

CHAPTER 224

MISCELLANEOUS BANKING AND FINANCIAL INSTITUTIONS PROVISIONS

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Cross-reference: See definitions in s. 220.01

SUBCHAPTER I
BANKING PROVISIONS

224.02 Banking, defined. The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business by any person, partnership, association, or corporation, shall be deemed to be doing a banking business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing, provided that nothing herein shall apply to or include money left with an agent, pending investment in real estate or securities for or on account of the agent's principal.

History: 991 a. 316; 1993 a. 490; 2005 a. 158.

A "junior achievement" bank would be a banking business and violate s. 224.03, 62 Atty. Gen. 254.

224.03 Banking, unlawful, without charter; penalty. It shall be unlawful for any person, partnership, association, or corporation to do a banking business without having been regularly organized and chartered as a national bank, a state bank or a trust company bank. Any person or persons violating any of the provisions of this section, either individually or as an interested party in any partnership, association, or corporation shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than \$300 nor more than \$1,000 or imprisoned in the county jail for not less than 60 days nor more than one year or both.

History: 1991 a. 221; 1993 a. 490; 1995 a. 417.

224.05 Municipality not preferred creditor. If any bank, banking institution or trust company, being indebted to the state of Wisconsin, or indebted to any county, city, town or other municipality therein, for deposits made or indebtedness incurred after April 23, 1899, becomes insolvent or bankrupt, except as pro-

vided in s. 34.07, the state, county, city, town or other municipality shall not be a preferred creditor and shall have no preference or priority of claim whatever over any other creditor or creditors thereof; but a just and fair distribution of the property of such bank, banking institution or trust company, and of the proceeds thereof, shall be made among the creditors thereof proportionally, according to the amount of their respective claims. Nothing herein contained shall in any manner affect the provisions of law as they existed on said date providing for the payment of unpaid taxes and assessments, laborer's claims, expenses of assignment and execution of the trust.

History: 1979 c. 110 s. 60 (12); 1985 a. 257.

224.06 Fidelity bonds for bank officers and employees. (1) As a condition precedent to qualification or entry upon the discharge of his or her duties, every person appointed or elected to any position requiring the receipt, payment or custody of money or other personal property owned by a bank or in its custody or control as collateral or otherwise, shall give a bond from an insurer qualified under s. 610.11 to do business in this state, in such adequate sum as the directors shall require and approve. In lieu of individual bonds the division may accept a schedule or blanket bond which covers all of the officers and employees of any bank whose duties include the receipt, payment or custody of money or other personal property for or on behalf of the bank. All such bonds shall be in the form prescribed by the division.

(2) No officer or employee who is required to give bond shall be deemed qualified nor shall be permitted to enter upon the discharge of duties until the bond is approved by a majority of the board of directors. The minute books of each bank shall contain a record of each bond executed and approved.

(3) Such bond shall be sufficient in amount to protect the bank from loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction or misapplication on the part of the person, directly or through connivance with oth-

ers. At any time the division may require additional bond or security, when in the division's opinion, the bonds then executed and approved are insufficient.

(4) Every such bond shall provide that no cancellation or other termination of the bond shall be effective unless the surety gives in advance at least 10 days' written notice by registered mail to the division. If the bond is canceled or terminated at the request of the insured (employer), the surety shall give the written notice to the division within 10 days after the receipt of such request.

(5) For reasons which the division deems valid and sufficient the division may waive as to the cancellation or termination of any such bond the 10-day written notice in advance required by sub. (4) and may give written consent to the termination or cancellation being made effective as of a date agreed upon and requested by the surety and the bank.

(6) The provisions required by sub. (4) to be in every such bond shall not in any way modify, impair or otherwise affect or render invalid a provision therein to the effect that the bond shall terminate as to any person covered thereby upon the discovery by the bank of any dishonest act on the part of such person.

(7) Any violation of the provisions contained in subs. (1) and (2) shall subject the bank to a fine of \$100 per day for each consecutive day of such violation and it shall be the duty of the attorney general to recover any such penalties by action for and in behalf of the state.

History: 1983 a. 119, 538; 1987 a. 252; 1989 a. 359; 1991 a. 316; 1995 a. 27.

224.07 Checks to clear at par. Checks drawn on any bank or trust company, organized under the laws of this state, shall be cleared at par by the bank or trust company on which they are drawn. Any bank or trust company, or officer or employee thereof, who violates the provisions of this section shall be guilty of a misdemeanor and punished as provided in s. 939.61.

224.075 Financially related services tie-ins. In any transaction conducted by a bank, bank holding company or a subsidiary of either with a customer who is also a customer of any other subsidiary of any of them, the customer shall be given a notice in 12-point boldface type in substantially the following form:

NOTICE OF RELATIONSHIP

This company, (insert name and address of bank, bank holding company or subsidiary), is related to (insert name and address of bank, bank holding company or subsidiary) of which you are also a customer. You may not be compelled to buy any product or service from either of the above companies or any other related company in order to participate in this transaction.

If you feel that you have been compelled to buy any product or service from either of the above companies or any other related company in order to participate in this transaction, you should contact the management of either of the above companies at either of the above addresses or the division of banking at (insert address).

History: 1985 a. 325; 1995 a. 27.

224.10 Indian loan funds. (1) ADMINISTRATION IN TRUST AS A LOAN FUND. The loan funds of any Indian tribe which are transferred to the custody of such tribe by the United States, including any outstanding loan accounts, shall be administered as follows:

(a) The funds shall be held in trust by the tribe or a legal entity thereof as an Indian loan fund, for the purpose of making loans to members of the tribe.

(b) Management of an Indian loan fund shall be vested in a board of trustees, which may hire necessary personnel to administer the loan fund. The board of trustees shall consist of 5 members of the tribe and shall be appointed annually by the governing body of the tribe.

(c) The Indian loan fund in custody of the Menominee Indian Tribe and administered by a board of trustees appointed by that tribe shall, at the termination of federal control, be administered,

subject to this section, by a board of 5 trustees appointed annually by the stockholders of the corporation described in s. 710.05, 1973 stats., and shall be used for making loans to those who were enrolled tribal members as proclaimed by the secretary of the interior as of June 17, 1954, and their spouses and descendants and to any additional classes recommended by the trustees.

(3) **RULES OF BOARD OF TRUSTEES.** The board of trustees of an Indian loan fund may establish rules for the administration of the fund.

History: 1975 c. 422 s. 163; 1987 a. 252.

SUBCHAPTER II

FINANCIAL INSTITUTIONS

224.25 Customer access to appraisals. If requested by an individual who is a customer, loan applicant or credit applicant, a financial institution, as defined in s. 705.01 (3), shall provide that individual with a copy of any written appraisal report which is held by the financial institution, which relates to residential real estate that the individual owns or has agreed to purchase and for which a fee is imposed.

History: 1991 a. 78; 1997 a. 191 s. 236; Stats. 1997 s. 224.25.

224.26 Customer access to credit reports. If requested by an individual who is a customer, loan applicant or credit applicant, a financial institution, as defined in s. 705.01 (3), shall provide that individual, at no additional charge, with a copy of any written credit report which is held by the financial institution, which relates to that individual and for which a fee is imposed.

History: 1993 a. 425; 1997 a. 191 s. 237; Stats. 1997 s. 224.26.

224.30 Powers and duties of the department. (1) DEFINITION. In this section, "department" means the department of financial institutions.

(3) **COMPUTER DATABASES, NETWORKS AND SYSTEMS; ACCESS AND USE FEES.** The department may establish fees to be paid by members of the public for accessing or using the department's computer databases, computer networks or computer systems. Every fee established under this paragraph shall be based upon the reasonable cost of the service provided by the department, together with a reasonable share of the costs of developing and maintaining the department's computer databases, computer networks and computer systems.

(4) **RESTRICTIONS ON RECORDING INSTRUMENTS WITH SOCIAL SECURITY NUMBERS. (a)** In this subsection, "system" means the department's corporate registration information system.

(b) The department may not record in the system any instrument offered for recording that contains the social security number of an individual. If the department is presented with an instrument for recording in the system that contains an individual's social security number, the department may, prior to recording the instrument, remove or obscure characters from the social security number such that the social security number is not discernable on the instrument.

(c) If the department is presented with an instrument for recording in the system that contains an individual's social security number, and if the department records the instrument but does not discover that the instrument contains the individual's social security number until after the instrument is recorded, the department is not liable for the instrument drafter's placement of the individual's social security number on the instrument and the department may remove or obscure characters from the social security number such that the social security number is not discernable on the instrument.

(d) If the department records an instrument in the system that contains the complete social security number of an individual, the instrument drafter is liable to the individual whose social security number appears in the recorded instrument for any actual damages resulting from the instrument being recorded.

(5) **ELECTRONIC FILING.** (a) In this subsection, “filing” means the submission to the department of any form, instrument, application, report, notice, or other information required or permitted to be submitted to the department for retention in the department’s records.

(b) Subject to par. (c), the department may require any filing to be made electronically in a manner prescribed by the department. Subject to par. (c), if the department requires that a filing be made electronically, the department may require that any fee associated with the filing be paid using a suitable method prescribed by the department.

(c) The department may waive any requirement imposed under par. (b) if all of the following apply:

1. The person affected by the requirement makes a written request to the department, in a manner prescribed by the department, that the requirement be waived and clearly states in the request why the requirement causes the person undue hardship.

2. The department determines, in its discretion, that the requirement, if imposed on the person, would cause the person undue hardship.

History: 1997 a. 306; 1999 a. 9; 2003 a. 294; 2009 a. 347; 2015 a. 55.

224.40 Disclosure of financial records for child support enforcement. (1) DEFINITIONS. In this section:

(a) “County child support agency” means a county child support agency under s. 59.53 (5).

(b) “Financial institution” has the meaning given in s. 49.853 (1) (c).

(c) “Financial record” has the meaning given in 12 USC 3401.

(2) **FINANCIAL RECORD MATCHING AGREEMENTS.** A financial institution is required to enter into an agreement with the department of children and families in accordance with rules promulgated under s. 49.853 (2).

(3) **LIMITED LIABILITY.** A financial institution is not liable for any of the following:

(a) Disclosing a financial record of an individual to the county child support agency attempting to establish, modify or enforce a child support obligation of the individual.

(b) Disclosing information to the department of children and families or a county child support agency pursuant to the financial record matching program under s. 49.853.

(c) Encumbering or surrendering any assets held by the financial institution in response to instructions provided by the department of children and families or a county child support agency for the purpose of enforcing a child support obligation.

(d) Any other action taken in good faith to comply with s. 49.853 or 49.854.

History: 1997 a. 191; 2007 a. 20.

224.42 Disclosure of financial records for Medical Assistance and food stamp program eligibility. (1) DEFINITIONS. In this section:

(a) “Financial institution” has the meaning given in s. 49.45 (4m) (a) 3.

(b) “Financial record” has the meaning given in 12 USC 3401 (2).

(2) **FINANCIAL RECORD MATCHING AGREEMENTS.** A financial institution is required to enter into an agreement with the department of health services under ss. 49.45 (4m) and 49.79 (1t).

(3) **LIMITED LIABILITY.** A financial institution is not liable for any of the following:

(a) Disclosing a financial record of an individual or other information to the department of health services in accordance with an agreement, and its participation in the program, under s. 49.45 (4m) or 49.79 (1t).

(b) Any other action taken in good faith to comply with s. 49.45 (4m) or 49.79 (1t).

History: 2011 a. 192; 2013 a. 20; 2017 a. 59.

224.44 Disclosure of financial records for collection of unemployment insurance debt. (1) DEFINITIONS. In this section:

(a) “Financial institution” has the meaning given in 12 USC 3401 (1).

(b) “Financial record” has the meaning given in 12 USC 3401 (2).

(2) **FINANCIAL RECORD MATCHING AGREEMENTS.** A financial institution is required to enter into an agreement with the department of workforce development under s. 108.223.

(3) **LIMITED LIABILITY.** A financial institution is not liable for any of the following:

(a) Disclosing a financial record of an individual or other information to the department of workforce development in accordance with an agreement, and its participation in the program, under s. 108.223.

(b) Any other action taken in good faith to comply with s. 108.223.

History: 2013 a. 36.

224.48 College tuition and expenses program. (1) DEFINITIONS. In this section:

(a) “Board” means the board of regents of the University of Wisconsin System.

(am) “Department” means the department of financial institutions.

(b) “Institution of higher education” means an eligible educational institution, as defined under 26 USC 529.

