

Chapter DFI-Bkg 43

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

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Note: Chapter RL 43 was renumbered chapter DFI-Bkg 43 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register, June 1999, No. 522. Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1999, No. 525.

DFI-Bkg 43.01 Authority and intent. (1) This chapter is adopted pursuant to ss. 227.11 (2), 224.73, 224.75, and 224.77, 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. 224.77, Stats.

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

DFI-Bkg 43.02 Definitions. In ch. 224, subch. III, Stats., and chs. DFI-Bkg 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.

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

DFI-Bkg 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. 224.77 (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.

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

DFI-Bkg 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. 224.77 (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 subch. III of ch. 224, Stats., are in writing.

(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.

(6) Failing to deliver promptly copies of all agreements, disclosures, representations and promises to perform services under ch. 224, subch. III, 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 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) 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) 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 USC 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.

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91; cr. (5m), July, 1993, No. 451, eff. 8-1-93; **correction in (5) made under s. 13.93 (2m) (b) 7., Stats., Register June 2004 No. 582.**