

## Chapter DFI-Bkg 40

### DEFINITIONS AND APPLICABILITY REQUIREMENTS FOR MORTGAGE BANKING REGULATION

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**Note:** Ch. RL 40 as it existed on February 28, 1991 was repealed and a new chapter RL 40 was created effective March 1, 1991.

**Note:** Chapter RL 40 was renumbered chapter DFI-Bkg 40 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1999, No. 522. Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1999, No. 525.

**DFI-Bkg 40.01 Authority.** This chapter is adopted pursuant to ss. 227.11 (2) (a), 224.71, 224.72 and 224.73, Stats.

**History:** Cr. Register, February, 1991, No. 422, eff. 3-1-91.

**DFI-Bkg 40.02 Definitions.** In subch. III of ch. 224, Stats., and chs. DFI-Bkg 40 to 46:

(1) “Depository institution” means 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.

(2) “Division” means the division of banking.

(3) “Employee” means an individual who receives earnings as payment for personal services rendered for the benefit of an employer. An individual is an employee if the individual is listed on an employer’s payroll records, federal and state payroll deductions are taken and payroll taxes are paid for the individual, and the employer has a right to control and direct the services performed by the individual, as to the result to be accomplished by the services and as to the details and means by which the result is to be accomplished.

(4) “Finds a loan” means to assist a loan applicant in locating a lender for the purpose of obtaining a loan for the applicant and to make arrangements for a loan applicant to obtain a loan.

(5) “Investor” means a mortgagee or a land contract vendor.

(6) “Loan application fee” means a fee in whole or in part imposed by a registrant for services rendered by the registrant in connection with a 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 an 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 registrant for that person’s services rendered in connection with the loan application.

(7) “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 mortgage loan to a particular applicant.

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

(9) “Loan solicitor” means a loan originator that performs the limited scope of activities set forth in s. DFI-Bkg 40.04.

(10) “Negotiate” means to discuss, explain or present the terms and conditions of a loan or a land contract with or to a loan applicant. “Negotiate” does not include making an underwriting decision on a loan or closing a loan.

(11) “Originate” means to make an underwriting decision on a loan and close a loan.

(12) “Person” means a corporation, partnership, individual or other legal entity, except that in s. 224.71 (1r), Stats., “person” means an individual. “Person” does not mean a state or other governmental body, subdivision or agency.

(13) “Registrant” means a person registered under s. 224.72, Stats.

(14) “Regular hours of operation” means at least 20 hours each week that a registrant is available, either by walk-in or by appointment, to meet with customers.

(15) “Services mortgage loans or land contracts” means the receipt of payments on a note or a land contract from the borrower or vendee and distribution of such payments in accordance with the terms of the note, land contract or servicing agreement.

(16) “Trust account” means an account in a depository institution, as specified in s. 224.76, Stats., 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.

(17) “Trust funds” means all monies other than nonrefundable fees which a registrant 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.

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

**History:** Cr. Register, February, 1991, No. 422, eff. 3-1-91; CR 05-012: am. (intro.), renum. (2) to (10) to be (3), (4), (5), (7), (10), (11), (12), (13), (15) and am. (3) and (15), cr. (2), (9) and (14), renum. DFI-Bkg 42.03 (1) (a), (b), (c), and (d) to be DFI-Bkg 40.02 (1), (16), (17) and (18), renum. 43.02 (1) and (2) to be 40.02 (6) and (8) Register June 2005 No. 594, eff. 7-1-05.

**DFI-Bkg 40.03 Applicability requirements.** (1) **SUBSIDIARIES OF EXEMPT PERSONS.** A subsidiary corporation of a person which is exempt from registration under s. 224.71 (3) (b) and (4) (b), Stats., shall register as a mortgage banker or mortgage broker when performing acts for which registration is required under subch. III of ch. 224, Stats.

(2) **EXEMPTIONS.** (a) *Statutory exemption.* In s. 224.71 (3) (b) and (4) (b), Stats., “organized under the laws of this state or of the United States” applies only to a land mortgage or farm loan association. A bank, trust company, savings bank, savings and loan association, or insurance company, whether organized under the laws of this state, another state, the United States, a territory or possession of the United States or another country is exempt from the registration requirement when engaged in the transaction of business within the scope of its corporate powers as provided by law.

(b) *Real estate brokers and salespersons.* A real estate licensee who finds a loan for a person is not required to register as a mortgage broker if the licensee does not receive a commission, money or other thing of value from any person for finding the loan.

(c) *Land contract.* A loan under s. 224.71 (3) (b) 6., Stats., includes a land contract.

(3) **SERVICER OR PROVIDER.** A person who services loans or land contracts or provides escrow services for another person and for commission, money or other thing of value and who does not perform acts under s. 224.71 (3) (a) 1. and 2., Stats., is required to register the sole proprietor-owner, the corporation, the limited liability company or the partnership as a mortgage banker. Other officers, members, partners or employees who do not use the title “mortgage banker” or “loan originator” and do not advertise or

otherwise portray themselves as mortgage bankers or loan originators are not required to register under s. 224.72, Stats.

**(4) NONRESIDENT PERSONS.** The primary factors which determine the division's jurisdiction over nonresident persons who engage in activities described in s. 224.71, Stats., are as follows:

(a) Whether the person's activity relates to real property located in Wisconsin which serves or may serve as security for a loan or a land contract; and,

(b) Whether the activity occurs in Wisconsin or the activity involves a resident of Wisconsin. In this section "activity occurs in Wisconsin" includes, but is not limited to, telephone calls into Wisconsin and correspondence sent into Wisconsin.

**(5) SOURCE OF FINANCING FOR A LOAN.** A person who provides funding for a loan must be registered 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 registered mortgage banker or other lending institution which is lawfully engaged in the practice of originating loans, the person is not required to be registered as a mortgage banker.

**History:** Cr. Register, February, 1991, No. 422, eff. 3-1-91; **CR 05-012:** r. (1), (2) and (5), renum. (3), (4), (6) and (7) to be (1), (2), (4) and (5) and am. (1), (2) (b) and (4), cr. (2) (c) and (3) Register June 2005 No. 594, eff. 7-1-05.

**DFI-Bkg 40.04 Loan solicitor activities. (1)** A loan

solicitor shall be limited to performing only the following activities:

(a) Taking information from a borrower and filling out a loan application.

(b) Estimating the maximum mortgage loan amount the prospective borrower can afford.

(c) Informing the prospective borrower about the different types of loan products available from a single lender.

(d) Collecting financial information and related documents that are part of the application process.

(e) Assisting the borrower in understanding credit problems.

(f) Providing the following:

1. The agreement and disclosures required by s. 224.79, Stats.

2. Servicing disclosure statements.

3. Affiliated business arrangement disclosures.

4. Good faith estimate.

5. HUD Settlement Costs and Information Booklet.

(g) Initiating the ordering of verifications of employment.

(h) Initiating the ordering of verifications of deposits.

(i) Initiating the ordering of requests for mortgage and other loan verifications.

**(2)** A loan solicitor is prohibited from accepting any funds from a loan applicant.

**History:** CR 05-012: cr. Register June 2005 No. 594, eff. 7-1-05.