

Chapter RL 42

MORTGAGE BANKING AUDIT REPORTS AND TRUST
ACCOUNTS

RL 42.01 Authority
RL 42.02 Annual audit by mortgage
bankers and loan solicitors

RL 42.03 Trust accounts

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

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91.

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 department, 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.

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91.

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.

Register, February, 1991, No. 422

(b) *Time of deposit.* A registrant shall deposit all trust funds received by the registrant or the registrant's employees 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.

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