

Chapter DFI-Bkg 43

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

DFI-Bkg 43.01 Authority and intent.

DFI-Bkg 43.02 Improper, fraudulent or dishonest dealing.

DFI-Bkg 43.03 Incompetency to act as a mortgage banker, loan originator or mortgage broker.

Note: Chapter RL 43 was renumbered chapter DFI-Bkg 43 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register, June 1999, No. 522. Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1999, No. 525.

DFI-Bkg 43.01 Authority and intent. (1) This chapter is adopted pursuant to ss. 227.11 (2), 224.73, 224.75, and 224.77, Stats.

(2) The intent of the division in adopting the rules in this chapter is to establish minimum standards of conduct for mortgage bankers, mortgage brokers and loan originators and to define that conduct which may result in disciplinary action by the division, pursuant to s. 224.77, Stats.

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91; CR 05-012: am. (2) Register June 2005 No. 594, eff. 7-1-05.

DFI-Bkg 43.02 Improper, fraudulent or dishonest dealing. The following conduct, without limitation because of enumeration, constitutes improper, fraudulent or dishonest dealing by a mortgage banker, loan originator or mortgage broker prohibited by s. 224.77 (1) (m), Stats.:

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

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

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91; CR 05-012: r. (intro.), renum. DFI-Bkg 43.02 (1) and (2) to be DFI-Bkg 40.02 (6) and (8), renum. DFI-Bkg 43.03 to be DFI-Bkg 43.02 and am. Register June 2005 No. 594, eff. 7-1-05.

DFI-Bkg 43.03 Incompetency to act as a mortgage banker, loan originator or mortgage broker. The following conduct, without limitation because of enumeration, demonstrates a lack of competency to act as a mortgage banker, 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 loan applications promptly.

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

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

(4) Failing to notify the division in writing of the use of a trade name prior to doing business under the trade name.

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

(6) 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.

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

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

(9) 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 without, records from the Consolidated Court Automation Program, or records from the department of justice crime information bureau shall be presumptive evidence of conviction.

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

(11) 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 registrant.

(12) Loan application fee. In any transaction in which a loan will be secured by a lien on residential property designed principally for the occupancy of from one to 4 families, before the acceptance of a loan application fee, failing to disclose in writing the following information to an applicant:

(a) The amount of any such fee, labelled 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.

(13) In any transaction in which a loan will be secured by a lien on residential property designed principally for the occupancy of from one to 4 families, 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.

(14) In any transaction in which a loan will be secured by a lien on residential property designed principally for the occupancy of from one to 4 families:

(a) Failing to provide or disclose in writing to the prospective borrower, at the time of or prior to the issuance of a 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 registrant for the borrower to accept a 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.

(15) (a) Except as provided in par. (b), in any transaction in which a registrant enters into an agreement or contract with a prospective borrower for the purpose of finding a loan or negotiating

a land contract, loan or commitment for a loan, including a provision or otherwise disclosing that either of the following are nonrefundable:

1. 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.

2. 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 a loan application.

(b) Paragraph (a) does not apply to a mortgage banker or loan originator who finds a loan or negotiates a land contract, loan or

commitment for a loan which will be originated by the mortgage banker or the loan originator's mortgage banker employer.

(16) Failing to notify the division that a federal agency under s. 224.72 (4) (a) 1. a. to d., Stats., has withdrawn its approval of the applicant as a mortgagee.

(17) Failing to maintain the requirements set forth in s. 224.72 (4) and (4m), Stats.

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91; cr. (5m), July, 1993, No. 451, eff. 8-1-93; correction in (5) made under s. 13.93 (2m) (b) 7., Stats., Register June 2004 No. 582; **CR 05-012: r. (5m), renum. DFI-Bkg 43.04 to be DFI-Bkg 43.03 and am. (intro.), (4), (8), (9), (11) and (14) (a), cr. (15) to (17) Register June 2005 No. 594, eff. 7-1-05.**