(2) **WEIGHTED AVERAGE TUITION; TUITION UNIT COST.** Annually, the department and the board jointly shall determine all of the following:

(a) The weighted average tuition of bachelor’s degree-granting institutions within the University of Wisconsin System for the academic year that begins on or after the first day of August of the current year. The amount shall be calculated as follows:

1. For each such institution, multiply the tuition charged a full-time undergraduate who is a resident of this state by the number of full-time equivalent resident undergraduates attending the institution.

2. Add the products under subd. 1.

3. Divide the sum under subd. 2. by the total number of full-time equivalent resident undergraduates attending such institutions.

(b) The price of a tuition unit, which shall be valid for a period determined jointly by the department and the board. The price shall be sufficient to ensure the ability of the department to meet its obligations under this section. To the extent possible, the price shall be set so that the value of the tuition unit in the anticipated academic year of its use will be equal to 1 percent of the weighted average tuition for that academic year plus the costs of administering the program under this section attributable to the unit.

(3) **COLLEGE TUITION AND EXPENSES CONTRACTS.** (a) An individual, trust, legal guardian, or entity described under 26 USC 529 (e) (1) (C) may enter into a contract with the department for the sale of tuition units on behalf of a beneficiary.

(b) The contract shall specify the anticipated academic year of the beneficiary’s initial enrollment in an institution of higher education.

(c) The department may charge a purchaser an enrollment fee.

(d) The department shall promulgate rules authorizing a person who has entered into a contract under this subsection to change the beneficiary named in the contract.

(4) **NUMBER OF TUITION UNITS PURCHASED.** A person who enters into a contract under sub. (3) may purchase tuition units at any time and in any number, or may authorize a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary to purchase tuition units, except that the total number of tuition units purchased on behalf of a single beneficiary may not exceed the

number necessary to cover tuition, fees and the costs of room and board, books, supplies and equipment required for enrollment or attendance of the beneficiary at an institution of higher education.

(5) PAYMENT OF TUITION. (a) Except as provided in sub. (7m), if an individual named as beneficiary in a contract under sub. (3) attends an institution of higher education in the United States, each tuition unit purchased on his or her behalf entitles that beneficiary to apply toward the payment of tuition, fees and the costs of room and board, books, supplies and equipment required for enrollment or attendance at the institution an amount equal to 1 percent of the anticipated weighted average tuition of bachelor's degree-granting institutions within the University of Wisconsin System for the year of attendance, as estimated under sub. (2) in the year in which the tuition unit was purchased.

(b) Upon request by the beneficiary, the department shall pay to the institution or beneficiary, whichever is appropriate, in each semester of attendance the lesser of the following:

1. An amount equal to the value of each tuition unit, as determined under par. (a), multiplied by the number of tuition units purchased on behalf of the beneficiary and not used.

2. An amount equal to the sum of the institution's tuition, fees and the costs described in par. (a) for that semester.

(6) TERMINATION OF CONTRACT. (a) A contract under sub. (3) may be terminated by the person entering into the contract if any of the following occurs:

1. The beneficiary dies or is permanently disabled.

2. The beneficiary graduates from high school but is unable to gain admission to an institution of higher education after a good faith effort.

3. The beneficiary attended an institution of higher education but involuntarily failed to complete the program in which he or she was enrolled.

4. The beneficiary is at least 18 years old and one of the following applies:

a. The beneficiary has not graduated from high school.

b. The beneficiary has decided not to attend an institution of higher education.

c. The beneficiary attended an institution of higher education but voluntarily withdrew without completing the program in which he or she was enrolled.

5. Other circumstances determined by the department to be grounds for termination.

(b) The department may terminate a contract under sub. (3) if any of the tuition units purchased under the contract remain unused 10 years after the anticipated academic year of the beneficiary's initial enrollment in an institution of higher education, as specified in the contract.

(7) REFUNDS. (a) Except as provided in sub. (7m), the department shall do all of the following:

1. When a beneficiary completes the program in which he or she is enrolled, if the beneficiary has not used all of the tuition units purchased on his or her behalf, refund to the person who entered into the contract an amount equal to 1 percent of the anticipated weighted average tuition in the academic year in which the beneficiary completed the program, as estimated under sub. (2) in the year in which the tuition units were purchased, multiplied by the number of tuition units purchased by the person and not used by the beneficiary.

2. If a contract is terminated under sub. (6) (a) 1., 2. or 3., refund to the person who entered into the contract an amount equal to 1 percent of the anticipated weighted average tuition in the academic year in which the contract is terminated, as estimated under sub. (2) in the year in which the tuition units were purchased, multiplied by the number of tuition units purchased by the person and not used by the beneficiary.

3. If a contract is terminated under sub. (6) (a) 4. or (b), refund to the person who entered into the contract an amount equal to 99 percent of the amount determined under subd. 2.

4. If a contract is terminated under sub. (6) (a) 5., refund to the person who entered into the contract the amount under subd. 2. or under subd. 3., as determined by the department.

5. If the beneficiary is awarded a scholarship, tuition waiver or similar subsidy that cannot be converted into cash by the beneficiary, refund to the person who entered into the contract, upon the person's request, an amount equal to the value of the tuition units that are not needed because of the scholarship, waiver or similar subsidy and that would otherwise have been paid by the department on behalf of the beneficiary during the semester in which the beneficiary is enrolled.

(b) The department shall determine the method and schedule for the payment of refunds under this subsection.

(7m) TUITION UNIT VALUE ADJUSTMENT; REFUND ADJUSTMENT. (a) The department may adjust the value of a tuition unit based on the actual earnings attributable to the tuition unit less the costs of administering the program under this section that are attributable to the tuition unit if any of the following applies:

1. The individual named as the beneficiary in a contract under sub. (3) wishes to use the tuition unit for the payment of tuition in a year other than the anticipated academic year of attendance, as specified in the contract.

2. The individual named as the beneficiary in a contract under sub. (3), or the person who entered into the contract, wishes to receive a refund under sub. (7) in a year other than the anticipated academic year of the beneficiary's attendance, as specified in the contract.

(b) The department may not increase the value of a tuition unit under par. (a) to an amount that exceeds the value of a tuition unit that was purchased at a similar time, held for a similar period and used or refunded in the anticipated academic year of the beneficiary's attendance, as specified in the contract.

(c) The department may promulgate rules imposing or increasing penalties for refunds under sub. (7) (a) if the department determines that such rules are necessary to maintain the status of the program under this section as a qualified state tuition program under section 529 of the Internal Revenue Code, as defined in s. 71.01 (6).

(8) EXEMPTION FROM GARNISHMENT, ATTACHMENT AND EXECUTION. Moneys deposited in the tuition trust fund and a beneficiary's right to the payment of tuition, fees and the costs described in sub. (5) (a) under this section are not subject to garnishment, attachment, execution or any other process of law.

(9) CONTRACT WITH ACTUARY. The department shall contract with an actuary or actuarial firm to evaluate annually whether the assets in the tuition trust fund are sufficient to meet the obligations of the department under this section and to advise the department on setting the price of a tuition unit under sub. (2) (b).

(10) REPORTS. (a) Annually, the department shall submit a report to the governor, and to the appropriate standing committees of the legislature under s. 13.172 (3), on the program under this section. The report shall include any recommendations for changes to the program that the department determines are necessary to ensure the sufficiency of the tuition trust fund to meet the department's obligations under this section.

(b) The department shall submit a quarterly report to the state investment board projecting the future cash flow needs of the tuition trust fund. The state investment board shall invest moneys held in the tuition trust fund in investments with maturities and liquidity that are appropriate for the needs of the fund as reported by the department in its quarterly reports. All income derived from such investments shall be credited to the fund.

(11) CONSTRUCTION. (a) Nothing in this section guarantees an individual's admission to, retention by or graduation from any institution of higher education.

(b) The requirements to pay tuition, fees and the costs of room and board, books, supplies and equipment under sub. (5) and to make refunds under sub. (7) are subject to the availability of sufficient assets in the tuition trust fund.

(11m) FINANCIAL AID CALCULATIONS. The value of tuition units shall not be included in the calculation of a beneficiary's eligibility for state financial aid for higher education if the beneficiary notifies the higher educational aids board and the institution of higher education that the beneficiary is planning to attend that he or she is a beneficiary of a contract under this section and the contract owner agrees to release to the higher educational aids board and the institution of higher education information necessary for the calculation under this subsection.

(12) ADDITIONAL DUTIES AND POWERS. (a) The department shall do all of the following:

1. Annually publish a list of the institutions of higher education located in this state and the number of tuition units necessary to pay for one year of full-time attendance as a resident undergraduate at each institution.

2. Actively promote the program under this section.

3. Promulgate rules to implement and administer this section.

(b) The department may do any of the following:

1. Contract with any person for the management and operation of the program or any part of the program under this section.

2. Keep personal and financial information pertaining to a purchaser of tuition units or a beneficiary of tuition units closed to the public.

(13) PROGRAM TERMINATION. If the department determines that the program under this section is financially infeasible, the department shall discontinue entering into contracts under sub. (3) and discontinue selling tuition units under sub. (4).

History: 1995 a. 403; 1997 a. 27, 158; 1999 a. 9 ss. 52 to 62; Stats. 1999 s. 14.63; 1999 a. 44; 2001 a. 7, 16; 2011 a. 32 s. 75; Stats. 2011 s. 16.64; 2017 a. 59 s. 148, 1704; Stats. 2017 s. 224.48.

224.50 College savings program. (1) DEFINITIONS. In this section:

(a) "Account owner" means a person who establishes a college savings account under this section.

(b) "Board" means the college savings program board.

(c) "Department" means the department of financial institutions.

(2) DUTIES OF THE BOARD. The board shall do all of the following:

(a) Except as provided in s. 224.51, establish and administer a college savings program that allows an individual, trust, legal guardian, or entity described under 26 USC 529 (e) (1) (C) to establish a college savings account to cover tuition, fees, and the costs of room and board, books, supplies, and equipment required for the enrollment or attendance of a beneficiary at an eligible educational institution, as defined under 26 USC 529, and to cover tuition expenses in connection with enrollment or attendance at an elementary or secondary public, private, or religious school, as described in section 11032 of P.L. 115–97, related to qualified tuition programs under 26 USC 529.

(b) Ensure that the college savings program meets the requirements of a qualified state tuition plan under 26 USC 529.

(c) Establish investment guidelines for contributions to college savings accounts and pay distributions to beneficiaries and eligible educational institutions.

(d) Provide to each account owner, and to persons who are interested in establishing a college savings account, information about current and estimated future higher education costs, levels of participation in the college savings program that will help achieve educational funding objectives and availability of and access to financial aid.

(e) Promulgate rules to implement and administer this section, including rules that determine whether a withdrawal from a college savings account is a qualified or nonqualified withdrawal, as defined under 26 USC 529, and that impose more than a de minimis penalty, as defined under 26 USC 529, for nonqualified withdrawals.

(f) Seek rulings and guidance from the U.S. department of the treasury, the internal revenue service and the securities and exchange commission to ensure the proper implementation and administration of the college savings program.

(g) Ensure that if the department changes vendors, the balances of college savings accounts are promptly transferred into investment instruments as similar to the original investment instruments as possible.

(h) Keep personal and financial information pertaining to an account owner or a beneficiary closed to the public, except that the board may release to the appropriate state agency information necessary in determining a beneficiary's eligibility for state financial aid for higher education.

(i) Before December 31 of each year, beginning in 2015, ensure that the account balance limitation under sub. (3) (bm) is increased for the subsequent year. The annual increase shall be equal to a percentage that is not less than the most recently published national average tuition and fees percentage increase at private, nonprofit 4-year institutions, as determined by the College Board, or such other nationally reputable entity, and shall be subject to the requirements under 26 USC 529 that pertain to the prohibition on excess contributions.

(3) ACCOUNT OWNERS; BENEFICIARIES; CONTRIBUTIONS; TERMINATION OF SAVINGS ACCOUNTS. (a) An account owner may do all of the following:

1. Contribute to a college savings account or authorize any other person to contribute to the account.

2. Select a beneficiary of a college savings account.

3. Change the beneficiary of a college savings account to a family member, as defined under 26 USC 529, of the previous beneficiary.

4. Transfer all or a portion of a college savings account to another college savings account whose beneficiary is a member of the family.

