

Chapter DFI-Bkg 40

DEFINITIONS AND APPLICABILITY REQUIREMENTS FOR MORTGAGE BANKING REGULATION

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Note: Ch. RL 40 as it existed on February 28, 1991 was repealed and a new chapter RL 40 was created effective March 1, 1991.

Note: Chapter RL 40 was renumbered chapter DFI-Bkg 40 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1999, No. 522.

DFI-Bkg 40.01 Authority. This chapter is adopted pursuant to ss. 227.11 (2) (a), 440.71, 440.72 and 440.73. Stats.

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

DFI-Bkg 40.02 Definitions. In ch. 440, subch. VI, Stats., and chs. DFI-Bkg 40 to 43:

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

(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.

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

DFI-Bkg 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 s. 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 s. 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 subs. 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.

History: Cr. Register, February, 1991, No. 422, off. 3-i-91.