

CR 90-3

CERTIFICATE

STATE OF WISCONSIN


DEPARTMENT OF REGULATION AND LICENSING

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Marlene A. Cummings, Secretary of the Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department, do hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 13th day of December, 1990.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin, this 13th day of December, 1990.



Marlene A. Cummings
Secretary
Department of Regulation
and Licensing

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DEC 13 1990
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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF REGULATION AND LICENSING
DEPARTMENT OF REGULATION	:	ADOPTING RULES
AND LICENSING	:	(Clearinghouse Rule 90-3)

ORDER

An order of the Department of Regulation and Licensing to repeal and recreate RL 40; and to create RL 41, 42 and 43 of the administrative code relating to the regulation of mortgage bankers, loan solicitors and loan originators.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2) (a), 440.71 to 440.83, Stats.

Statutes interpreted: ss. 440.71 to 440.83, Stats.

In this order the Department of Regulation and Licensing proposes to repeal and recreate RL 40; and to create RL 41, 42 and 43 of the administrative code relating to the regulation of mortgage bankers, loan solicitors and loan originators. The proposed rules are essential and necessary to effectuate the purpose of the statutes, and to provide guidance to registrants in the conduct of their affairs.

The Department of Regulation and Licensing is authorized under ss. 440.71 to 440.83, Stats., to regulate the activities of mortgage bankers, loan originators and loan solicitors. In general, the department has the authority to issue certificates of registration, discipline registrants who engage in certain prohibited conduct, and to examine the books of account, records, conditions and affairs of registrants.

The statutes were enacted by the Legislature on April 22, 1988, and became effective on November 1, 1988. Prior to the enactment of ss. 440.71 to 440.83, Stats., persons who functioned as mortgage bankers were required to register as real estate brokers under ch. 452, Stats.

The following is a summary of the proposed rules:

Chapter RL 40 clarifies the registration requirements set forth in s. 440.72, Stats., and defines certain words and phrases which are used in the statutes, but are not defined in s. 440.71, Stats. Some of the words defined in s. RL 40.02, such as "employee" and "person", are words commonly used in the Wisconsin Statutes, which vary in meaning depending upon the statute being interpreted. Other words, such as "originate", are commonly used terms in the mortgage banking industry, which vary in meaning from jurisdiction to jurisdiction.

Section RL 40.03 contains rules which make it clear that certain persons must register with the department prior to engaging in mortgage banking activities, and that certain other persons are exempt from the registration requirements. For example, the rules make it clear that: 1) a partnership or corporation must register each partner or officer who will use the title "loan solicitor" and, 2) individuals who do not engage in a "pattern of activity" (more than four transactions within one year), will not be required to register.

Chapter RL 41 identifies the fees which registrants are required to pay for the various types of registrations permitted under s. 440.72, Stats. Section RL 41.02 (a) was promulgated by the department in 1988, (refer to ch. RL 40, Wis. Admin. Code). The new rules also provide for conversion fees for registrants who terminate one type of registration and obtain another.

Chapter RL 42 interprets ss. 440.74 (1) and 440.76, Stats. Section 440.74 (1), Stats., provides that mortgage bankers and loan solicitors must submit a copy of an annual audit to the department. Section 440.76, Stats., provides that mortgage bankers and loan solicitors must deposit certain funds in trust accounts. The rules provide information relating to the type of trust account which must be maintained by registrants, and the type of audit report which must be filed with the department.

Chapter RL 43 expresses the department's intent to establish minimum standards of conduct for mortgage bankers, loan solicitors and loan originators, and defines the type of conduct which may result in disciplinary action by the department. The rules also make it clear that a violation of any rule in ch. RL 43 will constitute a violation of s. 440.77 (1) (i), Stats., or s. 440.77 (1) (m), Stats.

TEXT OF RULE

SECTION 1. Chapter RL 40 is repealed and recreated to read:

CHAPTER RL 40 (title)

DEFINITIONS AND APPLICABILITY REQUIREMENTS
FOR MORTGAGE BANKING REGULATION

RL 40.01 AUTHORITY. This chapter is adopted pursuant to ss. 227.11 (2) (a), 440.71, 440.72 and 440.73. Stats.

RL 40.02 DEFINITIONS. In ch. 440, subch. VI, Stats., and chs. RL 40 to 43:

(1) "Department" means the department of regulation and licensing.

(2) "Employee" means an individual who receives earnings as payment for personal services rendered for the benefit of an employer. An individual is an employee if the individual is listed on an employer's payroll records, federal and state payroll deductions are taken and payroll taxes are paid for

the individual, and the employer has a right to control and direct the services performed by the individual, as to the result to be accomplished by the services and as to the details and means by which the result is to be accomplished.

