

Chapter DFI-Bkg 42

ANNUAL REPORTS AND TRUST ACCOUNTS

DFI-Bkg 42.01 Authority.
DFI-Bkg 42.02 Annual reports.

DFI-Bkg 42.03 Trust accounts.

Note: Chapter RL 42 was renumbered chapter DFI-Bkg 42 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 42.01 Authority. This chapter is adopted pursuant to ss. 227.11 (2), 224.74, 224.75 and 224.76, Stats.

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

DFI-Bkg 42.02 Annual reports. Pursuant to s. 224.74 (1) (a), Stats., registered mortgage bankers and mortgage brokers, except as provided in s. 224.74 (1) (b), Stats., shall submit to the division internally prepared financial statements. The statements shall be submitted by April 30 of each year. The statements shall include a balance sheet and income statement, and shall be accompanied by a signed statement from an officer, partner or member of the organization certifying that the statements are true and correct. A mortgage banker or mortgage broker shall provide such other information and documentation as requested by the division.

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91; r. and recr. (1), cr. (1m), July, 1993, No. 451, eff. 8-1-93; **CR 05-012: r. and recr. Register June 2005 No. 594, eff. 7-1-05.**

DFI-Bkg 42.03 Trust accounts. (1) GENERAL REQUIREMENTS FOR TRUST ACCOUNTS. (a) Type of account. A registrant shall deposit all trust funds received by the registrant or the registrant's employees in a trust account in a depository institution authorized to do business in Wisconsin or which is federally chartered. The account shall be identified as a trust account. The division may prohibit a registrant from establishing or maintaining a trust account in a financial institution if the division believes that the financial institution is operating in an unsafe or unsound manner.

(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 48 hours after receipt of the trust funds.

(bm) *Deposit of loan application fee by mortgage broker.* A registered mortgage broker who receives a loan application fee 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 mortgage broker 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.

(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 employees.* An employee of a registrant who receives trust funds shall promptly submit the funds to the registrant.

(2) DUTY TO NOTIFY THE DIVISION ABOUT TRUST ACCOUNTS. Upon request by the division, the registrant shall provide the division 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.

(3) AUTHORIZATION TO EXAMINE TRUST ACCOUNTS. Upon the division'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 division. The registrant shall have sufficient documentation from the trust account available to make an adequate examination.

(4) 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;

or,

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.

(5) 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.

(6) 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 12 USC 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 USC 2602, as amended.

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91; cr. (2) (bm), July, 1993, No. 451, eff. 8-1-93; **CR 05-012: r. (1) (intro.), renum. DFI-Bkg 42.03 (1) (a), (b), (c), and (d) to be DFI-Bkg 40.02 (1), (16), (17) and (18), renum. (2) to be (1) and am. (1) (a), (b), (bm) and (e), renum. (3) to (5) and (7) to be (2) to (4) and (6) and am., renum. (6) to be (5) Register June 2005 No. 594, eff. 7-1-05.**