

CHAPTER 224

MISCELLANEOUS BANKING AND FINANCIAL INSTITUTIONS PROVISIONS

SUBCHAPTER I
BANKING PROVISIONS

- 224.02 Banking, defined.
 224.03 Banking, unlawful, without charter; penalty.
 224.05 Municipality not preferred creditor.
 224.06 Fidelity bonds for bank officers and employees.
 224.07 Checks to clear at par.
 224.075 Financially related services tie–ins.
 224.10 Indian loan funds.

SUBCHAPTER II
FINANCIAL INSTITUTIONS

- 224.25 Customer access to appraisals.
 224.26 Customer access to credit reports.
 224.30 Powers and duties of the department.
 224.40 Disclosure of financial records for child support enforcement.

SUBCHAPTER III

MORTGAGE BANKERS, LOAN ORIGINATORS
AND MORTGAGE BROKERS

- 224.71 Definitions.
 224.72 Registration of mortgage bankers, loan originators and mortgage brokers.
 224.73 Relationship between loan originator and either a mortgage banker or a mortgage broker.
 224.74 Division's review of the operations of a loan originator, mortgage broker or mortgage banker.
 224.75 Record–keeping requirements for mortgage bankers and mortgage brokers.
 224.76 Mortgage banker, loan originator and mortgage broker trust accounts.
 224.77 Discipline of mortgage bankers, loan originators and mortgage brokers.
 224.78 Fee splitting.
 224.80 Penalties and private cause of action.
 224.81 Limitation on actions for commissions and other compensation.
 224.82 Compensation presumed.

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. Provided, however, that if money so left with an agent for investment shall not be kept in a separate trust fund or if the agent receiving such money shall mingle same with the agent's own property, whether with or without the consent of the principal, or shall make an agreement to pay any certain rate of interest thereon or any agreement to pay interest thereon other than an agreement to account for the actual income which may be derived from such money while held pending investment, the person receiving such money shall be deemed to be in the banking business.

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

Junior achievement bank would be a banking business and violates 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 provided 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 employes 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 employe 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 others. 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) In this section, “department” means the department of financial institutions.

(2) The department shall promulgate rules regarding the submission of written documents under s. 137.05 and the use and verification of electronic signatures under s. 137.06.

History: 1997 a. 306.

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 workforce development 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 workforce development 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 workforce development 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.

SUBCHAPTER III

MORTGAGE BANKERS, LOAN ORIGINATORS AND MORTGAGE BROKERS

224.71 Definitions. In this subchapter:

(1b) “Bona fide office” of a mortgage banker or mortgage broker means an office that meets all of the following conditions:

(a) Is located in this state.

(b) Has regular hours of operation.

(c) Is accessible to the public.

(d) Serves as an office for the transaction of business.

(e) Is staffed by an individual registered under this subchapter who is an employe of the mortgage banker or mortgage broker and is not shared with another business.

(f) Is separate from the offices of other entities.

(g) Contains the books and records of the mortgage banker or mortgage broker, or copies of the books and records, unless the mortgage banker or mortgage broker has agreed to furnish copies of its books and records, as soon as practicable, upon the request of the division.

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

(1g) “Loan” means a loan secured by a lien or mortgage, or equivalent security interest, on real property.

(1r) “Loan originator” means a person who, on behalf of a mortgage banker or mortgage broker, finds a loan or negotiates a land contract, loan or commitment for a loan.

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

1. Originates loans for itself, as payee on the note evidencing the loan, or for another person.
2. Sells loans or interests in loans to another person.
3. Services loans or land contracts or provides escrow services.

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

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

1m. A community-based organization, as defined in s. 16.30 (1), or a housing authority, as defined in s. 16.30 (2).

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

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

4. A landlord who, in connection with leasing real property, makes a loan to a tenant that is secured by leasehold improvements that are fixtures or improvements to real property.

5. An employe or agent of persons described in subd. 4. if the employe or agent is performing his or her duties in making leasehold improvement loans in connection with leasing real property.

6. A person who originates, sells, or services loans only with the person’s own funds for the person’s own investment and the person has originated, sold or serviced no more than 4 loans during the previous 12 months.

(4) (a) “Mortgage broker” means a person who is not excluded by par. (b) and who, on behalf of a loan applicant or an investor and for commission, money or other thing of value, finds a loan or negotiates a land contract, loan or commitment for a loan or engages in table funding.