5. Designate a person other than the beneficiary as a person to whom funds may be paid from a college savings account.

6. Receive distributions from a college savings account if no other person is designated.

(b) An individual may be the beneficiary of more than one college savings account, and an account owner may be the beneficiary of a college savings account that the account owner has established.

(bm) Beginning on August 1, 2015, no contribution may be made to an account if the contribution would cause the account balance of a beneficiary's account, or the combined balance of all accounts of a beneficiary, to exceed \$425,000. This contribution limitation applies to all accounts that are established on and after that date, and to all accounts that are in existence on that date that have not yet reached the balance limit specified in this paragraph, subject to the annual increase described in sub. (2) (i).

(c) The board shall establish a minimum initial contribution to a college savings account that may be waived if the account owner agrees to contribute to a college savings account through a payroll deduction or automatic deposit plan. The board shall ensure that any such plan permits the adjustment of scheduled deposits because of a change in the account owner's economic circumstances or a beneficiary's educational plans.

(d) An account owner under this section may terminate his or her college savings account if any of the following occurs:

1. The beneficiary dies or is permanently disabled.

2. The beneficiary graduates from high school but is unable to gain admission to an institution of higher education after a good faith effort.

3. The beneficiary attended an institution of higher education but involuntarily failed to complete the program in which he or she was enrolled.

4. The beneficiary is at least 18 years old and one of the following applies:

- a. The beneficiary has not graduated from high school.
 - b. The beneficiary has decided not to attend an institution of higher education.
 - c. The beneficiary attended an institution of higher education but voluntarily withdrew without completing the program in which he or she was enrolled.
5. Other circumstances determined by the board to be grounds for termination.

(e) The board may terminate a college savings account if any portion of the college savings account balance remains unused 10 years after the anticipated academic year of the beneficiary's initial enrollment in an eligible educational institution.

(4) CONTRACTS WITH PROFESSIONALS. The board may enter into a contract for the services of accountants, attorneys, consultants and other professionals to assist in the administration and evaluation of the college savings program.

(5) REPORT. Annually, the board shall submit a report to the governor, and to the appropriate standing committees of the legislature under s. 13.172 (3), on the performance of the college savings program, including any recommended changes to the program.

(6) CONSTRUCTION. Nothing in this section guarantees an individual's admission to, retention by or graduation from any institution of higher education; a rate of interest or return on a college savings account; or the payment of principal, interest or return on a college savings account.

(7) EXEMPTION FROM GARNISHMENT, LIEN, LEVY, ATTACHMENT AND EXECUTION; SECURITY FOR LOAN. (a) An account established under this section is not subject to garnishment, lien, levy, attachment, execution or other process of law.

(b) No interest in a college savings account may be pledged as security for a loan.

(8) FINANCIAL AID CALCULATIONS. The balance of a college savings account shall not be included in the calculation of a beneficiary's eligibility for state financial aid for higher education if the beneficiary notifies the higher educational aids board and the eligible educational institution that the beneficiary is planning to attend that he or she is a beneficiary of a college savings account and if the account owner agrees to release to the higher educational aids board and the eligible educational institution information necessary for the calculation under this subsection.

History: 1999 a. 44; 2001 a. 7, 38; 2011 a. 32 s. 76; Stats. 2011 s. 16.641; 2013 a. 227; 2015 a. 55; 2017 a. 59 ss. 149, 1705; Stats. 2017 s. 224.50; 2017 a. 231.

Cross-reference: See also ch. DFI-CSP 1, Wis. adm. code.

224.51 College savings program vendor. (1g) In this section, "department" means the department of financial institutions.

(1m) The department shall determine the factors to be considered in selecting a vendor of the program under s. 224.50, which shall include:

- (a) The person's ability to satisfy record-keeping and reporting requirements.
- (b) The fees, if any, that the person proposes to charge account owners.
- (c) The person's plan for promoting the college savings program and the investment that the person is willing to make to promote the program.
- (d) The minimum initial contribution or minimum contributions that the person will require.
- (e) The ability and willingness of the person to accept electronic contributions.
- (f) The ability of the person to augment the college savings program with additional, beneficial services related to the program.

(2) The department shall solicit competitive sealed proposals under s. 16.75 (2m) from nongovernmental persons to serve as vendor of the college savings program. The department shall

select the vendor based upon factors determined by the department under sub. (1m).

(3) The contract between the department and the vendor shall ensure all of the following:

(a) That the vendor reimburses the state for all administrative costs that the state incurs for the college savings program.

(b) That a firm of certified public accountants selected by the vendor annually audits the college savings program and provides a copy of the audit to the college savings program board.

(c) That each account owner receives a quarterly statement that identifies the contributions to the college savings account during the preceding quarter, the total contributions to and the value of the college savings account through the end of the preceding quarter and any distributions made during the preceding quarter.

(d) That the vendor communicate to the beneficiary and account owner the requirements of s. 224.50 (8).

History: 1999 a. 44; 2001 a. 38 s. 12; 2011 a. 32; 2017 a. 59 ss. 114 to 117, 1706; Stats. 2017 s. 224.51.

224.52 Repayment to the general fund. (1) The secretary of administration shall transfer from the tuition trust fund, the college savings program trust fund, the college savings program bank deposit trust fund, or the college savings program credit union deposit trust fund to the general fund an amount equal to the amount expended from the appropriations under s. 20.505 (9) (a), 1995 stats., s. 20.585 (2) (a), 2001 stats., and s. 20.585 (2) (am), 2001 stats., when the secretary of administration determines, after consultation with the secretary of financial institutions, that funds in those trust funds are sufficient to make the transfer. The secretary of administration may make the transfer in installments.

(2) Annually, by June 1, the secretary of financial institutions, after consultation with the secretary of administration, shall submit a report to the joint committee on finance on the amount available for repayment under sub. (1), the amount repaid under sub. (1), and the outstanding balance under sub. (1).

History: 2001 a. 16; 2003 a. 33; 2005 a. 478; 2011 a. 32 s. 77; Stats. 2011 s. 16.642; 2017 a. 59 s. 150; Stats. 2017 s. 224.52.

SUBCHAPTER III

MORTGAGE BANKERS, LOAN ORIGINATORS AND MORTGAGE BROKERS

224.71 Definitions. In this subchapter:

(1bm) "Another state" means any state of the United States other than Wisconsin; the District of Columbia; any territory of the United States; Puerto Rico; Guam; American Samoa; the Trust Territory of the Pacific Islands; the Virgin Islands; or the Northern Mariana Islands.

(1br) "Bona fide nonprofit organization" means an organization that is described in section 501 (c) (3) of the Internal Revenue Code and exempt from federal income tax under section 501 (a) of the Internal Revenue Code, that is certified by the federal department of housing and urban development or the Wisconsin Housing and Economic Development Authority, and that does all of the following:

- (a) Promotes affordable housing or provides home ownership education or similar services.
- (b) Conducts its activities in a manner that serves public or charitable purposes.
- (c) Receives funding and revenue and charges fees in a manner that does not create an incentive for itself or its employees to act other than in the best interests of its clients.
- (d) Compensates its employees in a manner that does not create an incentive for its employees to act other than in the best interests of its clients.
- (e) Provides to, or identifies for, the borrower residential mortgage loans with terms favorable to the borrower and comparable

to residential mortgage loans and housing assistance provided under government housing assistance programs.

(1c) “Branch office” means an office or place of business, other than the principal office, located in this state or another state, where a mortgage loan originator, mortgage banker, or mortgage broker engages in the mortgage loan business subject to this subchapter.

(1dm) “Depository institution” has the meaning given in [12 USC 1813](#) (c) (1), but also includes any state or federal credit union.

(1e) “Division” means the division of banking.

(1f) “Dwelling” has the meaning given in [15 USC 1602](#) (w).

(1g) “Employee” means an individual whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

(1gh) (a) Except as provided in par. (b), “expungement” means to have stricken or obliterated from a record of criminal conviction all references to the defendant’s name and identity.

(b) For a criminal conviction entered in another state, “expungement” has the meaning given under the laws of the state where the criminal conviction is entered.

(1h) “Federal banking agency” means the board of governors of the federal reserve system, the U.S. office of the comptroller of the currency, the national credit union administration, or the federal deposit insurance corporation.

(1m) “Finds,” with respect to a residential mortgage loan, means to assist a residential mortgage loan applicant in locating a lender for the purpose of obtaining a residential mortgage loan and to make arrangements for a residential mortgage loan applicant to obtain a residential mortgage loan, including collecting information on behalf of an applicant and preparing a loan package.

(1r) “Housing finance agency” means any authority that is all of the following:

(a) Chartered by a state to help meet the affordable housing needs of the residents of the state.

(b) Supervised directly or indirectly by the state government.

(c) Subject to audit and review by the state in which it operates.

(2) “Loan processor or underwriter” means an individual who, as an employee, performs clerical or support duties at the direction of and subject to the supervision and instruction of a mortgage loan originator licensed under s. [224.725](#) or exempt from licensing under s. [224.725 \(1m\)](#), which clerical or support duties may include any of the following occurring subsequent to the receipt of a residential mortgage loan application:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan.

(b) Communicating with a residential mortgage loan applicant to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms or providing counseling related to loan rates or terms.

(3) “Mortgage banker” means a person who does any of the following:

(c) Originates residential mortgage loans for itself, as payee on the note evidencing the residential mortgage loan, or for another person.

(d) Sells residential mortgage loans or interests in residential mortgage loans to another person.

(e) Services residential mortgage loans or provides escrow services.

(4) “Mortgage broker” means a person who, for compensation or gain or in the expectation of compensation or gain, does any of

the following but does not make an underwriting decision or close a residential mortgage loan:

(a) Assists a person in obtaining or applying to obtain a residential mortgage loan.

(b) Holds himself, herself, or itself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan.

(c) Engages in table funding.

(6) “Mortgage loan originator” means an individual who, for compensation or gain or in the expectation of compensation or gain, does any of the following:

(c) Takes a residential mortgage loan application.

(d) Offers or negotiates terms of a residential mortgage loan.

(7) “Nationwide mortgage licensing system and registry” means the licensing and registration system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for licensed mortgage loan originators and mortgage loan originators exempt from licensing under s. [224.725 \(1m\)](#) or, if this system is no longer maintained, any system established by the secretary of the federal department of housing and urban development under P.L. [110–289](#), Title V, section 1509.

(8) “Negotiate,” with respect to a residential mortgage loan, means to discuss, explain, or present the terms and conditions, including rates, fees, and other costs, of a residential mortgage loan with or to a residential mortgage loan applicant, but does not include making an underwriting decision on a residential mortgage loan or closing a residential mortgage loan.

(9) “Net worth” means total tangible assets less total liabilities of a person, or, if the person is an individual, total tangible assets less total liabilities exclusive of the person’s principal residence and its furnishings and personal use vehicles.

(10) “Nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

(11) “Originate,” with respect to a residential mortgage loan, means to make an underwriting decision on the residential mortgage loan and close the loan.

(12) “Principal office,” with respect to a mortgage banker or mortgage broker, means the place of business designated by the mortgage banker or mortgage broker as its principal place of business, as identified in the records of the division.

(13) “Real estate brokerage activity” means any activity that involves offering or providing to the public real estate brokerage services involving residential real property in this state, including all of the following:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(c) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing for the transaction. For purposes of this paragraph, providing financing for the transaction does not include use by a licensee under s. [452.03](#) of forms approved under s. [REEB 16.03](#), Wis. Adm. Code.

(d) Engaging in any activity for which a person engaged in the activity is required to be licensed under s. [452.03](#).

(e) Offering to engage in any activity, or act in any capacity, described in pars. (a) to (d).

(13c) “Registered entity” means a depository institution that voluntarily registers with the division for the purpose of sponsoring licensed mortgage loan originators that are under the depository institution’s direct supervision and control.

(13g) “Registered mortgage loan originator” means any individual who is all of the following:

(a) An employee of, and acting for, a depository institution, a subsidiary owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration.

(b) Registered with, and who maintains a unique identifier through, the nationwide mortgage licensing system and registry.

(13m) “Regularly engage,” with respect to an individual, means that any of the following applies:

(a) The individual engaged in the business of a mortgage loan originator on more than 5 residential mortgage loans, in this state or another state, in the previous calendar year or expects to engage in the business of a mortgage loan originator on more than 5 residential mortgage loans, in this state or another state, in the current calendar year.

(b) The individual is acting on behalf of a person who is, or is required to be, licensed as a mortgage lender, mortgage banker, or mortgage broker in this state or another state.

(c) The individual is acting on behalf of a registered entity.