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

(4) "Investor" means a mortgagee or a land contract vendor.

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

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

(7) "Originate" means to make an underwriting decision on a loan and close a loan.

(8) "Person" means a corporation, partnership, individual or other legal entity, except that in s. 440.71 (1r) (a), Stats., "person" means an individual. "Person" does not mean a state or other governmental body, subdivision or agency.

(9) "Registrant" means a person registered under s. 440.72, Stats.

(10) "Services mortgage loans or land contracts" means the receipt of payments for interest or principal on a note or a land contract from the borrower or vendee and distribution of such payments in accordance with the terms of the note, land contract or servicing agreement.

RL 40.03 APPLICABILITY REQUIREMENTS. (1) LOAN ORIGINATOR. A person may not register as a loan originator unless the person is employed by a mortgage banker. An independent contractor who provides services on behalf of a mortgage banker shall register as a loan solicitor.

(2) LOAN SOLICITOR. A corporation or a partnership which acts as a loan solicitor shall register as a loan solicitor and each officer, partner or employe who acts as a loan solicitor on behalf of the corporation or partnership shall, individually, register as a loan solicitor.

(3) SUBSIDIARIES OF EXEMPT PERSONS. A subsidiary corporation of a person which is exempt from registration under ss. 440.71 (1r) (b), (2) (b) and (3) (b), Stats., shall register as a mortgage banker or loan solicitor when performing acts for which registration is required under ch. 440, subch. VI, Stats.

(4) EXEMPTIONS. (a) Statutory exemption. In ss. 440.71 (1r) (b) 1., (2) (b) 1., and (3) (b) 1., Stats., "organized under the laws of this state or of the United States" applies only to a land mortgage or farm loan association. A bank, trust company, savings bank, savings and loan association, or insurance company, whether organized under the laws of this state, another state, the United States, a territory or possession of the United States or another country is exempt from the registration requirement when engaged in the transaction of business within the scope of its corporate powers as provided by law.

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

(5) MORTGAGE BANKER. (a) Servicer of mortgage loans or land contracts. A person who services loans or land contracts or provides escrow services for another person and for commission, money or other thing of value and who does not perform acts under s. 440.71 (3) (a) 1. and 2., Stats., is required to register the sole proprietor-owner, the corporation or the partnership as a mortgage banker. Other officers, partners or employes who do not use the title "mortgage banker" or "loan originator" and do not advertise or otherwise portray themselves as mortgage bankers or loan originators are not required to register under s. 440.72, Stats.

(b) Persons who are not in the business. In this paragraph "pattern of activity" means engaging in an activity in Wisconsin more than 4 times within one calendar year. The following individuals are not required to register under s. 440.72, Stats., provided that they are not in the business of performing activities, as described in subds. 1 to 4, to the extent that there is a pattern of activity:

1. An individual who originates loans for himself or herself as payee on the note evidencing the loan;
2. An individual who enters into a land contract as the vendor;
3. An individual who sells his or her loans or interests in loans to another person; and
4. An individual who sells land contracts in which he or she is the vendor.

(6) NONRESIDENT PERSONS. The primary factors which determine the department's jurisdiction over nonresident persons who engage in activities described in s. 440.71, Stats., are as follows:

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

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

(7) SOURCE OF FINANCING FOR A LOAN. A person who provides funding for a loan must be registered as a mortgage banker if the person is in the business of originating loans directly with loan applicants. However, if the person who provides funding engages the services of a registered mortgage banker or other lending institution which is lawfully engaged in the practice of originating loans, the person is not required to be registered as a mortgage banker.

SECTION 2. Chapter RL 41 is created to read:

CHAPTER RL 41 (title)

FEEES FOR MORTGAGE BANKERS, LOAN ORIGINATORS
AND LOAN SOLICITORS

RL 41.01 AUTHORITY. This chapter is adopted pursuant to ss. 227.11 (2) (a), 440.72 (2) and (7), 440.73 (3), 440.74 (2), and 440.83, Stats.

RL 41.02 REGISTRATION FEES. The following standard fee schedule applies to all registrations issued under ch. 440, subch. VI., Stats.

(1) ORIGINAL REGISTRATION. (a) Mortgage banker: \$200.

(b) Loan originator: \$100.

(c) Loan solicitor: \$200.

(2) RENEWAL OF REGISTRATION. (a) Renewal before expiration of registration.

1. 'Mortgage banker': \$150.

2. 'Loan originator': \$75.

3. 'Loan solicitor': \$150.

(b) Renewal after expiration of registration. A registrant may renew a registration after the registration expiration date set forth in s. 440.72 (7), Stats., by making application for renewal, paying the renewal fee in par. (a), and paying the penalty fee set forth in s. 440.05 (4) or (5), Stats.

(3) LOAN ORIGINATOR TRANSFERS. (a) Procedure. A loan originator may transfer employment to another registered mortgage banker by completing an application form prescribed and provided by the department, and paying the transfer fee specified in par. (b).

(b) Transfer fee: \$20.

(4) CONVERSION FEE. (a) A person who is registered as a loan originator pursuant to s. 440.72, Stats., may at any time other than at renewal of registration cancel that registration and obtain a loan solicitor or a mortgage banker registration by satisfying all requirements for the appropriate registration and paying a fee of \$120.

(b) A person who is registered as a loan solicitor, pursuant to s. 440.72, Stats., may at any time other than at renewal of registration cancel that registration and obtain a loan originator or a mortgage banker registration by satisfying all requirements for the appropriate registration and paying a fee of \$20.

(c) A person who is registered as a mortgage banker, pursuant to s. 440.72, Stats., may at any time other than at renewal of registration cancel that registration and obtain a loan solicitor or a loan originator registration by satisfying all requirements for the appropriate registration and paying a fee of \$20.

SECTION 3. Chapter RL 42 is created to read:

CHAPTER RL 42 (title)

MORTGAGE BANKING AUDIT REPORTS AND TRUST ACCOUNTS

RL 42.01 AUTHORITY. This chapter is adopted pursuant to ss. 227.11 (2), 440.74, 440.75 and 440.76, Stats.

RL 42.02 ANNUAL AUDIT BY MORTGAGE BANKERS AND LOAN SOLICITORS. (1) ANNUAL AUDIT. Registered mortgage bankers and loan solicitors shall arrange for an annual independent audit of their operations. The audit shall be signed by an independent certified public accountant, and conducted in accordance with generally accepted accounting standards. An audit conducted for a governmental agency which complies with this standard may be accepted by the department, provided that the audit pertains to the complete operation of the registrant and not just the specific program or project supervised by the governmental agency.

(2) AUDITS BY LOAN SOLICITOR EMPLOYEES. A registered loan solicitor who performs all loan solicitor activities as an employe of a registered loan solicitor is not required to submit an audit to the deptment, provided that the loan solicitor-employe's employer reports on all of the operations of the employer and all of the employer's loan solicitors.

RL 42.03 TRUST ACCOUNTS. (1) DEFINITIONS. In ch. 440, subch. VI, Stats., and chs. RL 42 to 43:

(a) "Depository institution" means a bank, savings bank, savings and loan association or credit union which is authorized to do business in this state or which is federally chartered.

(b) "Trust account" means an account in a depository institution, as specified in s. 440.76, Stats., in which funds are held for the benefit of a third party. A trust account may also be known as a custodial or escrow account.

(c) "Trust funds" means all monies other than nonrefundable fees which a registrant receives on behalf of any person, pending disbursement of the funds in accordance with instructions from the person on whose behalf the funds are deposited.

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

(2) GENERAL REQUIREMENTS FOR TRUST ACCOUNTS. (a) Type of account. A registrant shall deposit all trust funds received by the registrant or the registrant's employes in a trust account with a maturity of no more than 31 days in a depository institution authorized to do business in Wisconsin or which is federally chartered.

(b) Time of deposit. A registrant shall deposit all trust funds received by the registrant or the registrant's employes in a trust account within 24 hours of receipt of such trust funds. If funds are received on a day prior to a holiday or other day when the depository institution is closed, the registrant shall deposit the funds on the next business day of the depository institution. A registrant may satisfy this requirement by mailing trust funds to the depository institution within 24 hours after receipt of the trust funds.

(c) Statement of account. Upon reasonable notice, a registrant shall promptly provide a statement of account to all parties to a mortgage transaction.

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

(e) Responsibility of employes. An employe of a registrant who receives trust funds shall promptly submit the funds to the registrant.

(3) DUTY TO NOTIFY THE DEPARTMENT ABOUT TRUST ACCOUNTS. Upon request by the department, pursuant to s. 440.74 (1), Stats., the registrant shall provide the department with the name and number of every trust account maintained by the registrant in a depository institution and the name and address of the depository institution in which the registrant holds each account.

(4) AUTHORIZATION TO EXAMINE TRUST ACCOUNTS. Upon the department's request, a registrant shall obtain the certification of every depository institution in which a registrant maintains a trust account, attesting to the existence of the account and consenting to the examination and audit of the account by a duly authorized representative of the department.