(b) “Mortgage broker” does not include any of the following:

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

1m. A community-based organization, as defined in s. 16.30 (1), or a housing authority, as defined in s. 16.30 (2).

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

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

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

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.

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

224.72 Registration of mortgage bankers, loan originators and mortgage brokers. (1) DEFINITIONS. In this section:

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

(b) “Warehouse line of credit” means a line of credit to fund loans held for sale to other persons.

(1m) **REGISTRATION REQUIRED.** A person may not act as a mortgage banker, loan originator or mortgage broker, use the title “mortgage banker”, “loan originator” or “mortgage broker”, or advertise or otherwise portray himself or herself as a mortgage banker, loan originator or mortgage broker, unless the person has been issued a certificate of registration from the division.

(2) **APPLYING FOR REGISTRATION.** A person desiring to act as a mortgage banker, loan originator or mortgage broker shall apply for a certificate of registration to the division on forms prescribed by the division and shall pay the fee specified in rules promulgated under sub. (8). An application shall satisfy all of the following:

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

1. By at least 2 partners of the partnership.
2. By at least 2 officers of the corporation who have authority to verify the application.
3. By at least 2 members of the limited liability company.

(b) *Identity of partner, member or officer.* If the applicant is a partnership, limited liability company or corporation, the application shall identify each partner, member or officer who will use the title “mortgage banker”, “loan originator” or “mortgage broker”.

(c) *Social security and federal employer identification numbers.* 1. 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 department may not disclose any information received under subd. 1. to any person except as follows:

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

b. The department may disclose information under subd. 1. a. to the department of industry, labor and job development [department of workforce development] in accordance with a memorandum of understanding under s. 49.857.

NOTE: The department of industry, labor and job development was changed to the department of workforce development by 1997 Wis. Act 3. Corrective legislation is pending.

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

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

1. ‘Approval by federal agency.’ Submit evidence which shows, to the division’s satisfaction, that one or more of the following have approved the applicant as a mortgagee:

- a. The federal department of housing and urban development.
- b. The Federal National Mortgage Association.
- c. The Government National Mortgage Association.
- d. The Federal Home Loan Mortgage Corporation.

2. ‘File a bond.’ File with the division a commercial surety bond which is in the amount of \$25,000, 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, is payable to the division for the benefit of persons to whom the mortgage banker provided services as a mortgage banker, is issued on a form that is acceptable to the division and provides that the bond may not be terminated without at least 30 days' written notice to the division.

3. 'Other bond or guarantee.' File a personal bond or 3rd-party guarantee in the amount of \$25,000 in a form acceptable to the division and secured by one of the following forms of security:

- a. A certificate of deposit.
- b. A debt security acceptable to the division.
- c. An irrevocable bank letter of credit issued by a financial institution that is authorized to do business in this state or that is federally chartered.

4. 'Minimum net worth.' Submit evidence that establishes, to the division's satisfaction, a minimum net worth of \$25,000 and a warehouse line of credit of not less than \$250,000 or a minimum net worth of \$100,000. Evidence of net worth shall include the submission of a balance sheet that is accompanied by a written statement by an independent certified public accountant attesting that he or she has reviewed the balance sheet in accordance with generally accepted accounting principles.

(d) *Without a bona fide office.* In addition to the requirements of sub. (2), an applicant for registration as a mortgage banker who does not maintain a bona fide office shall do all of the following:

1. 'File a bond.' File with the division a commercial surety bond that is in the amount of \$300,000, 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, is payable to the division for the benefit of persons to whom the mortgage banker provided services as a mortgage banker, is issued on a form that is acceptable to the division and provides that the bond may not be terminated without at least 30 days' written notice to the division.

2. 'Minimum net worth.' Submit evidence that establishes, to the division's satisfaction, a minimum net worth of \$250,000. Evidence of net worth shall include the submission of a balance sheet that is accompanied by a written statement by an independent certified public accountant attesting that he or she has reviewed the balance sheet in accordance with generally accepted accounting principles.

(4m) ADDITIONAL REQUIREMENT FOR MORTGAGE BROKER APPLICANT. (a) *With a bona fide office.* In addition to the requirements of sub. (2), an applicant for registration as a mortgage broker who maintains a bona fide office shall do at least one of the following:

1. 'File a bond.' File with the division a commercial surety bond that is in the amount of \$10,000, 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 broker, is payable to the division for the benefit of persons to whom the mortgage broker provided services as a 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 30 days' written notice to the division.