(14) “Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a lien or mortgage, or equivalent security interest, on a dwelling or residential real property located in this state.

(15) “Residential real property” means real property on which a dwelling is constructed or intended to be constructed.

(16) “Services,” with respect to a residential mortgage loan, means to receive payments on a note from the borrower and distribute these payments in accordance with the terms of the note or servicing agreement.

(17) “Table funding” means a transaction in which a person conducts a residential mortgage loan closing in the person’s name with funds provided by a 3rd party and the person assigns the residential mortgage loan to the 3rd party within 24 hours of the residential mortgage loan closing.

(18) “Unique identifier” means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.71; 1989 a. 45; 1995 a. 27 s. 6590; Stats. 1995 s. 224.71; 1997 a. 27, 145; 2001 a. 16; 2003 a. 33, 260; 2005 a. 22; 2007 a. 211; 2009 a. 2 ss. 565 to 594, 597; 2013 a. 360 ss. 1 to 28, 43.

Cross-reference: See also ch. DFI-Bkg 40, Wis. adm. code.

Wisconsin’s new mortgage banking law. Thompson. Wis. Law. March 1989.

224.72 Licensing of mortgage bankers and mortgage brokers. **(1m)** LICENSE REQUIRED. Except as provided in sub. (1r), a person may not conduct business or act as a mortgage banker or mortgage broker, use the title “mortgage banker” or “mortgage broker,” or advertise or otherwise portray himself, herself, or itself as a mortgage banker or mortgage broker, unless the person has been issued a mortgage banker or mortgage broker license by the division.

(1r) LICENSE EXEMPTIONS. The following persons shall not be required to be licensed under this section or comply with the other provisions of this subchapter:

(a) A depository institution.

(b) A subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency.

(c) A federal, state, or local government agency or housing finance agency.

(d) An institution regulated by the farm credit administration.

(e) A bona fide nonprofit organization that does not operate in a commercial context and that is exempt under this paragraph. To qualify for an exemption under this paragraph, an organization shall certify, on a form prescribed by the division, that it is a bona fide nonprofit organization and shall provide documentation as required by the division. To maintain this exemption, the organization shall file the prescribed certification and accompanying documentation with the division by December 31 of each year.

(f) A mortgage banker that meets all of the following criteria:

1. The mortgage banker engaged in the business of a mortgage banker on 5 or fewer residential mortgage loans during the previous calendar year.

2. The mortgage banker expects to serve as the prospective source of financing, or to perform other phases of origination or servicing, on 5 or fewer residential mortgage loans in the current calendar year.

3. The mortgage banker does not advertise or otherwise hold himself, herself, or itself out as a “mortgage banker.”

(g) A person that only performs real estate brokerage activities and is licensed under s. 452.03, unless the person is compensated by a lender, mortgage broker, or mortgage loan originator or by any agent of a lender, mortgage broker, or mortgage loan originator.

(h) A person solely involved in extensions of credit relating to time-share plans, as defined in 11 USC 101 (53D).

(2) LICENSE APPLICATIONS. (am) Applicants for a mortgage banker or mortgage broker license shall apply to the division, on forms and in the manner prescribed by the division, and shall pay the fee specified in rules promulgated under sub. (8). Forms prescribed by the division under this paragraph may contain any content or requirement that the division, in its discretion, determines necessary and these forms may be modified or updated as necessary by the division to carry out the purposes of this subchapter.

(c) 1. Except as provided in par. (d), an application shall include the following:

a. In the case of an individual, the individual’s social security number.

b. In the case of a person that is not an individual, the person’s federal employer identification number.

2. The division may not disclose any information received under subd. 1. to any person except as follows:

a. The division may disclose information under subd. 1. to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 and to the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

b. The division may disclose information under subd. 1. a. to the department of children and families in accordance with a memorandum of understanding under s. 49.857.

(d) 1. If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for or applying to renew a license under this section, shall submit a statement made or subscribed under oath or affirmation to the division that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families.

2. Any license issued or renewed in reliance upon a false statement submitted by an applicant under subd. 1. is invalid.

(2m) LICENSED OFFICES. (a) Each mortgage banker or mortgage broker shall obtain and maintain a license for its principal office and a separate license for each branch office.

(b) 1. A principal office of a mortgage banker or mortgage broker shall be located in either this state or another state. Except as provided in subd. 2., a principal office may not be located in a residence.

2. A principal office of a mortgage banker or mortgage broker located in a residence on April 25, 2014, may continue to be located in that residence after this date but may not thereafter be relocated to any residence with a different address.

(c) A branch office of a mortgage banker or mortgage broker shall be located in either this state or another state. A branch office may be located in a residence.

(4) ADDITIONAL REQUIREMENTS. (a) In addition to the requirements of sub. (2), an applicant for a mortgage banker or mortgage broker license shall do all of the following:

2. File with the division a commercial surety bond which is in the amount of \$300,000 for a mortgage banker or \$120,000 for a mortgage broker, is issued by a surety company authorized to do business in this state, secures the applicant's faithful performance of all duties and obligations of a mortgage banker or mortgage broker, is payable to the division for the benefit of persons to whom the mortgage banker or mortgage broker provided services as a mortgage banker or mortgage broker, is issued on a form that is acceptable to the division and provides that the bond may not be terminated without at least 60 days' written notice to the division.

4. Submit evidence that establishes, to the division's satisfaction, a minimum net worth of \$250,000 for a mortgage banker or \$100,000 for a mortgage broker. Evidence of net worth shall include the submission of recent financial statements accompanied by a written statement by an independent certified public accountant attesting that he or she has reviewed the financial statements in accordance with generally accepted accounting principles.

(5m) COMPLETION OF LICENSING PROCESS. Except as provided in sub. (7m), upon the filing of an application for a mortgage banker or mortgage broker license and the payment of the fee specified in rules promulgated under sub. (8), the division shall make an investigation of the applicant including, if the applicant is a partnership, limited liability company, association, or corporation, the members or officers and directors, respectively, of the applicant. If the division finds that the character, general fitness, and financial responsibility of the applicant, including its members or officers and directors if the applicant is a partnership, limited liability company, association, or corporation, warrant the belief that the business will be operated in compliance with this subchapter, the division shall issue to the applicant a mortgage banker or mortgage broker license. A mortgage banker or mortgage broker license is not assignable or transferable.

(7) LICENSE RENEWAL. (am) A mortgage broker or mortgage banker may apply to renew a license issued under this section by timely submitting, on forms and in the manner prescribed by the division, a completed renewal application and all required renewal fees. The division may not renew a license issued under this section unless the division finds that the mortgage broker or mortgage banker continues to meet the minimum standards for license issuance under this section.

(bm) The license of a mortgage broker or mortgage banker who fails to satisfy the minimum standards for license renewal shall expire. The division may, by rule, provide for the reinstatement of expired licenses consistent with the standards established by the nationwide mortgage licensing system and registry.

(7m) DENIAL OF APPLICATION FOR CERTAIN REASONS. The division may not issue or renew a license under this section if any of the following applies:

(a) The applicant for the issuance or renewal has failed to provide any information required under sub. (2) (c) 1.

(b) The department of revenue has certified under s. 73.0301 that the applicant is liable for delinquent taxes. An applicant whose application for issuance or renewal of a license is denied under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

(bm) The department of workforce development has certified under s. 108.227 that the applicant is liable for delinquent unemployment insurance contributions. An applicant whose application for issuance or renewal of a license is denied under this paragraph for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

(c) The applicant for the issuance or renewal is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a

county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or who is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. An applicant whose license is not issued or renewed under this paragraph for delinquent payments is entitled to a notice and hearing under s. 49.857 but is not entitled to any other notice or hearing under this section.

(8) LICENSE PERIOD; FEES. The division shall promulgate rules establishing the license period and the license fees for mortgage bankers and mortgage brokers.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.72; 1989 a. 45; 1991 a. 39; 1993 a. 112; 1995 a. 27 ss. 6210, 6527m, 6528m, 6535m, 6591 to 6593; Stats. 1995 s. 224.72; 1995 a. 465; 1997 a. 27, 35, 145, 191, 237, 252; 1999 a. 9, 32; 2003 a. 260; 2007 a. 20; 2009 a. 2; 2013 a. 36; 2013 a. 360 ss. 11 to 15, 29 to 35.

Cross-reference: See also chs. DFI-Bkg 40 and 41, Wis. adm. code. Persons who received an ad in the mail or a post card offering services from a mortgage banker were not "provided services" and the surety had no liability to them. All Cities Privacy Class v. Hartford Fire Insurance Company, 2011 WI App 71, 333 Wis. 2d 483, 798 N.W.2d 909, 10–1738.

224.722 Registered entities. (1) A depository institution may apply for registered entity status with the division. The application shall be on forms and in the manner prescribed by the division and the applicant shall pay the same fee as that established by rule under s. 224.72 (8) for mortgage bankers. The application shall be accompanied by a commercial surety bond in the amount of \$300,000 that is issued by a surety company authorized to do business in this state and is written on a form that is acceptable to the division.

(2) Upon the filing of an application for registered entity status and the payment of the required fee, the division shall make an investigation of the applicant. If the application is complete, and the division has no concerns regarding the applicant's character, general fitness, or financial responsibility, the division shall register the applicant as a registered entity.

(3) Each registered entity shall register with the division each branch office where a mortgage loan originator sponsored by the registered entity engages in business as a mortgage loan originator. Applications for branch office registration shall be made on forms and in the manner prescribed by the division and shall be accompanied by the same fee as that established by rule for branch offices of mortgage bankers.

(5) A depository institution's registered entity status, and the registration of all of its registered branch offices, expires on December 31 of each year.

(6) A registered entity may apply to renew its registered entity status, and the registration of all of its registered branch offices, by timely submitting, on forms and in the manner prescribed by the division, a completed renewal application for the registered entity and for each branch office, along with the applicable fee under sub. (1) or (3). The division may not renew registered entity status under this section unless the division finds that the registered entity continues to meet the minimum standards for registration under this section.

(7) If a registered entity fails to satisfy the minimum standards for renewal of its registration, its registration shall expire. If a registered entity fails to satisfy any requirement under sub. (6) for renewing its registration of a branch office, the registration for that branch office shall expire.

(8) A registered entity shall cooperate with, and provide access to records and documents required by, the division to carry out examinations in accordance with s. 224.74 (2) of mortgage loan originators that are sponsored by the registered entity.

History: 2013 a. 360.

224.725 Licensing of mortgage loan originators.

(1) LICENSE REQUIRED. Except as provided in sub. (1m), an individual may not regularly engage in the business of a mortgage loan originator with respect to a residential mortgage loan, or use the

title “mortgage loan originator,” advertise, or otherwise portray himself or herself as a mortgage loan originator in this state, unless the individual has been issued by the division, and thereafter maintains, a license under this section. Each licensed mortgage loan originator shall register with, and maintain a valid unique identifier issued by, the nationwide mortgage licensing system and registry.

(1m) LICENSE EXEMPTIONS. The following individuals are not required to be licensed under this section:

(a) A registered mortgage loan originator.

(b) An employee of a federal, state, or local government agency or housing finance agency who acts as a mortgage loan originator only pursuant to his or her official duties as an employee of the federal, state, or local government agency or housing finance agency.

(c) An individual engaged solely as a loan processor or underwriter, unless the individual is an independent contractor or represents to the public, through advertising or another means of communication such as the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(d) An individual who performs real estate brokerage activities only and is licensed under s. 452.03, unless the individual is compensated by a lender, mortgage broker, or another mortgage loan originator or by any agent of a lender, mortgage broker, or another mortgage loan originator.

(e) An individual solely involved in extensions of credit relating to time-share plans, as defined in 11 USC 101 (53D).

(f) An employee of a bona fide nonprofit organization who acts as a mortgage loan originator only in connection with his or her work duties to the bona fide nonprofit organization and only with respect to residential mortgage loans with terms that are favorable to the borrower.

(g) A licensed attorney who undertakes activities described in s. 224.71 (6) if all of the following apply:

1. These activities are considered by the Wisconsin Supreme Court to be part of the authorized practice of law within Wisconsin.

2. These activities are carried out within an attorney–client relationship.

3. The attorney carries out the activities in compliance with all applicable laws, rules, and ethics standards.

(2) LICENSE APPLICATIONS. (a) Applicants for a mortgage loan originator license shall apply to the division, on forms and in the manner prescribed by the division, and shall pay the fee specified in rules promulgated under sub. (8). The division shall require mortgage loan originators to be licensed and registered through the nationwide mortgage licensing system and registry. Forms prescribed by the division under this paragraph may contain any content or requirement that the division, in its discretion, determines necessary and these forms may be modified or updated as necessary by the division to carry out the purposes of this subchapter.

(b) 1. Except as provided in subd. 2., an application shall include the individual’s social security number. The division may not disclose the individual’s social security number to any person except as follows:

a. The division may disclose the social security number to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 and to the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

b. The division may disclose the social security number to the department of children and families in accordance with a memorandum of understanding under s. 49.857.

2. If an individual does not have a social security number, the individual, as a condition of applying for, or applying to renew, a

license under this section, shall submit a statement made or subscribed under oath or affirmation to the division that the individual does not have a social security number. The form of the statement shall be prescribed by the department of children and families. Any license issued or renewed in reliance upon a false statement submitted by an applicant under this subdivision is invalid.

(c) Any applicant for a license under this section shall furnish to the nationwide mortgage licensing system and registry information concerning the applicant’s identity, including all of the following:

1. Fingerprints for submission to the federal bureau of investigation and to any governmental agency or entity authorized to receive this information, for purposes of a state, national, and international criminal history background check.

2. Personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the division to obtain all of the following:

a. An independent credit report from a consumer reporting agency, as defined in s. 100.54 (1) (c).

b. Any information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) ISSUANCE OF LICENSE. Except as provided in sub. (6), upon the filing of an application for a mortgage loan originator license and the payment of the fee specified in rules promulgated under sub. (8), the division may issue to the applicant a mortgage loan originator license if the division finds that all of the following apply:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, unless the revocation was subsequently and formally vacated.

(b) The applicant has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the 7–year period preceding the date of the application or, for a felony involving an act of fraud, dishonesty, breach of trust, or money laundering, at any time preceding the date of the application. With respect to any conviction for which the applicant has received a pardon or expungement of the conviction, the pardoned or expunged conviction shall not result in an automatic denial or revocation of a mortgage loan originator license. The division may consider the underlying crime, facts, or circumstances of a pardoned or expunged felony conviction when determining the eligibility of an applicant for licensure under this paragraph and par. (c).

(c) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this subchapter. For purposes of this paragraph, an individual has shown that he or she is not financially responsible if he or she has shown a disregard in the management of his or her own financial condition. In making a finding related to an applicant’s financial responsibility for purposes of this paragraph, the division may consider whether the applicant has current outstanding judgments other than those resulting from medical expenses, has current outstanding tax liens or other government liens and filings, or has, within the past 3 years, any pattern of seriously delinquent accounts.

(d) The applicant has satisfied the education requirements under s. 224.755 (1).

(e) The applicant has passed a written test that meets the requirements under s. 224.755 (4).

(f) The applicant has met the surety bond requirement under sub. (4).

(4) SURETY BOND. (a) Each mortgage loan originator shall be covered by a surety bond in accordance with this subsection. A surety bond of a mortgage banker, mortgage broker, or registered entity meeting the requirements of par. (b) and s. 224.72 (4) (a) 2.

or 224.722 (1) may satisfy the requirement under this paragraph for a mortgage loan originator who is sponsored by the mortgage banker, mortgage broker, or registered entity.

(b) The penal sum of the surety bond shall provide coverage for each mortgage loan originator in an amount that reflects the dollar amount of residential mortgage loans originated by the mortgage loan originator, as determined by the division.

(c) The surety bond shall be in a form prescribed, and satisfy all requirements established, by rule of the division.

(d) When an action is commenced on a mortgage loan originator's surety bond, the division may require the filing of a new surety bond. If an action results in recovery on a mortgage loan originator's surety bond, the mortgage loan originator shall immediately file a new surety bond.

(5) LICENSE RENEWAL. (a) A mortgage loan originator may apply to renew a license issued under this section by timely submitting, on forms and in the manner prescribed by the division, a completed renewal application and all required renewal fees. The division may not renew a license issued under this section unless the division finds that all of the following apply:

1. The mortgage loan originator continues to meet the minimum standards for license issuance under sub. (3).

2. The mortgage loan originator has satisfied the annual continuing education requirements under s. 224.755 (2).

(b) The license of a mortgage loan originator who fails to satisfy the minimum standards for license renewal shall expire. The division may, by rule, provide for the reinstatement of expired licenses consistent with the standards established by the nationwide mortgage licensing system and registry.

(6) DENIAL OF APPLICATION FOR CERTAIN REASONS. The division may not issue or renew a license under this section if any of the following applies:

(a) The applicant for the issuance or renewal has failed to provide the information required under sub. (2) (b).

(b) The department of revenue has certified under s. 73.0301 that the applicant is liable for delinquent taxes. An applicant whose application for issuance or renewal of a license is denied under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

(bm) The department of workforce development has certified under s. 108.227 that the applicant is liable for delinquent unemployment insurance contributions. An applicant whose application for issuance or renewal of a license is denied under this paragraph for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and hearing under s. 108.227 (5) (a) but is not entitled to any other notice or hearing under this section.

(c) The applicant for the issuance or renewal has failed to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or who is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. An applicant whose license is not issued or renewed under this paragraph for delinquent payments is entitled to a notice and hearing under s. 49.857 but is not entitled to any other notice or hearing under this section.

(8) LICENSE PERIOD; FEES. The division shall promulgate rules establishing the license period and the license fees for mortgage loan originators. The fees shall be no less than \$250 annually. The rules may not require a license fee for an individual who is eligible for the veterans fee waiver program under s. 45.44.

History: 2009 a. 2 ss. 607, 621, 634; 2009 a. 386; 2011 a. 209; 2013 a. 36; 2013 a. 360 ss. 19 to 21, 37 to 41, 44.

Cross-reference: See also chs. DFI-Bkg 40 and 41, Wis. adm. code.

224.728 Nationwide mortgage licensing system and registry and cooperative arrangements. **(1) PARTICIPATION.** (a) The division shall participate in the nationwide mortgage licensing system and registry. The division may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licenses under this subchapter. With respect to any form, fee, or other information related to the initial issuance or renewal of a mortgage loan originator license under this subchapter, the division may require that any applicant submit such form, fee, or other information directly to the nationwide mortgage licensing system and registry and may authorize the nationwide mortgage licensing system and registry to perform any function under this subchapter related to the licensing of mortgage loan originators in this state.

(b) The division may provide to the nationwide mortgage licensing system and registry any information relating to an applicant for initial issuance or renewal of a mortgage loan originator license that the division and the nationwide mortgage licensing system and registry determine to be relevant to the application or to any mortgage loan originator responsibility administered or conducted through the nationwide mortgage licensing system and registry.

(c) The division may rely on the nationwide mortgage licensing system and registry to establish any dates relating to application or reporting deadlines for mortgage loan originators, to establish requirements for amending or surrendering mortgage loan originator licenses, or to establish any other requirements applicable to mortgage loan originators licensed under this subchapter to the extent the requirements are a condition of the state's participation in the nationwide mortgage licensing system and registry.

(2) CHANNELING INFORMATION. To reduce the points of contact that the division may have to maintain, and to facilitate compliance with the requirements under s. 224.725 (2) (c), the division may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the division, including the federal bureau of investigation, any state or federal department of justice, or any other governmental agency.

(3) CHALLENGE PROCESS. The division shall establish a process whereby mortgage loan originators may challenge information maintained by the nationwide mortgage licensing system and registry on behalf of the division.

(4) CONFIDENTIAL INFORMATION. (a) If any information or material is considered confidential or privileged under federal or state law before it is provided or disclosed to the nationwide mortgage licensing system and registry, it shall continue to be confidential or privileged after it is provided or disclosed to, and while maintained by, the nationwide mortgage licensing system and registry, except to the extent federal or state law expressly provides otherwise and except as provided in par. (c). Confidential or privileged information or material under this paragraph is not subject to any of the following:

1. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of federal or state government.

2. Subpoena or discovery, or admission into evidence, in any private civil action or administrative proceeding, unless the person to whom the information or material pertains waives any right or protection of confidentiality or privilege in the information or material.

(b) Confidential or privileged information or material under par. (a) may be shared with any state or federal regulatory agency having supervisory authority over mortgage lending without losing any right or protection of confidentiality or privilege under federal or state law.

(c) This subsection does not prohibit the nationwide mortgage licensing system and registry from providing public access to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators.

(5) COOPERATIVE ARRANGEMENTS. The division may enter into cooperative, coordinating, or information-sharing arrangements or agreements with other governmental agencies or with associations representing other governmental agencies, including the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

History: 2009 a. 2.

224.73 Relationship between mortgage loan originator and a mortgage banker, mortgage broker, or registered entity; branch offices. (1) RESPONSIBILITY FOR MORTGAGE LOAN ORIGINATOR. A mortgage banker, mortgage broker, or registered entity is responsible for, and shall supervise the acts of, a mortgage loan originator or any other person who otherwise acts on behalf of the mortgage banker, mortgage broker, or registered entity.

(2) RESTRICTION ON MORTGAGE LOAN ORIGINATOR. (a) If the division suspends or revokes a mortgage banker's or mortgage broker's license or a registered entity's registration, a mortgage loan originator may not act on behalf of that mortgage banker, mortgage broker, or registered entity during the period of suspension or revocation.

(b) A mortgage loan originator may act on behalf of only the mortgage banker, mortgage broker, or registered entity with which that mortgage loan originator's license is associated in the records of the division. A mortgage loan originator's license may only be associated with one mortgage banker, mortgage broker, or registered entity at a time.

(3) TRANSFER BY MORTGAGE LOAN ORIGINATOR. (a) A licensed mortgage loan originator may apply, on forms and in the manner prescribed by the division, to transfer association to another licensed mortgage banker or mortgage broker or a registered entity. The division shall promulgate rules establishing a fee for a transfer application under this subsection.

(b) A mortgage loan originator may not act on behalf of a mortgage banker, mortgage broker, or registered entity until the mortgage loan originator's license association has been transferred to that mortgage banker, mortgage broker, or registered entity in the records of the division.

(5) MORTGAGE LOAN ORIGINATORS AND BRANCH OFFICES. (a) A mortgage loan originator shall be assigned to and work out of a licensed or registered office or branch office of the sponsoring mortgage banker, mortgage broker, or registered entity. This office shall either be the mortgage loan originator's residence or be within 100 miles of the mortgage loan originator's residence.

(b) At each branch office of a mortgage banker or registered entity at which residential mortgage loans are originated for the mortgage banker or registered entity or for another person, and at each branch office of a mortgage broker, there shall be at least one licensed mortgage loan originator assigned to and working out of the office. If an individual is identified as a branch manager for the office, either in the records of the division or in the records of the mortgage banker, mortgage broker, or registered entity, the individual must be licensed as a mortgage loan originator.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.73; 1991 a. 39; 1995 a. 27 s. 6594; Stats. 1995 s. 224.73; 1997 a. 145; 2003 a. 260; 2009 a. 2; 2013 a. 360.

Cross-reference: See also ch. DFI-Bkg 40, Wis. adm. code.

224.74 Division's review of the operations of a mortgage loan originator, mortgage broker, mortgage banker, or registered entity. (1) CALL REPORTS; AUDITS. (a) *Mortgage call report.* Each mortgage banker, mortgage broker, and mortgage loan originator licensed under this subchapter, and each registered entity, shall submit to the nationwide mortgage licensing system and registry reports of condition, which shall be

in such form and contain such information as the nationwide mortgage licensing system and registry may require.

(b) *Audit requirement for mortgage bankers.* Each year, no later than 6 months following the end of its most recently completed fiscal year, each mortgage banker shall submit a copy of an audit of the mortgage banker's operations during that fiscal year. An audit under this paragraph shall be conducted by an independent certified public accountant in accordance with generally accepted auditing standards. The financial statements in the audit report shall be prepared in accordance with generally accepted accounting principles.

(bm) *Reviewed financial statements for mortgage brokers.* Each year, no later than 6 months following the end of its most recently completed fiscal year, each mortgage broker shall submit a copy of the mortgage broker's reviewed financial statements for the mortgage broker's operations during that fiscal year. The reviewed financial statements shall include a balance sheet, an income statement, and a written statement by an independent certified public accountant attesting that he or she has conducted his or her review in accordance with generally accepted accounting principles and professional standards of the American Institute of CPAs.

