

CHAPTER 224

MISCELLANEOUS BANKING PROVISIONS

| | | | |
|---------|--|--------|--|
| | SUBCHAPTER I | | |
| | BANKING PROVISIONS | 224.70 | Administration. |
| 224.02 | Banking, defined. | 224.71 | Definitions. |
| 224.03 | Banking, unlawful, without charter; penalty. | 224.72 | Registration of mortgage bankers, loan originators and loan solicitors. |
| 224.05 | Municipality not preferred creditor. | 224.73 | Relationship between loan originator and mortgage banker. |
| 224.06 | Fidelity bonds for bank officers and employes. | 224.74 | Department's review of the operations of a loan solicitor, loan originator or mortgage banker. |
| 224.07 | Checks to clear at par. | 224.75 | Record-keeping requirements for mortgage bankers and loan solicitors. |
| 224.075 | Financially related services tie-ins. | 224.76 | Mortgage banker, loan originator and loan solicitor trust accounts. |
| 224.092 | Customer access to appraisals. | 224.77 | Discipline of mortgage bankers, loan originators and loan solicitors. |
| 224.093 | Customer access to credit reports. | 224.78 | Fee splitting. |
| 224.10 | Indian loan funds. | 224.80 | Penalties and private cause of action. |
| | SUBCHAPTER II | 224.81 | Limitation on actions for commissions and other compensation. |
| | MORTGAGE BANKERS, LOAN ORIGINATORS AND LOAN SOLICITORS | 224.82 | Compensation presumed. |
| | | 224.85 | Applicability of subchapter to certain nonprofit corporations. |

Cross-reference: See definitions in s. 220.01

SUBCHAPTER I

BANKING PROVISIONS

224.02 Banking, defined. The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business by any person, partnership, association, or corporation, shall be deemed to be doing a banking business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing, provided that nothing herein shall apply to or include money left with an agent, pending investment in real estate or securities for or on account of the agent's principal. Provided, however, that if money so left with an agent for investment shall not be kept in a separate trust fund or if the agent receiving such money shall mingle same with the agent's own property, whether with or without the consent of the principal, or shall make an agreement to pay any certain rate of interest thereon or any agreement to pay interest thereon other than an agreement to account for the actual income which may be derived from such money while held pending investment, the person receiving such money shall be deemed to be in the banking business.

History: 991 a. 316; 1993 a. 490.

Junior achievement bank would be a banking business and violates 224.03. 62 Atty. Gen. 254.

224.03 Banking, unlawful, without charter; penalty. It shall be unlawful for any person, partnership, association, or corporation to do a banking business without having been regularly organized and chartered as a national bank, a state bank or a trust company bank. Any person or persons violating any of the provisions of this section, either individually or as an interested party in any partnership, association, or corporation shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than \$300 nor more than \$1,000 or imprisoned in the county jail for not less than 60 days nor more than one year or both.

History: 1991 a. 221; 1993 a. 490; 1995 a. 417.

224.05 Municipality not preferred creditor. If any bank, banking institution or trust company, being indebted to the state of Wisconsin, or indebted to any county, city, town or other municipality therein, for deposits made or indebtedness incurred after April 23, 1899, becomes insolvent or bankrupt, except as provided in s. 34.07, the state, county, city, town or other municipality shall not be a preferred creditor and shall have no preference or priority of claim whatever over any other creditor or creditors thereof; but a just and fair distribution of the property of such bank, banking institution or trust company, and of the proceeds thereof, shall be made among the creditors thereof proportionally,

according to the amount of their respective claims. Nothing herein contained shall in any manner affect the provisions of law as they existed on said date providing for the payment of unpaid taxes and assessments, laborer's claims, expenses of assignment and execution of the trust.

History: 1979 c. 110 s. 60 (12); 1985 a. 257.

224.06 Fidelity bonds for bank officers and employes.

(1) As a condition precedent to qualification or entry upon the discharge of his or her duties, every person appointed or elected to any position requiring the receipt, payment or custody of money or other personal property owned by a bank or in its custody or control as collateral or otherwise, shall give a bond from an insurer qualified under s. 610.11 to do business in this state, in such adequate sum as the directors shall require and approve. In lieu of individual bonds the division may accept a schedule or blanket bond which covers all of the officers and employes of any bank whose duties include the receipt, payment or custody of money or other personal property for or on behalf of the bank. All such bonds shall be in the form prescribed by the division.

(2) No officer or employe who is required to give bond shall be deemed qualified nor shall be permitted to enter upon the discharge of duties until the bond is approved by a majority of the board of directors. The minute books of each bank shall contain a record of each bond executed and approved.

(3) Such bond shall be sufficient in amount to protect the bank from loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction or misapplication on the part of the person, directly or through connivance with others. At any time the division may require additional bond or security, when in the division's opinion, the bonds then executed and approved are insufficient.

(4) Every such bond shall provide that no cancellation or other termination of the bond shall be effective unless the surety gives in advance at least 10 days' written notice by registered mail to the division. If the bond is canceled or terminated at the request of the insured (employer), the surety shall give the written notice to the division within 10 days after the receipt of such request.

(5) For reasons which the division deems valid and sufficient the division may waive as to the cancellation or termination of any such bond the 10-day written notice in advance required by sub.

(4) and may give written consent to the termination or cancellation being made effective as of a date agreed upon and requested by the surety and the bank.