2. 'Other bond or guarantee.' File a personal bond or 3rd-party guarantee in the amount of \$10,000 in a form acceptable to the division and secured by one of the following forms of security:

- a. A certificate of deposit.
- b. A debt security acceptable to the division.
- c. An irrevocable bank letter of credit issued by a financial institution that is authorized to do business in this state or that is federally chartered.

3. 'Minimum net worth.' Submit evidence that establishes, to the division's satisfaction, a minimum net worth of \$100,000. Evidence of net worth shall include the submission of a balance sheet that is accompanied by a written statement by an independent certified public accountant attesting that he or she has

reviewed the balance sheet in accordance with generally accepted accounting principles.

(b) *Without a bona fide office.* In addition to the requirements of sub. (2), an applicant for registration as a mortgage broker who does not maintain a bona fide office shall do all of the following:

1. 'File a bond.' File with the division a commercial surety bond that is in the amount of \$120,000, 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 broker, is payable to the division for the benefit of persons to whom the mortgage broker provided services as a 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 30 days' written notice to the division.

2. 'Minimum net worth.' Submit evidence that establishes, to the division's satisfaction, a minimum net worth of \$250,000. Evidence of net worth shall include the submission of a balance sheet that is accompanied by a written statement by an independent certified public accountant attesting that he or she has reviewed the balance sheet in accordance with generally accepted accounting principles.

(4n) SECURITY HELD BY THE DIVISION; RELEASE. The division or its agent shall hold security filed under subs. (4) (a) 3. and (4m) (a) 2. The security shall remain in effect, and the division may not release it, until all of the following conditions are met:

(a) A period of 180 days has elapsed since at least one of the following:

1. The date on which the mortgage banker or mortgage broker gives notice to the division that the mortgage banker or mortgage broker is no longer acting as a mortgage banker or mortgage broker.

2. The date on which the mortgage banker's or mortgage broker's registration expires or is revoked.

(b) The division determines that the mortgage banker or mortgage broker is no longer in business.

(c) The division determines that all claims of persons to whom the mortgage banker or mortgage broker provided services as a mortgage banker or mortgage broker have been satisfied.

(4r) INSUFFICIENT SECURITY; DIVISION ORDER; SUSPENSION OF REGISTRATION. If the division finds that the surety bond, security or insurance policy filed by a mortgage banker or mortgage broker has been cancelled without the required notice to the division, the division may summarily suspend the mortgage banker's or mortgage broker's registration.

(5) COMPLETION OF REGISTRATION. (a) *Loan originator.* Except as provided in sub. (7m), upon receiving a properly completed application for registration as a loan originator and the fee specified in rules promulgated under sub. (8), the division may issue to the applicant a certificate of registration as a loan originator.

NOTE: Par. (a) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).

(b) *Mortgage banker and mortgage broker.* Except as provided in sub. (7m), upon receiving a properly completed application for registration as a mortgage banker or a mortgage broker, the fee specified in rules promulgated under sub. (8) and satisfactory evidence of compliance with subs. (4) and (4m), the division may issue to the applicant a certificate of registration as a mortgage banker or mortgage broker.

(7) RENEWAL OF REGISTRATION. (a) A loan originator, mortgage broker or mortgage banker shall renew a certificate of registration by submitting to the division a renewal application and the renewal fee specified in rules promulgated under sub. (8) on or before the renewal date specified in rules promulgated under sub. (8).

(b) An applicant for renewal of a certificate of registration as a mortgage banker shall, as part of the application, do the following:

1. For a mortgage banker who maintains a bona fide office, refile a bond that satisfies sub. (4) (a) 2. or 3. or resubmit evidence that satisfies sub. (4) (a) 1. or 4.

2. For a mortgage banker who does not maintain a bona fide office, refile a bond that satisfies sub. (4) (d) 1. and resubmit evidence that satisfies sub. (4) (d) 2.

(c) An applicant for renewal of a certificate of registration as a mortgage broker shall, as part of the application, do the following:

1. For a mortgage broker who maintains a bona fide office, refile a bond that satisfies sub. (4m) (a) 1. or 2. or resubmit evidence that satisfies sub. (4m) (a) 3.

2. For a mortgage broker who does not maintain a bona fide office, refile a bond that satisfies sub. (4m) (b) 1. and resubmit evidence that satisfies sub. (4m) (b) 2.

(7m) DENIAL OF APPLICATION FOR ISSUANCE OR RENEWAL OF REGISTRATION. The department may not issue or renew a certificate of registration 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) (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 certificate of registration 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.

(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 workforce development 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 registration 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) REGISTRATION PERIOD; FEES. The division shall promulgate rules establishing the registration period and the registration fees for loan originators, 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; s. 13.93 (2) (c).

224.73 Relationship between loan originator and either a mortgage banker or a mortgage broker.

(1) RESPONSIBILITY FOR LOAN ORIGINATOR. A mortgage banker or a mortgage broker is responsible for, and shall supervise the acts of, a loan originator who registers under s. 224.72 (3) as an employe of the mortgage banker or mortgage broker. A mortgage banker or mortgage broker is also responsible for, and shall supervise the acts of, a loan originator or any other person who otherwise acts on behalf of the mortgage banker or the mortgage broker.

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

(3) TRANSFER BY LOAN ORIGINATOR. A registered loan originator may at any time apply, on forms prescribed and provided by the division, to transfer employment to another registered mortgage banker or mortgage broker. The division shall promulgate

rules establishing a fee for a transfer application under this subsection.

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.

224.74 Division's review of the operations of a loan originator, mortgage broker or mortgage banker.

(1) ANNUAL REPORTS; AUDITS. (a) *Annual report.* Except as provided in par. (b), each year, on a date specified by the division and in a form required by the division, a mortgage banker or mortgage broker shall submit to the division an annual report relating to the mortgage banker's or mortgage broker's operations during its most recently completed fiscal year.

(b) *Audit requirement.* Each year, no later than 6 months following the end of its most recently completed fiscal year, a mortgage banker or mortgage broker that qualified for registration under s. 224.72 (4) (a) 4. or (d) or (4m) (a) 3. or (b), shall submit a copy of an audit of the mortgage banker's or mortgage broker'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.

(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 certificate of registration granted 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. (a) *Conduct of examination and preparation of report.* The division may at any time, on its own motion or upon complaint, examine the books of account, records, condition and affairs of a mortgage banker, loan originator or mortgage broker registered under this subchapter. The division shall prepare a report of each examination conducted under this section. As part of the examination or preparation of the report, the division may examine under oath any of the members, officers, directors, agents, employes or customers of the mortgage banker, loan originator or mortgage broker. The division may require a mortgage banker, loan originator or mortgage broker who is examined under this paragraph to pay to the division a reasonable fee for the costs of conducting the examination.

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

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.

224.75 Record-keeping requirements for mortgage bankers and mortgage brokers.

(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 mortgage loan applicant or

a mortgagor. 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 mortgage loan application:

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

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

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

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

(2) **PERIOD OF RECORD RETENTION.** A mortgage banker or mortgage broker shall keep for at least 25 months 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 loan or loan application. The retention period begins on the date the loan is closed or, if the loan is not closed, the date of loan application. If the loan is serviced by a mortgage banker, the retention period commences on the date that the loan is paid in full. The mortgage banker or mortgage broker shall make the records available for inspection and copying by the division. If the records are not kept within this state, the mortgage banker or mortgage broker shall, upon request of the division, promptly send exact and complete copies of requested records to the division.

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

(b) *Appraisal report.* If a mortgage banker or mortgage broker charges a loan applicant a separate fee for an appraisal report, the appraisal report shall consist, at a minimum, of a written statement indicating the appraiser's opinion of the value of the property appraised for mortgage loan purposes, the basis for that opinion and the name of the person who conducted the appraisal. If requested by a 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 and the report relates to residential real estate that the loan applicant owns or has agreed to purchase.

(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 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.

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.

224.76 Mortgage banker, loan originator and mortgage broker trust accounts.

A mortgage banker, 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 bank, savings bank, savings and loan association or credit union which is authorized to do business in this state or whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. 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.