(5) DISBURSEMENT OF TRUST FUNDS. (a) Withdrawal of fees and commissions. A registrant shall withdraw fees or commissions from trust accounts maintained by the registrant within 24 hours after the fees or commissions are payable or in accordance with any written agreement or

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

(b) Release of trust funds. A registrant shall release trust funds:

1. Within 10 calendar days after payment of the loan in full;

2. If a loan or the transfer thereof is not consummated, within 10 calendar days after such determination, to the person who furnished the money held in trust; or,

(6) AFTER CLOSING ESCROW AGREEMENTS. If a registrant requires or permits funds to be placed in escrow until some future occurrence, such as repair or completion escrows, and the parties request that the registrant hold these funds, a written agreement to that effect shall be prepared by the parties or an attorney. If the registrant holds these funds, the registrant shall place the funds in the registrant's trust account.

(7) ADVANCE DEPOSITS IN ESCROW ACCOUNTS. In any transaction, in connection with a loan, in which a registrant requires a borrower or prospective borrower to deposit a sum of money in a tax or insurance escrow account for the purpose of assuring payment of taxes, insurance premiums or other charges with respect to the property, the registrant shall comply with the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. s. 2601 et seq., as amended, and all regulations related thereto if the transaction involves a "federally related mortgage loan," as the phrase is defined in 12 U.S.C. s. 2602, as amended.

SECTION 4. Chapter RL 43 is created to read:

CHAPTER RL 43 (title)

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

RL 43.01 AUTHORITY AND INTENT. (1) This chapter is adopted pursuant to ss. 227.11 (2), 440.73, 440.75, and 440.77, Stats.

(2) The intent of the department in adopting the rules in this chapter is to establish minimum standards of conduct for mortgage bankers, loan solicitors and loan originators and to define that conduct which may result in disciplinary action by the department, pursuant to s. 440.77, Stats.

RL 43.02 DEFINITIONS. In ch. 440, subch. VI, Stats., and chs. RL 42 to 43:

(1) "Loan application fee" means a fee in whole or in part imposed by a registrant for services rendered by the registrant in connection with a loan application; a fee or charge imposed on behalf of a third party for services rendered by the third party incident to the processing of an

application, such as a charge for a credit report or appraisal; or a fee or deposit in whole or in part imposed on behalf of any other registrant for that person's services rendered in connection with the loan application.

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

RL 43.03 IMPROPER, FRAUDULENT OR DISHONEST DEALING. The following conduct, without limitation because of enumeration, constitutes improper, fraudulent or dishonest dealing by a mortgage banker, loan originator or loan solicitor prohibited by s. 440.77 (1) (m), Stats.:

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

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

RL 43.04 INCOMPETENCY TO ACT AS A MORTGAGE BANKER, LOAN ORIGINATOR OR LOAN SOLICITOR. The following conduct, without limitation because of enumeration, demonstrates a lack of competency to act as a mortgage banker, loan originator, or loan solicitor in a way which safeguards the interest of the public prohibited by s. 440.77 (1) (i), Stats.:

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

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

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

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

(5) Failing to ensure that all agreements, disclosures, representations and promises to perform services under ch. 440, subch. VI, Stats., are in writing.

(6) Failing to deliver promptly copies of all agreements, disclosures, representations and promises to perform services under ch. 440, subch. VI, Stats., to all parties directly affected.

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

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

(9) Failing to notify the department of any criminal conviction, the circumstances of which substantially relate to the practice of a mortgage banker, a loan originator or a loan solicitor. A certified copy of a judgment of a court of record showing such conviction, within this state or without, shall be presumptive evidence of conviction.

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

(11) Giving or receiving referral fees in violation of the federal real estate settlement procedures act, 12 USC, Section 2607, and regulations relating to it, to the extent that the act is applicable to a registrant.

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

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

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

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

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

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

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

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

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

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

(a) Failing to provide or disclose in writing to the prospective borrower, at the time of or prior to the issuance of a loan commitment, a good faith estimate of all charges and information that is required by the federal Real Estate Settlement Procedures Act (RESPA), 12 U.S.C., ss. 2603 to 2604 and the regulations adopted under the Act.

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

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

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22(2)(intro), Stats.

Dated 12/13/90

Agency Marlene A. Cummings
Marlene A. Cummings
Secretary
Department of Regulation and Licensing

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DEC 13 1990

Revisor of Statutes
Bureau

CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

DATE: December 13, 1990

TO: Gary Poulson
Assistant Revisor of Statutes

FROM: Pamela Haack, Administrative Assistant
Department of Regulation and Licensing

SUBJECT: Final Rulemaking Order

RECEIVED

DEC 13 1990

Revisor of Statutes
Bureau

Agency: DEPARTMENT OF REGULATION AND LICENSING

Clearinghouse Rule: 90-3

Attached is a copy and a certified copy of a final order adopting rules.

Would you please publish these rules in the code.

Thank you.