09 – 9/30/09	\$291.67	\$1,166.67	\$875.00
10/1/09 – 10/31/09	\$281.25	\$1,125.00	\$843.75
11/1/09 – 11/30/09	\$270.83	\$1,083.33	\$812.50
12/1/09 – 12/31/09	\$260.42	\$1,041.67	\$781.25
1/1/10 – 12/31/10	\$250.00	\$1,000.00	\$750.00

**(2)** The fee for renewal applications to renew certificates that expire between September 1, 2009 and December 1, 2010 are as follows:

Expiration Date	Mortgage Loan Originator Renewal Fee	Mortgage Banker Renewal Fee	Mortgage Broker Renewal Fee
09/01/2009	\$291.67	\$1,166.67	\$875.00
10/01/2009	\$281.25	\$1,125.00	\$843.75
11/01/2009	\$270.83	\$1,083.33	\$812.50
12/01/2009	\$260.42	\$1,041.67	\$781.25
01/01/2010	\$250.00	\$1,000.00	\$750.00
02/01/2010	\$229.17	\$916.67	\$687.50
03/01/2010	\$208.33	\$833.33	\$625.00
04/01/2010	\$187.50	\$750.00	\$562.50
05/01/2010	\$166.67	\$666.67	\$500.00
06/01/2010	\$145.83	\$583.33	\$437.50
07/01/2010	\$125.00	\$500.00	\$375.00
08/01/2010	\$104.17	\$416.67	\$312.50
09/01/2010	\$83.33	\$333.33	\$250.00
10/01/2010	\$62.50	\$250.00	\$187.50
11/01/2010	\$41.67	\$166.67	\$125.00
12/01/2010	\$20.83	\$83.33	\$62.50

**(3)** An application for renewal received by the division after the expiration of the certificate and prior to 31 days after the expiration of the certificate shall be accompanied by an additional fee of \$100. A registrant whose application for renewal is not received by the division within 30 days after the expiration of the certificate shall submit an application for a new license, and no business

for which the license is required shall be conducted after the certificate expires and before a new license is issued by the division.

(4) No fee paid under sub. 1 or 2 shall be refunded unless a request to withdraw the application is received in writing by the division before the division begins its investigation of the applicant.

**DFI – Bkg 47.05 Transition of license information.** (1) All licensed mortgage bankers and mortgage brokers shall transition their license information onto the Nationwide Mortgage Licensing System between January 2, 2010 and March 31, 2010. The division may suspend the license of any mortgage banker or mortgage broker that has not transitioned their license information onto the Nationwide Mortgage Licensing System by March 31, 2010.

(2) All licensed mortgage loan originators shall transition their license information onto the Nationwide Mortgage Licensing System between January 2, 2010 and March 31, 2010. Any mortgage loan originator who does not transition their license information onto the Nationwide Mortgage Licensing System by March 31, 2010 shall pay a late transition fee of \$100, if the license information is transitioned between April 1, 2010 and May 31, 2010, and a late transition fee of \$200, if the license information is transitioned between June 1, 2010 and December 31, 2010.

**DFI – Bkg 47.06 Requirements.** (1) No mortgage banker, mortgage broker or mortgage loan originator license shall be renewed for the period beginning January 1, 2011 unless the applicant has met all of the requirements of subch. III of ch. 224, Stats., as affected by 2009 Wisconsin Act 2.

(2) Any hours of approved education taken by a mortgage loan originator pursuant to s. 224.72(7)(d)1, 2007 Stats., may be applied toward meeting the requirements under s. 224.755(1), Stats., as affected by 2009 Wisconsin Act 2.

301    **(3)** The division may hold certain requirements of subch. III of ch. 224, Stats., as affected by 2009  
302    Wisconsin Act 2, in abeyance if the lack of functionality of the Nationwide Mortgage Licensing  
303    System makes compliance with those provisions impracticable.

304           **Effective date.** The effective date of Section 7 is January 1, 2011. The effective date of  
305    the remaining sections is January 1, 2010.

Dated:

Agency: