

CR 92-143

**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 2nd day of June, 1993.**

**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 2nd day of June, 1993.**

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

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**JUN 2 1993**  
*3:20 PM*  
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**Bureau**

*8-1-93*

STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING

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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 92-143)

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ORDER

An order of the Department of Regulation and Licensing to repeal and recreate RL 42.02 (1); and to create RL 42.02 (1m), 42.03 (2) (bm), and 43.04 (5m) of the administrative code relating to annual audits or annual reports by mortgage bankers and loan solicitors, deposit of loan application fees by loan solicitors, and prohibited conduct.

Analysis prepared by the Department of Regulation and Licensing.

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ANALYSIS

Statutes authorizing promulgation: s. 227.11 (2), Stats.

Statutes interpreted: ss. 440.74, 440.75, 440.76 and 440.77, Stats.

In this proposed rule-making order:

SECTIONS 1 and 2 of this rule proposal amend s. RL 42.02 of the current rules to distinguish between various levels of audit reports to be submitted by registrants pursuant to s. 440.74 (1), Stats. The changes in SECTION 1 require mortgage bankers to submit the highest level audit which entails an opinion of an independent certified accountant, except that a mortgage banker who anticipated engaging in mortgage banking activity under a registration credential, but actually did not engage in any such activity, may merely submit an affidavit which states that fact. On the other hand, the provisions in SECTION 2 would require loan solicitors to file an annual report on a form prepared by the department which addresses the activities of the loan solicitor when acting as a loan solicitor, and other information relating to his or her loan solicitor activities. Both mortgage bankers and loan solicitors must obtain an audit or complete an annual report, as applicable, within 6 months after the end of their fiscal year. Section 440.74 (1), Stats., merely requires that an audit report be submitted to the department within 20 days after the audit is completed, but does not state when it must be completed.

This rule proposal also specifies the type of financial documents which must accompany an audit with opinion submitted by an independent certified public accountant relating to the activities of a mortgage banker.

Proposed changes in SECTION 3 would require loan solicitors to specifically identify which portions of a loan application fee received by them are required to pay for a credit report, real estate appraisal or some other service provided by another person. Loan solicitors may not disclose or otherwise designate that such portions of the loan application fee are nonrefundable. Loan solicitors must, therefore, either run these fees through their trust account or must direct the loan applicant to make payment directly to the third party who provides services relating to the loan. These

provisions address problems which the department has encountered involving loan solicitors who have taken loan application fees, ordered credit reports and real estate appraisals and not paid the providers of such services.

SECTION 4 would create s. RL 43.04 (5m) to require that loan solicitors who enter into an agreement or contract with a prospective borrower for the purpose of finding a loan or negotiating a land contract, loan or commitment for a loan include written provisions in the contract or agreement relating to the term of the agreement, any modification or extension of the agreement, the exclusivity of the relationship between the loan solicitor and the prospective borrower, the nature of the services to be provided, the specific fee to be paid to the loan solicitor and various conditions relating to it, and the type of loan which the prospective borrower is seeking. The agreement may not state that payments received by the loan solicitor for third-party services are nonrefundable. These requirements would not pertain to a mortgage banker or loan originator who agrees to provide such services relating to a loan or land contract which will be originated by the mortgage banker or the loan originator's mortgage banker employer.

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TEXT OF RULE

SECTION 1. RL 42.02 (1) is repealed and recreated to read:

RL 42.02 (1) ANNUAL AUDIT BY MORTGAGE BANKERS. (a) Registered mortgage bankers shall obtain an annual independent audit report pertaining to their financial operations covering the preceding fiscal year. The report shall be obtained and submitted to the department within 6 months after the close of the fiscal year. The audit report shall be signed by an independent certified public accountant. The audit shall be conducted in accordance with generally accepted auditing standards and the financial statements included in the audit report shall be prepared in accordance with generally accepted accounting principles. 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.

(b) An annual audit report submitted by a mortgage banker to the department shall include at least the following documents:

1. A balance sheet;
2. A statement of operations; and
3. A statement which shows the registrant's net worth, including, when appropriate, a statement of stockholders' equity or retained earnings and a statement of cash flows.

(c) In lieu of the audit under par. (a), a mortgage banker who is registered during a specific fiscal year, but does not engage in the business of mortgage banking that fiscal year may submit to the department an affidavit stating that the mortgage banker did not engage in the business of mortgage banking during that fiscal year.