224.77 Discipline of mortgage bankers, loan originators and mortgage brokers. (1) PROHIBITED CONDUCT.

The division may deny an application submitted to it under s. 224.72, or may revoke, suspend or limit the certificate of registration of a mortgage banker, loan originator or mortgage broker, or may reprimand a mortgage banker, loan originator or mortgage broker, if it finds that the mortgage banker, loan originator or mortgage broker did any of the following:

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

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

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

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

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

(f) Accepted a commission, money or other thing of value for performing an act as a loan originator unless the payment is from a mortgage banker or mortgage broker who is registered under s. 224.72 (3) as employing the loan originator.

(g) As a loan originator, represented or attempted to represent a mortgage banker other than the mortgage banker who is registered under s. 224.72 (3) as employing the loan originator.

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

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

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

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

(L) Engaged in conduct which violates a standard of professional behavior which, through professional experience, has

become established for mortgage bankers, loan originators or mortgage brokers.

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

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

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

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

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

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

(r) Failed to notify the division that the mortgage banker's or mortgage broker's net worth fell below the minimum amount required under s. 224.72 (4) (a) 4. or (d) 2. or (4m) (a) 3. or (b) 2., if the mortgage banker or mortgage broker had qualified for registration under s. 224.72 (4) (a) 4. or (d) or (4m) (a) 3. or (b).

(1m) ADMINISTRATIVE FORFEITURE AND HEARING RIGHTS. (a) The division may assess against a person who is registered under this chapter a forfeiture of not more than \$1,000 for each violation enumerated under sub. (1) (a) to (o) or (r).

(b) A person may contest an assessment of forfeiture under par. (a) by sending, within 10 days after receipt of notice of the assessment 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) 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 division of banking shall remit all forfeitures paid to the state treasurer for deposit in the school fund.

(d) The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this subsection if the forfeiture 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 has been paid.

(2) CONDUCT OF OFFICERS, DIRECTORS AND OTHERS. The division may revoke, suspend or limit a certificate of registration issued under this subchapter or reprimand a mortgage banker or mortgage broker registered under this subchapter, if 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 is guilty of an act or omission

which would be cause for refusing to issue a certificate of registration to that individual.

(3) ORDERS OF THE DIVISION. (a) *Orders to prevent or correct actions.* The division may issue general and special orders necessary to prevent or correct actions by a mortgage banker, loan originator or mortgage broker that constitute cause under this section for revoking, suspending or limiting a certificate of registration.

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

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

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

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

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

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

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

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

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

(b) *Other penalties.* The penalty under par. (a) may be imposed in addition to any penalty imposed under s. 66.432, 106.04 or 224.80.

(6) RESTRICTION OR SUSPENSION OF REGISTRATION. The department shall restrict or suspend the registration of a mortgage banker, loan originator or loan solicitor [mortgage broker] if the registrant is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development 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. A registrant whose registration 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.

NOTE: The bracketed language indicates the correct term. Corrective legislation is pending.

(7) REVOCATION FOR LIABILITY FOR DELINQUENT TAXES. The department shall revoke the certificate of registration of a mort-

gage banker, loan originator or loan solicitor [mortgage broker] if the department of revenue certifies under s. 73.0301 that the registrant is liable for delinquent taxes. A registrant whose certificate of registration 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.

NOTE: The bracketed language indicates the correct term. Corrective legislation is pending.

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

NOTE: Sub. (8) was created as sub. (6) by 1997 Wis. Act 145, was renumbered to sub. (6m) by 1997 Wis. Act 237 and as renumbered was renumbered by the revisor under s. 13.93 (1) (b).

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; s. 13.93 (1) (b).

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

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.78; 1995 a. 27 s. 6601; Stats. 1995 s. 224.78; 1997 a. 145.

224.80 Penalties and private cause of action. (1) PENALTIES. A person who violates s. 224.72 (1m) may be fined not more than \$1,000 or imprisoned for not more than 6 months or both. The district attorney of the county where the violation occurs shall enforce the penalty under this subsection on behalf of the state.

(2) PRIVATE CAUSE OF ACTION. A person who is aggrieved by an act which is committed by a mortgage banker, loan originator

or mortgage broker and which is described in s. 224.77 (1) may recover all of the following in a private action:

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

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

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

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

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.

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, 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, loan originator or mortgage broker without alleging and proving that the person was registered under this subchapter as a mortgage banker, 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.

224.82 Compensation presumed. In a prosecution arising from a violation of this subchapter, proof that a person acted as a mortgage banker, 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.