(c) *Audits requested by the division.* The division may request that a mortgage banker or mortgage broker obtain an audit of the mortgage banker's or mortgage broker's operations if the division has reason to believe that the mortgage banker or mortgage broker may not have sufficient financial resources to meet its obligations to its clients or investors or to other persons directly affected by the activities conducted by the mortgage banker or mortgage broker under the license issued by the division. If the division requests an audit under this paragraph, the mortgage banker or mortgage broker shall have the audit completed no later than 90 days after the date of the division's request. The mortgage banker or mortgage broker shall submit the audit report to the division no later than 5 days after the date on which the audit is completed. An audit under this paragraph shall be conducted by an independent certified public accountant in accordance with generally accepted auditing standards. The financial statements in the audit report shall be prepared in accordance with generally accepted accounting principles.

(2) EXAMINATION AND INVESTIGATION. (ag) The division may at any time, on its own motion or upon complaint, conduct inquiries, investigations, and examinations of licensees under this subchapter, or of persons required to be licensed under or otherwise subject to the provisions of this subchapter, including doing any of the following:

1. Examining, accessing, receiving, or using any books, accounts, records, files, documents, or other information relating to the condition or affairs of a mortgage banker, mortgage loan originator, or mortgage broker.

2. Interviewing or examining under oath any mortgage banker, mortgage loan originator, or mortgage broker, any of the members, officers, directors, agents, employees, contractors, or customers of the mortgage banker, mortgage loan originator, or mortgage broker, or any other person whose testimony the division deems to be relevant. The division may direct, subpoena, or order the attendance of a person to provide testimony under this subdivision and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other document the division deems relevant to the inquiry, investigation, or examination.

3. Direct or order any licensee under this subchapter to make or compile reports or other information, in a format directed by the division, that the division considers necessary to carry out any investigation or examination under this subchapter, including any accounting compilation or other loan transaction data, list, or information.

4. Examine, access, receive, and use any other records, documents, or other information that the division deems relevant to the

inquiry, investigation, or examination, regardless of the location, possession, control, or custody of the records, documents, or information, including any of the following:

a. Criminal, civil, and administrative history information, including conviction information and nonconviction information to the extent permitted by law.

b. Personal history and experience information, including credit reports obtained from a consumer reporting agency, as defined in s. 100.54 (1) (c).

(ar) In making any investigation or examination authorized under this subchapter, the division may control access to any documents and records of the licensee or of any other person under investigation or examination. The division may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no person may remove or attempt to remove any of the documents and records except with the consent of the division or by court order. Unless the division has reasonable grounds to believe the documents and records have been or are at risk of being altered or destroyed for purposes of concealing a violation of this subchapter, the licensee or owner or custodian of the documents and records shall have access to the documents and records as necessary to conduct its ordinary business affairs.

(b) The division shall prepare a report for each investigation or examination conducted under this subsection. These reports, and correspondence regarding these reports, are confidential, except that the division may release these reports and correspondence in connection with a disciplinary proceeding conducted by the division, a liquidation proceeding, or a criminal investigation or proceeding. In addition, any information from these reports or correspondence may be provided to the nationwide mortgage licensing system and registry and is not confidential to the extent specified in s. 224.728 (4) (b) and (c).

(c) The division may require a mortgage banker, mortgage loan originator, or mortgage broker who is investigated or examined under this subsection to pay to the division a reasonable fee for the costs of conducting the investigation or examination. A mortgage banker, mortgage loan originator, or mortgage broker shall pay these costs to the division within 30 days after the division demands payment of these costs.

(3) ADDITIONAL DIVISION AUTHORITY. To carry out the purposes of this section, the division may do any of the following:

(a) Retain attorneys, accountants, and other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of investigations or examinations.

(b) Enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, or information obtained under this section.

(c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate any licensee or other person subject to investigation or examination.

(d) Accept and rely on investigation or examination reports made by other government officials, in this state or elsewhere.

(e) Accept audit reports made by an independent certified public accountant for the licensee or another person relevant to the investigation or examination and incorporate any such audit report into any report of the division.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.74; 1991 a. 39; 1995 a. 27 s. 6595; Stats. 1995 s. 224.74; 1997 a. 145; 2009 a. 2; 2013 a. 360; 2015 a. 195 s. 83.

224.75 Record-keeping requirements for licensees.

(1) REQUIRED RECORDS; LOAN APPLICATION OR SERVICING DOCUMENTS. (a) *Fee record system.* A mortgage banker or mortgage broker shall establish and maintain a record system which shows

all fees which a mortgage banker or mortgage broker charged a residential mortgage loan applicant or a mortgagor in connection with a residential mortgage loan. The record shall show the application or disposition of those fees.

(b) *Loan application record system.* A mortgage banker or mortgage broker shall establish and maintain a record system containing all of the following information for each residential 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.
6. The name of the mortgage loan originator.
7. The loan amount.

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

(d) *Loan servicing records and documents.* A mortgage banker shall maintain for each residential mortgage loan serviced by the mortgage banker a copy of or a record of all of the following:

1. All correspondence relating to the loan.
2. All payments received from the borrower.
3. All charges assessed to the borrower's account.
4. All payments made by the mortgage banker on behalf of the borrower.
5. The unpaid balance on the borrower's account.

(2) PERIOD OF RECORD RETENTION. A mortgage banker or mortgage broker shall keep for at least 36 months, in an office of the mortgage banker or mortgage broker licensed under this subchapter but one that is not located in a residence unless the residence is authorized as a principal office under s. 224.72 (2m) (b) 2., all books and records that, in the opinion of the division, will enable the division to determine whether the mortgage banker or mortgage broker is in compliance with the provisions of this subchapter. These books and records include copies of all deposit receipts, canceled checks, trust account records, the records which a mortgage banker or mortgage broker maintains under sub. (1) (c) or (d), and other relevant documents or correspondence received or prepared by the mortgage banker or mortgage broker in connection with a residential mortgage loan or residential mortgage loan application. The retention period begins on the date the residential mortgage loan is closed or, if the loan is not closed, the date of loan application. If the residential mortgage loan is serviced by a mortgage banker, the retention period commences on the date that the loan is paid in full.

(3) CONTENTS OF CREDIT AND APPRAISAL REPORTS. (a) *Credit report.* If a mortgage banker or mortgage broker charges a residential mortgage 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 mortgage broker charges a residential mortgage 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 residential mortgage loan purposes, the basis for that opinion and the name of the person who conducted the appraisal. If requested by a residential mortgage loan applicant, a mortgage banker or mortgage broker shall provide the loan applicant with a copy of any written appraisal report held by the mortgage banker or mortgage broker, if the loan applicant paid a fee for the report.

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

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

(6) **FURNISHING BOOKS AND RECORDS.** Upon request by the division, any licensee under this subchapter, and any other person whom the division has authority to investigate and examine under s. 224.74 (2), shall make any books and records requested by the division available for inspection and copying by the division. If any records are kept at a licensed office not located within this state, the mortgage banker or mortgage broker shall, upon request of the division, promptly deliver such documents to any location within this state specified by the division.

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.75; 1995 a. 27 s. 6596; Stats. 1995 s. 224.75; 1997 a. 145; 2007 a. 211; 2009 a. 2; 2013 a. 360.

Cross-reference: See also ch. DFI-Bkg 42, Wis. adm. code.

224.755 Education and testing requirements for mortgage loan originators. (1) **EDUCATION REQUIREMENTS APPLICABLE PRIOR TO LICENSE ISSUANCE.** Subject to sub. (3) (a) and (c), an applicant for a license under s. 224.725 (1), prior to the division's issuance of the license, shall complete at least 20 hours of education, including a minimum of all of the following:

- (a) Three hours of federal law and regulations.
- (b) Three hours of ethics, including instruction on fraud, consumer protection, and fair lending issues.
- (c) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) **CONTINUING EDUCATION REQUIREMENTS.** Subject to subs. (3) (a), (c), (d), and (f), an applicant for renewal of a license under s. 224.725 (5), prior to the division's renewal of the license, shall annually complete at least 8 hours of education, including a minimum of all of the following:

- (a) Three hours of federal law and regulations.
- (b) Two hours of ethics, including instruction on fraud, consumer protection, and fair lending issues.
- (c) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(3) **EDUCATION APPROVAL.** (a) No education course may count toward the requirement under sub. (1) or (2) unless the course has been reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards, including review and approval of the course provider.

(b) An education course meeting the standard under par. (a) may count toward the requirements under subs. (1) and (2) even if the course is any of the following:

1. Provided by the applicant's or licensee's employer, by an entity affiliated with the applicant or licensee by an agency contract, or by any subsidiary or affiliate of such an employer or affiliated entity.

2. Offered through the Internet or another online or electronic medium.

3. Taken in another state.

(c) Subject to any rule promulgated under s. 224.72 (7) (bm) or 224.725 (5) (b), if an individual was previously registered as a loan originator under s. 224.72, 2007 stats., or previously licensed as a mortgage loan originator under s. 224.725, the division may not issue or renew a mortgage loan originator license for the individual under s. 224.725 unless the individual satisfies the requirements under sub. (1) or (2) or demonstrates to the division's satisfaction that the individual has completed all education requirements applicable to the individual in the last year in which the individual's license or registration was valid.

(d) Except as provided in any rule promulgated under s. 224.72 (7) (bm), a licensed mortgage loan originator may receive credit for a continuing education course only in the year in which the course is taken and may not take the same approved course in the same or successive years to meet the requirements under sub. (2).

(e) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours of credit for every one hour taught.

(f) The division may, by rule, allow an applicant for renewal of a license under s. 224.725 (5) to make up any deficiency in meeting the requirements specified in sub. (2).

(4) **TESTING REQUIREMENTS.** (a) An applicant for a license under s. 224.725 (1), prior to the division's issuance of the license, shall pass a written test meeting the standards under par. (b). An individual shall answer at least 75 percent of the test questions correctly to achieve a passing test score.

(b) 1. No test may satisfy the requirement under par. (a) unless the test is developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.

2. A test does not meet the standard under subd. 1. unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including all of the following:

- a. Ethics.
- b. Federal and state law, regulations, and rules pertaining to mortgage origination.
- c. Federal and state law, regulations, and rules relating to residential mortgage transactions, including instruction on fraud, consumer protection, the nontraditional mortgage product marketplace, and fair lending issues.

(c) A written test meeting the standards under par. (b) may satisfy the requirement under par. (a) even if the test is provided at the location of the applicant's employer, any subsidiary or affiliate of the applicant's employer, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) An individual may take a test 3 consecutive times, with each retest occurring at least 30 days after the preceding test. If the individual fails 3 consecutive tests, the individual may not retake a test again for at least 6 months.

(e) If an individual previously licensed as a mortgage loan originator fails to maintain a valid license for a period of 5 years or longer, not taking into account any time during which the individual is a registered loan originator, the individual shall retake the test under par. (a).

(5) **COMPLIANCE RECORDS.** A mortgage loan originator shall keep records documenting compliance with this section for at least 4 years.

History: 2003 a. 260; 2009 a. 2; 2013 a. 360.

224.76 Mortgage banker, mortgage loan originator, and mortgage broker trust accounts. A mortgage banker, mortgage loan originator, or mortgage broker 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 mortgage broker shall maintain trust accounts in a depository institution. The mortgage banker or mortgage broker shall notify the division of the location of its trust accounts.

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.76; 1995 a. 27 s. 6597; Stats. 1995 s. 224.76; 1997 a. 145; 2009 a. 2.

Cross-reference: See also ch. DFI–Bkg 42, Wis. adm. code.

224.77 Prohibited acts and practices, and discipline, of mortgage bankers, mortgage loan originators, mortgage brokers, and registered entities. (1) PROHIBITED ACTS AND PRACTICES. No mortgage banker, mortgage loan originator, mortgage broker, or, with respect to pars. (f), (fg), (g), (gd), and (gh), registered entity, and no member, officer, director, principal, partner, trustee, or other agent of a mortgage banker, mortgage broker, or registered entity may do any of the following:

(a) Make a material misstatement, or knowingly omit a material fact, in a license application or in other information or reports furnished to the division, to the nationwide mortgage licensing system and registry, or to any other governmental agency, including failing to disclose a criminal conviction or any disciplinary action taken by a state or federal regulatory agency.

(b) Make, in any manner, any materially false or deceptive statement or representation, including engaging in bait and switch advertising or falsely representing residential mortgage loan rates, points, or other financing terms or conditions.

(c) Make a false, deceptive, or misleading promise relating to the services being offered or that influences, persuades, or induces a client to act to his or her detriment.

