

## Chapter DFI-Bkg 43

### ETHICAL AND COMPETENT PRACTICE BY MORTGAGE BANKERS, MORTGAGE BROKERS AND MORTGAGE LOAN ORIGINATORS

DFI-Bkg 43.01 Improper, fraudulent or dishonest dealing.

DFI-Bkg 43.02 Incompetency to act as a mortgage banker, mortgage loan originator or mortgage broker.

**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. **Chapter DFI-Bkg 43 as it existed on December 31, 2009 was repealed and a new chapter DFI-Bkg 43 was created, effective January 1, 2010.**

**DFI-Bkg 43.01 Improper, fraudulent or dishonest dealing.** The following conduct, without limitation because of enumeration, constitutes improper, fraudulent or dishonest dealing by a mortgage banker, mortgage loan originator or mortgage broker prohibited by s. 224.77 (1) (m), Stats.:

(1) Using or permitting the use of any document which contains erroneous or false information.

(2) Making or causing to be made any false, deceptive or misleading statement or representation in regard to services being offered by the licensee.

**History:** CR 09-060: cr. Register December 2009 No. 648, eff. 1-1-10.

**DFI-Bkg 43.02 Incompetency to act as a mortgage banker, mortgage loan originator or mortgage broker.** The following conduct, without limitation because of enumeration, demonstrates a lack of competency to act as a mortgage banker, mortgage loan originator, or mortgage broker 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 residential mortgage loan applications promptly.

(2) Failing to promptly advise applicants of approval or disapproval of residential mortgage loan applications.

(3) Failing to close residential mortgage loans and disburse monies in a timely manner.

(4) Failing to ensure that all agreements, disclosures, representations and promises to perform services under subch. III of ch. 224, Stats., are in writing.

(5) Failing to deliver promptly copies of all agreements, disclosures, representations and promises to perform services under subch. III of ch. 224, Stats., to all parties directly affected.

(6) Issuing checks upon business or trust accounts which contain insufficient funds.

(7) Being convicted of a crime, the circumstances of which substantially relate to the practice of a mortgage banker, a mortgage loan originator or a mortgage broker.

(8) Failing to notify the division of any criminal conviction. A certified copy of a judgment of a court of record showing such conviction, in this state or another state, records from the Consolidated Court Automation Program, or records from the department of justice crime information bureau shall be presumptive evidence of conviction.

(9) Rendering services while the ability of the licensee to competently perform the services is impaired by mental or emotional disorder, drugs or alcohol.

(10) Giving or receiving referral fees in violation of 12 USC 2607, and regulations relating to it, to the extent that the section is applicable to a licensee.

(11) Before the acceptance of a residential mortgage loan application or loan application fee, failing to disclose in writing any of the following information to an applicant:

(a) The amount of any such fee, labeled 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.

(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.

(12) Before the acceptance of a loan commitment fee, failing to disclose in writing any of 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.

(c) The terms and conditions of the refund, if all or any part of the commitment fee is refundable.

(13) (a) Failing to provide or disclose in writing to the prospective borrower, at the time of or prior to the issuance of a residential mortgage loan commitment, a good faith estimate of all charges and information that is required by 12 USC 2601 et seq and any regulations promulgated under those sections.

(b) Failing to disclose in writing to the borrower any time period established by a licensee for the borrower to accept a residential mortgage 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.

(14) (a) Except as provided in par. (b), in any transaction in which a licensee enters into an agreement or contract with a prospective borrower for the purpose of finding a residential mortgage loan or negotiating a residential mortgage loan or commitment for a residential mortgage loan, including a provision or otherwise disclosing that a fee or deposit in whole or in part imposed on behalf of any other licensee for that person's services rendered in connection with a residential mortgage loan application is not refundable.

(b) Paragraph (a) does not apply to a mortgage banker or mortgage loan originator who finds a residential mortgage loan or negotiates a residential mortgage loan or commitment for a residential mortgage loan which will be originated by the mortgage banker or the mortgage loan originator's mortgage banker employer.

(15) Failing to maintain in force the surety bond required under s. 224.72 (4) (a) 2., Stats.

(16) Failing to maintain the minimum net worth required by s. 224.72 (4) (a) 4., Stats.

**History:** CR 09-060: cr. Register December 2009 No. 648, eff. 1-1-10.