SECTION 2. RL 42.02 (1m) is created to read:

RL 42.02 (1m) ANNUAL REPORTS BY LOAN SOLICITORS. Registered loan solicitors shall, within 6 months after the end of their fiscal year, prepare and send to the department an annual report pertaining to their activities as a loan solicitor covering the preceding fiscal year. The annual report shall be prepared on a form prescribed by the department by an officer of a corporation, a partner of a partnership or a sole proprietor registrant and be submitted by that person to the department. The annual report shall include at least the following information:

- (a) The name and number of every trust account maintained by the loan solicitor in a depository institution and the name and address of the depository institution.
- (b) The balance in each trust account maintained by the loan solicitor as of the date on which the report is prepared by the loan solicitor.
- (c) The total amount of fees charged mortgage loan applicants and persons for whom the loan solicitor agreed to find a loan.
- (d) In summary form, the disposition of the fees in par. (c).
- (e) The number and type of applications for mortgages processed by the loan solicitor.
- (f) Other information, similar to that which is contained in pars. (a) to (e), relating to the activities of the loan solicitor when acting as a loan solicitor.

NOTE: A copy of the annual report form may be obtained from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 3. RL 42.03 (2) (bm) is created to read:

RL 42.03 (2) (bm) Deposit of loan application fee by loan solicitor. A registered loan solicitor who receives a loan application fee, as defined in s. RL 43.02 (1), from an applicant for a loan shall make a good faith estimate of that portion of the loan application fee which will be needed to pay for services rendered by a third party incident to the processing of the loan application, such as a fee or a charge for a credit report or a real estate appraisal. The loan solicitor shall follow either one of the following 2 procedures relating to that portion of the loan application fee which is needed to pay for the services rendered by a third party or which is imposed on behalf of any other person.

1. Deposit that portion of the loan application fee in a trust account and disburse it from the trust account to pay for the services rendered by a third party.
2. Direct the applicant to make payment directly to the third party.

SECTION 4. RL 43.04 (5m) is created to read:

RL 43.04 (5m) (a) Except as provided in par. (c), in any transaction in which a registrant enters into an agreement or contract with a prospective borrower for the purpose of finding a loan or negotiating a land contract, loan or commitment for a loan, failing to include the following written provisions in the agreement or contract:

1. A statement setting forth the specific period during which the registrant will perform the services.

2. A statement that any modification or extension of the agreement or contract must be approved in writing by the registrant and prospective borrower. The agreement or contract may not contain an automatic renewal provision.

3. A statement as to whether the agreement or contract creates an exclusive relationship between the registrant and the prospective borrower to the extent that, if the prospective borrower obtains a mortgage during the term of the agreement or contract through the prospective borrower's own efforts or the efforts of another registrant, the prospective borrower will be required to pay the registrant the fee set forth in the agreement.

4. A statement describing the services which the registrant will perform on behalf of the prospective borrower under the agreement or contract.

5. A statement which complies with sub. (12) and sets forth the fee or fee which the prospective borrower will directly pay the registrant for services provided by the registrant, a statement of the conditions under which the registrant will earn the fee and the terms and conditions under which any part of the fee would be refundable.

6. A statement describing the type of loan and the terms and conditions of a loan or land contract which the prospective borrower is willing to accept, including the intended interest rate and whether the rate is fixed or variable, the maturity term, and the amortization of principal.

(b) Except as provided in par. (c), in any transaction in which a registrant enters into an agreement or contract with a prospective borrower for the purpose of finding a loan or negotiating a land contract, loan or commitment for a loan, including a provision or otherwise disclosing that either of the following are nonrefundable:

1. A fee or charge imposed on behalf of a third party for services rendered by the third party incident to the processing of an application, such as a charge for a credit report or appraisal.

2. A fee or deposit in whole or in part imposed on behalf of any other registrant for that person's services rendered in connection with a loan application.

(c) Paragraphs (a) and (b) do not apply to a mortgage banker or loan originator who finds a loan or negotiates a land contract, loan or commitment for a loan which will be originated by the mortgage banker or the loan originator's mortgage banker employer.

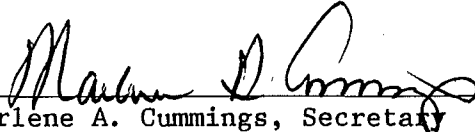
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(END OF TEXT OF RULE)  
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The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.),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

Dated \_\_\_\_\_

6/2/93

Agency \_\_\_\_\_

  
Marlene A. Cummings, Secretary  
Department of Regulation  
and Licensing

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JUN 2 1993

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Bureau

**CORRESPONDENCE/MEMORANDUM**

**STATE OF WISCONSIN**

**RECEIVED**

**DATE:** June 2, 1993

**JUN 2 1993**

**TO:** Gary Poulson  
Assistant Revisor of Statutes

Revisor of Statutes  
Bureau

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

**SUBJECT:** Final Rulemaking Order

**Agency: DEPARTMENT OF REGULATION AND LICENSING**

**Clearinghouse Rule: 92-143**

Attached is a copy and a certified copy of a final order adopting rules.  
Would you please publish these rules in the code.

Please stamp or sign a copy of this letter to acknowledge receipt.

Thank you.