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

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

(f) Accept a commission, money, or other thing of value for performing an act as a mortgage loan originator unless the payment is from the mortgage banker, mortgage broker, or registered entity with whom the mortgage loan originator's license is associated, as identified in the records of the division at the time the act is performed.

(fg) As a mortgage banker, mortgage broker, or registered entity, pay a commission, money, or other thing of value to any person for performing an act as a mortgage loan originator unless the mortgage loan originator's license is associated with the mortgage banker, mortgage broker, or registered entity in the records of the division at the time the act is performed.

(g) As a mortgage loan originator, represent or attempt to represent a mortgage banker, mortgage broker, or registered entity other than the mortgage banker, mortgage broker, or registered entity with whom the mortgage loan originator's license was associated, as identified in the records of the division at the time the representation or attempted representation occurs.

(gd) As a mortgage banker, mortgage broker, or registered entity, permit a person who is not licensed under this subchapter to act as a mortgage loan originator on behalf of the mortgage banker, mortgage broker, or registered entity.

(gh) As a mortgage banker, mortgage broker, or registered entity, permit a person whose mortgage loan originator license is not associated in the records of the division with the mortgage banker, mortgage broker, or registered entity to act as a mortgage loan originator on behalf of the mortgage banker, mortgage broker, or registered entity.

(gp) As a mortgage banker or mortgage broker, conduct business at or from a principal office or branch office that is not licensed under this subchapter.

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

(i) Demonstrate a lack of competency to act as a mortgage banker, mortgage loan originator, or mortgage broker in a way that safeguards the interests of the public.

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

(jm) Pay a person who is not licensed under this subchapter a commission, money, or other thing of value for performing an act as a mortgage banker, mortgage loan originator, or mortgage broker.

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

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

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

(o) In the course of practice as a mortgage banker, mortgage loan originator, or mortgage broker, except in relation to housing designed to meet the needs of elderly individuals, treat 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, marital status, or status as a victim of domestic abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u), of the person maintaining a household.

(p) Intentionally encourage or discourage 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 residential mortgage loan applicant, rather than because of the credit worthiness of the applicant and the condition of the property securing the loan:

1. Refuse to negotiate, to offer, or to attempt to negotiate a residential mortgage loan or commitment for a residential mortgage loan, or refuse to find a residential mortgage loan.

2. Find a residential mortgage loan or negotiate a residential mortgage loan on terms less favorable than are usually offered.

(s) Violate, or fail to comply with, any lawful order of the division.

(sm) As a mortgage loan originator, fail to identify his or her name and sign the mortgage loan application for a loan originated by him or her.

(sn) As a mortgage banker, mortgage broker, or mortgage loan originator, fail to clearly place his, her, or its unique identifier on all residential mortgage loan application forms, solicitations, and advertisements, including business cards, Internet sites, email signature blocks, and on all other documents specified by rule of the division.

(sq) As a mortgage banker, mortgage broker, or mortgage loan originator, use any solicitation or advertisement to which any of the following applies:

1. The solicitation or advertisement misrepresents that the provider is, or is affiliated with, any governmental entity or other organization.

2. The solicitation or advertisement misrepresents that the product is or relates to a government benefit, or is endorsed, sponsored by, or affiliated with any government or government-

related program, including through the use of formats, symbols, or logos that resemble those of such entity, organization, or program.

3. The solicitation or advertisement does not clearly and conspicuously identify the name of the mortgage broker or mortgage banker or, if a mortgage loan originator is sponsored by a registered entity, the registered entity.

(t) Impede an investigation or examination of the division or deny the division access to any books, records, or other information which the division is authorized to obtain under s. 224.74 (2), 224.75 (6), or any other provision of this subchapter.

(tm) Make a material misstatement, or knowingly omit a material fact, or knowingly mutilate, destroy, or secrete any books, records, or other information requested by the division, in connection with any investigation or examination conducted by the division or another governmental agency.

(u) Solicit or enter into a contract with a borrower that provides in substance that the mortgage banker, mortgage broker, or mortgage loan originator may earn a fee or commission through “best efforts” to obtain a residential mortgage loan even though no residential mortgage loan is actually obtained for the borrower.

(um) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting.

(v) Assist, aid, or abet any person in unlawfully conducting business under this subchapter without a valid license.

(w) Fail to make disclosures required under this subchapter or required under any other applicable state or federal law, rule, or regulation.

(x) Withhold any payment or make any payment, threat, or promise, directly or indirectly, to any person for the purpose of influencing the independent judgment of the person in connection with a residential mortgage loan, or withhold any payment or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property for the purpose of influencing the independent judgment of the appraiser with respect to the value of the property.

(y) Cause or require a borrower to obtain property insurance coverage in an amount exceeding the replacement cost of improvements on the property, as determined by the property insurer.

(1m) ADMINISTRATIVE FORFEITURE AND HEARING RIGHTS. (a) The division may assess against any person who violates this subchapter a forfeiture of not more than \$25,000 for each violation and may further order restitution to any person suffering loss as a result of the violation.

(b) A person may contest an assessment of forfeiture, or a restitution order, under par. (a) by sending, within 10 days after receipt of notice of the assessment or order under par. (a), a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division of hearings and appeals may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division of hearings and appeals shall be the final administrative decision. The division of hearings and appeals shall commence the hearing within 30 days after receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division of hearings and appeals are governed by ch. 227. In any petition for judicial review of a decision by the division of hearings and appeals, the party, other than the petitioner, who was in the proceeding before the division of hearings and appeals shall be the named respondent.

(c) 1. All forfeitures shall be paid to the division of banking within 10 days after receipt of notice of assessment or, if the forfeiture is contested under par. (b), within 10 days after receipt of the final decision after exhaustion of administrative review. The divi-

sion of banking shall remit all forfeitures paid to the secretary of administration for deposit in the school fund.

2. All amounts ordered as restitution shall be paid to the person suffering loss within 10 days after receipt of notice of the order or, if the restitution order is contested under par. (b), within 10 days after receipt of the final decision after exhaustion of administrative review.

(d) The attorney general may bring an action in the name of the state to collect any forfeiture imposed, or amount ordered as restitution, under this subsection if the forfeiture or restitution amount has not been paid following the exhaustion of all administrative and judicial reviews. The only issue to be contested in any such action shall be whether the forfeiture or restitution amount has been paid.

(2m) DIVISION ACTION ON LICENSE. (a) 1. In addition to any other authority provided to the division under this subchapter, if the division finds that a mortgage banker, mortgage loan originator, or mortgage broker has violated any provision of this subchapter or any rule promulgated by the division under this subchapter, or a registered entity has violated any applicable provision of this subchapter, the division may do any of the following:

a. Deny any application for initial issuance or renewal of a license or registration.

b. Revoke, suspend, limit, or condition any license of the mortgage banker, mortgage loan originator, or mortgage broker or registration of the registered entity.

c. Reprimand the mortgage banker, mortgage loan originator, or mortgage broker.

2. The division may take any action specified in subd. 1. against a mortgage banker or mortgage broker based upon any act or omission described in subd. 1. of a director, officer, trustee, partner, or member of the mortgage banker or mortgage broker or a person who has a financial interest in or is in any way connected with the operation of the mortgage banker’s or mortgage broker’s business.

(b) In addition to any other authority provided to the division under this subchapter, if the division finds that an applicant for initial issuance or renewal of a license under this subchapter made any material misstatement in the application or withheld material information, or that the applicant no longer satisfies the requirements under s. 224.72 or 224.725 for issuance or renewal of the license, the division may deny the application or, if the license has already been issued, suspend or revoke the license.

(c) The division shall restrict or suspend the license of a mortgage banker, mortgage loan originator, or mortgage broker if the licensee is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or who is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. An individual whose license is restricted or suspended under this subsection is entitled to a notice and hearing only as provided in a memorandum of understanding entered into under s. 49.857 and is not entitled to any other notice or hearing under this section.

(d) The division shall revoke the license of a mortgage banker, mortgage loan originator, or mortgage broker if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes. A licensee whose license is revoked under this subsection for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (a) but is not entitled to any other notice, hearing or review under this section.

(e) The division shall revoke the license of a mortgage banker, mortgage loan originator, or mortgage broker if the department of workforce development certifies under s. 108.227 that the licensee is liable for delinquent unemployment insurance contributions. A licensee whose license is revoked under this subsection for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and a hearing under s. 108.227 (5) (a) but is not entitled to any other notice, hearing or review under this section.

(3) ORDERS OF THE DIVISION. (a) *Orders to prevent or correct actions.* The division may issue general and special orders, including temporary orders that become immediately effective, to prevent or correct actions by a mortgage banker, mortgage loan originator, or mortgage broker that constitute a violation of any provision of this subchapter or of any rule promulgated under this subchapter, including special orders that do any of the following:

1. Direct a mortgage banker, mortgage loan originator, or mortgage broker to cease and desist from engaging in a particular activity, from conducting business, or from otherwise violating any provision of this subchapter or any rule promulgated under this subchapter.

2. Direct a mortgage banker, mortgage loan originator, or mortgage broker to refund or remit to a residential mortgage loan applicant or borrower amounts that the mortgage banker, mortgage loan originator, or mortgage broker got from actions that constitute a violation of any provision of this subchapter or of any rule promulgated under this subchapter.

3. Direct a mortgage banker, mortgage loan originator, or mortgage broker to cease business under a license issued under this subchapter if the division determines that the license was erroneously issued or the licensee is currently in violation of any provision of this subchapter or of any rule promulgated under this subchapter.

4. Direct a mortgage banker, mortgage loan originator, or mortgage broker to undertake any affirmative action, consistent with the provisions of this subchapter, that the division deems necessary.

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

(3m) HEARING RIGHTS FOR LICENSE DENIAL, REVOCATION, OR SUSPENSION. A person whose license has been denied, revoked, suspended, limited, or conditioned under this section may request a hearing under s. 227.44 within 30 days after the date of denial, revocation, suspension, limitation, or conditioning of the license. The division may appoint a hearing examiner under s. 227.46 to conduct the hearing.

(4) PERIOD OF DISCIPLINARY ACTION; LICENSE INELIGIBILITY. (a) *Period.* Except as provided in par. (b), the division shall determine in each case the period that a revocation, suspension, limitation, or condition of a license is effective.

(b) *Ineligibility.* 1. Except as provided in subd. 2., if the division denies or revokes a license under sub. (2m) (a), the person is not eligible for a license until the expiration of a period determined in each case by the division.

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

(5) PENALTIES FOR CERTAIN DISCRIMINATORY CONDUCT. (a) *Mandatory revocation or suspension.* Notwithstanding subs. (2m) (a) and (4), if the division finds that a mortgage banker, mortgage loan originator, or mortgage broker has violated sub. (1) (p) or (q), the division shall:

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

2. For the 2nd offense, revoke the license of the mortgage banker, mortgage loan originator, or mortgage broker.

(b) *Other penalties.* The penalty under par. (a) may be imposed in addition to any penalty imposed under s. 66.1011, 106.50 or 224.80.

(8) VOLUNTARY SURRENDER. A mortgage banker, mortgage loan originator, or mortgage broker may voluntarily surrender a license to the division, but the division may refuse to accept the surrender if the division has an open investigation or examination or received allegations of unprofessional conduct against the mortgage banker, mortgage loan originator, or mortgage broker. The division may negotiate stipulations in consideration for accepting the surrender of the license.

(9) REPORTING VIOLATIONS. The division shall report regularly violations of this subchapter or of rules promulgated under this subchapter, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry. Except as provided in s. 224.728 (4) (b) and (c), these reports shall be confidential.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.77; 1993 a. 112; 1995 a. 27 ss. 6598 to 6600; Stats. 1995 s. 224.77; 1997 a. 145, 191, 237; 1999 a. 32, 82; 1999 a. 150 s. 672; 2003 a. 33, 260; 2007 a. 20; 2009 a. 2 ss. 673 to 707, 709; 2009 a. 95; 2011 a. 258; 2013 a. 36; 2013 a. 360 ss. 50, 60 to 68.

Cross-reference: See also ch. DFI–Bkg 43, Wis. adm. code.

Failure to comply with an administrative rule requiring agreements by loan solicitors to be in writing did not cause an otherwise valid agreement to be unenforceable under this section. *Felland v. Sauey*, 2001 WI App 257, 248 Wis. 2d 963, 637 N.W.2d 403, 00–2102.

The elements of various claims under this section are discussed. *SJ Properties Suites v. Specialty Finance Group, LLC*, 864 F. Supp. 2d 776 (2012).

224.79 Mortgage brokerage agreements and disclosures; mortgage broker agency relationship and duties.

(1) FORM AND CONTENT OF MORTGAGE BROKERAGE AGREEMENTS. Every contract between a mortgage broker and an individual under which the mortgage broker agrees to provide brokerage services to the individual relating to a residential mortgage loan shall be in writing, in the form prescribed by rule of the division, and shall contain all information required by rule of the division. The division shall promulgate rules to administer this subsection and shall design these rules to facilitate the comparison of similar charges and total charges assessed by different mortgage brokers.

(2) DISCLOSURE STATEMENT. Before entering into a contract with an individual to provide brokerage services relating to a residential mortgage loan, a mortgage broker shall give the individual a copy of a disclosure statement, explain the content of the statement, and ensure that the individual initials or signs the statement, acknowledging that the individual has read and understands the statement. The disclosure statement shall contain a brief explanation of the relationship between the individual and the mortgage broker under the proposed contract, a brief explanation of the manner in which the mortgage broker may be compensated under the proposed contract, and any additional information required by rule of the division. The division shall promulgate rules to administer this subsection and, by rule, shall specify the form and content of the disclosure statement required under this subsection.

(3) MORTGAGE BROKER AGENCY RELATIONSHIP AND DUTIES. (a) In this subsection, “borrower” means the residential mortgage loan applicant or investor on whose behalf a mortgage broker provides, or contracts to provide, mortgage brokerage services.

(b) A mortgage broker, at all times when acting in the capacity of a mortgage broker, has an agency relationship with the borrower.

(c) A mortgage broker owes all of the following duties to the borrower:

1. The mortgage broker shall act in the borrower’s best interest and in the utmost good faith toward the borrower, and may not compromise the borrower’s rights or interests in favor of another’s rights or interests, including those of the mortgage broker.

2. The mortgage broker may not accept, give, or charge any undisclosed compensation or realize any undisclosed remuneration, through direct or indirect means, that inures to the benefit of the mortgage broker on an expenditure made for the borrower.

3. The mortgage broker shall carry out all lawful instructions given by the borrower.

4. The mortgage broker shall disclose to the borrower all material facts of which the mortgage broker has knowledge that might reasonably affect the borrower's rights or interests or ability to receive the borrower's intended benefit from the residential mortgage loan, but not facts that are reasonably susceptible to the knowledge of the borrower.

4m. The mortgage broker shall present loan options in an objective and unbiased manner and disclose the advantages and disadvantages of each loan option.

5. The mortgage broker shall use reasonable care in performing the mortgage broker's duties.

6. The mortgage broker shall account to the borrower for all money and property received by the mortgage broker as the borrower's agent.

(d) Nothing in this subsection prohibits a mortgage broker from contracting or collecting a fee for services provided, if the services were disclosed to the borrower before they were provided.

(e) Nothing in this subsection requires a mortgage broker to obtain a residential mortgage loan containing terms or conditions not available to the mortgage broker in the mortgage broker's usual course of business or to obtain a residential mortgage loan for the borrower from a mortgage lender with whom the mortgage broker does not have a business relationship.

(f) The duties imposed under par. (c) may not be waived.

(g) Every contract under sub. (1), and every disclosure statement under sub. (2), shall identify the agency relationship described in par. (b) and the mortgage broker's duties imposed under par. (c).

History: 2003 a. 260; 2009 a. 2, 188; 2011 a. 233.

Cross-reference: See also ch. DFI-Bkg 44, Wis. adm. code.

224.80 Penalties and private cause of action. (1) PENALTIES. A person who violates any provision of this subchapter or any rule promulgated under this subchapter may be fined not more than \$25,000 or imprisoned for not more than 9 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, mortgage loan originator, or mortgage broker in violation of any provision of this subchapter or of any rule promulgated under this subchapter 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 \$25,000 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).

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.80; 1989 a. 45; 1995 a. 27 s. 6602; Stats. 1995 s. 224.80; 1997 a. 145; 2003 a. 260; 2009 a. 2.

A "person who is aggrieved" under sub. (2) is one who suffered at least some actual injury or damage. *Avudria v. McGlone Mortgage Company, Inc.* 2011 WI App 95, 334 Wis. 2d 480, 802 N.W.2d 524, 10–2032.

224.81 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, mortgage loan originator, or mortgage broker 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, mortgage loan originator, or mortgage broker without alleging and

proving that the person was licensed under this subchapter as a mortgage banker, mortgage loan originator, or mortgage broker when the alleged cause of action arose.

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.81; 1995 a. 27 s. 6603; Stats. 1995 s. 224.81; 1997 a. 145; 2009 a. 2.

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

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.82; 1995 a. 27 s. 6604; Stats. 1995 s. 224.82; 1997 a. 145; 2009 a. 2.

SUBCHAPTER IV

NONDEPOSITORY SMALL BUSINESS LENDERS

224.90 Definitions. In this subchapter:

(1) "Division" means the division of banking.

(2) "In control" means any of the following:

(a) Owning 10 percent or more of the outstanding voting stock of a nondepository lender.

(b) Possessing, directly or indirectly, alone or in concert with others, the power to control or vote 10 percent or more of the outstanding voting stock of a nondepository lender or to elect or control the election of a majority of the board of directors of a nondepository lender.

(3) "Licensee" means a lender licensed under this subchapter.

(4) "Nondepository lender" means a commercial small business lender that participates in the loan guarantee program of the U.S. small business administration described in 13 CFR 120.2 (a) and that provides financial assistance to small businesses that qualify for financial assistance pursuant to 15 USC 636 (a). "Nondepository lender" does not include a bank, credit union, savings and loan association or savings bank.

History: 1999 a. 9.

224.92 License required. No person may engage in business as a nondepository lender in this state without a license issued under this subchapter.

History: 1999 a. 9.

224.923 License application. An application for a license under this subchapter shall be made to the division in writing on a form to be prescribed by the division. An application for a license under this subchapter shall state the full name and business address of the applicant and each officer, director and person in control of the applicant. The application also shall contain the applicant's federal employer identification number. In addition, the application shall contain the applicant's business plan, 3 years of detailed financial projections and other relevant information, all as prescribed by the division.

History: 1999 a. 9.

224.927 Disclosure of certain application information. The division may not disclose an applicant's federal employer identification number received under s. 224.923, except as follows:

(1) The division may disclose the information to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 and to the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

(2) The division may disclose the information to the department of children and families in accordance with a memorandum of understanding under s. 49.857.

History: 1999 a. 9; 2007 a. 20; 2013 a. 36.

224.93 License approval. After a review of information regarding the directors, officers and controlling persons of the applicant for a license, a review of the applicant's business plan, including at least three years of detailed financial projections and

other information considered relevant by the division, the division may approve an application for a license if the division determines that all of the following conditions are met:

(1) The applicant has at least \$500,000 in capital and the amount of capital is adequate for the applicant to transact business as a nondepository lender.

(2) Each director, officer and person in control of the applicant is of good character and sound financial standing; the directors and officers of the applicant are competent to perform their functions with respect to the applicant and the directors and officers of the applicant are collectively adequate to manage the business of the applicant as a nondepository lender.

(3) The business plan of the applicant will be honestly and efficiently conducted in accordance with the intent and purpose of this subchapter.

(4) The proposed activity of the applicant possesses a reasonable prospect for success.

(5) The applicant has paid to the division the application fee prescribed by the division, together with the actual cost incurred by the division in investigating the application.

History: 1999 a. 9.

224.935 Expiration of license. (1) GENERALLY. Except as provided under sub. (2), a license issued under this subchapter expires on the June 30 following the date on which the license was issued.

(2) CHANGE IN CONTROL OF LICENSEE. A change in the identity or number of individuals that are in control of a licensee terminates the licensee's license under this subchapter, unless the licensee applies to the division for and receives a renewal of the license no later than 15 days after the change in control.

History: 1999 a. 9.

224.94 Renewal of license. Except as provided under s. 224.935 (2), a licensee shall renew its license by submitting to the division a renewal application and the renewal fee as prescribed by the division not less than 60 days before the date on which the license expires. A renewal application is subject to the same criteria as the criteria for approval of an original license.

History: 1999 a. 9.

224.95 Denial of or disciplinary action relating to license. (1) MANDATORY DENIAL. The division shall deny an application for issuance or renewal of a license under this subchapter if any of the following applies:

(a) The applicant has failed to provide its federal employer identification number under s. 224.923.

(b) The department of revenue has certified under s. 73.0301 that the applicant is liable for delinquent taxes. An applicant whose application for issuance or renewal of a license is denied under this paragraph is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (a) but is not entitled to a notice or hearing under sub. (4).

(bm) The department of workforce development has certified under s. 108.227 that the applicant is liable for delinquent unemployment insurance contributions. An applicant whose application for issuance or renewal of a license is denied under this paragraph is entitled to a notice under s. 108.227 (2) (b) 1. b. and a hearing under s. 108.227 (5) (a) but is not entitled to a notice or hearing under sub. (4).

(c) The applicant is an individual who has failed to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or who is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. An applicant whose application for issuance or renewal of a license is denied under this

paragraph is entitled to a notice and a hearing under s. 49.857 but is not entitled to a notice or hearing under sub. (4).

(2) DISCRETIONARY DENIAL OR DISCIPLINARY ACTION. The division may deny an application for issuance or renewal of a license under this subchapter or may revoke, suspend or limit a license issued under this subchapter if the division finds that the applicant or nondepository lender did any of the following:

(a) Made a material misstatement in an application for issuance or renewal of a license issued under this subchapter or in information provided to the division.

(b) Demonstrated a lack of competency to act as a nondepository lender.

(c) Violated any provision of this subchapter or any rule of the division.

(3) DISCIPLINARY ORDERS. The division may issue general or special orders necessary to prevent or correct actions by a nondepository lender that constitute cause under this section for revoking, suspending or limiting a license.

(4) APPEAL OF DENIAL OR DISCIPLINARY ACTION. A person whose application for issuance or renewal of a license under this subchapter has been denied or whose license has been revoked, suspended or limited under this section may request a hearing under s. 227.42 within 30 days after the date of denial, revocation, suspension or limitation. Failure of a person to request a hearing within the time provided under this subsection is a waiver of the person's right to a hearing on the denial, revocation, suspension or limitation.

History: 1999 a. 9; 2007 a. 20; 2013 a. 36.

224.96 Required loan loss reserve. Each licensee shall provide for a loan loss reserve sufficient to cover projected loan losses that are not guaranteed by the U.S. government or any agency of the U.S. government.

History: 1999 a. 9.

224.97 Division review of nondepository lender operations. The division may, at any reasonable time, examine the books of account, records, condition and affairs of a nondepository lender licensed under this subchapter. The division shall examine the books of account, records, condition and affairs of every nondepository lender licensed under this subchapter at least once during every 12 month period. The division shall prepare a report of each examination conducted under this section. As part of an examination under this section or as part of the preparation of an examination report, the division may examine under oath any person in control, officer, director, agent, employee or customer of the nondepository lender. The division may require a nondepository lender that is examined under this section to pay to the division a reasonable fee for the costs of conducting the examination.

History: 1999 a. 9.

224.98 Powers of licensee. A licensee may do any of the following:

(1) Participate in the loan guaranty program under 15 USC 636 (a).

(2) Participate in any other government program for which the licensee is eligible and which has as its function the provision or facilitation of financing or management assistance to business firms.

History: 1999 a. 9.

224.985 Required records and reports. (1) RECORD KEEPING. A licensee shall keep books, accounts, and other records in such a form and manner as required by rule of the division. These records shall be kept at a location and shall be preserved for a length of time as prescribed by rule of the division.

(2) ANNUAL REPORT. Not more than 90 days after the close of a licensee's fiscal year or upon request of the division, every licensee shall file with the division a report containing all of the following:

224.985 MISCELLANEOUS BANKING PROVISIONS

Updated 15–16 Wis. Stats. 20

(a) Financial statements, including the balance sheet, the statement of income or loss, the statement of changes in capital accounts and the statement of changes in financial position of the licensee. The licensee shall ensure that the financial statements have been audited by an independent certified public accountant and prepared in accordance with generally accepted account principles.

(b) Other relevant information requested by the division.

History: 1999 a. 9, 185.

224.99 Rule making. The division may promulgate rules for the efficient administration of this subchapter.

History: 1999 a. 9.