(6) The provisions required by sub. (4) to be in every such bond shall not in any way modify, impair or otherwise affect or render invalid a provision therein to the effect that the bond shall terminate as to any person covered thereby upon the discovery by the bank of any dishonest act on the part of such person.

(7) Any violation of the provisions contained in subs. (1) and (2) shall subject the bank to a fine of \$100 per day for each consecutive day of such violation and it shall be the duty of the attorney general to recover any such penalties by action for and in behalf of the state.

History: 1983 a. 119, 538; 1987 a. 252; 1989 a. 359; 1991 a. 316; 1995 a. 27.

224.07 Checks to clear at par. Checks drawn on any bank or trust company, organized under the laws of this state, shall be cleared at par by the bank or trust company on which they are drawn. Any bank or trust company, or officer or employe thereof, who violates the provisions of this section shall be guilty of a misdemeanor and punished as provided in s. 939.61.

224.075 Financially related services tie-ins. In any transaction conducted by a bank, bank holding company or a subsidiary of either with a customer who is also a customer of any other subsidiary of any of them, the customer shall be given a notice in 12-point boldface type in substantially the following form:

NOTICE OF RELATIONSHIP

This company, (insert name and address of bank, bank holding company or subsidiary), is related to (insert name and address of bank, bank holding company or subsidiary) of which you are also a customer. You may not be compelled to buy any product or service from either of the above companies or any other related company in order to participate in this transaction.

If you feel that you have been compelled to buy any product or service from either of the above companies or any other related company in order to participate in this transaction, you should contact the management of either of the above companies at either of the above addresses or the division of banking at (insert address).

History: 1985 a. 325; 1995 a. 27.

224.092 Customer access to appraisals. If requested by an individual who is a customer, loan applicant or credit applicant, a financial institution, as defined in s. 705.01 (3), shall provide that individual with a copy of any written appraisal report which is held by the financial institution, which relates to residential real estate that the individual owns or has agreed to purchase and for which a fee is imposed.

History: 1991 a. 78.

224.093 Customer access to credit reports. If requested by an individual who is a customer, loan applicant or credit applicant, a financial institution, as defined in s. 705.01 (3), shall provide that individual, at no additional charge, with a copy of any written credit report which is held by the financial institution, which relates to that individual and for which a fee is imposed.

History: 1993 a. 425.

224.10 Indian loan funds. (1) ADMINISTRATION IN TRUST AS A LOAN FUND. The loan funds of any Indian tribe which are transferred to the custody of such tribe by the United States, including any outstanding loan accounts, shall be administered as follows:

(a) The funds shall be held in trust by the tribe or a legal entity thereof as an Indian loan fund, for the purpose of making loans to members of the tribe.

(b) Management of an Indian loan fund shall be vested in a board of trustees, which may hire necessary personnel to administer the loan fund. The board of trustees shall consist of 5 members of the tribe and shall be appointed annually by the governing body of the tribe.

(c) The Indian loan fund in custody of the Menominee Indian Tribe and administered by a board of trustees appointed by that tribe shall, at the termination of federal control, be administered, subject to this section, by a board of 5 trustees appointed annually by the stockholders of the corporation described in s. 710.05, 1973 stats., and shall be used for making loans to those who were enrolled tribal members as proclaimed by the secretary of the inte-

rior as of June 17, 1954, and their spouses and descendants and to any additional classes recommended by the trustees.

(3) RULES OF BOARD OF TRUSTEES. The board of trustees of an Indian loan fund may establish rules for the administration of the fund.

History: 1975 c. 422 s. 163; 1987 a. 252.

SUBCHAPTER II

MORTGAGE BANKERS, LOAN ORIGINATORS AND LOAN SOLICITORS

224.70 Administration. This subchapter shall be administered by the department.

History: 1995 a. 27.

224.71 Definitions. In this subchapter:

(1g) “Loan” means a loan secured by a lien or mortgage, or equivalent security interest, on real property.

(1r) (a) “Loan originator” means a person who is not excluded by par. (b) and who, on behalf of a mortgage banker, finds a loan or negotiates a land contract, loan or commitment for a loan.

(b) “Loan originator” does not include any of the following:

1. The Wisconsin housing and economic development authority, or a bank, trust company, savings bank, savings and loan association, insurance company, or a land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law.

2. A credit union which negotiates loans or any licensee under ch. 138 which negotiates loans or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan.

3. Employes of persons described in subs. 1. and 2. if the employe is performing his or her duties as an employe.

4. A landlord who, in connection with leasing real property, makes a loan to a tenant that is secured by leasehold improvements that are fixtures or improvements to real property.

5. An employe or agent of persons described in subd. 4. if the employe or agent is performing his or her duties in making leasehold improvement loans in connection with leasing real property.

(2) (a) “Loan solicitor” means a person who is not excluded by par. (b) and who, on behalf of a loan applicant or an investor and for commission, money or other thing of value, finds a loan or negotiates a land contract, loan or commitment for a loan.

(b) “Loan solicitor” does not include any of the following:

1. The Wisconsin housing and economic development authority, or a bank, trust company, savings bank, savings and loan association, insurance company, or a land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law.

2. A credit union which negotiates loans or any licensee under ch. 138 which negotiates loans or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan.

3. Employes of persons described in subs. 1. and 2. if the employe is performing his or her duties as an employe.

(3) (a) “Mortgage banker” means a person who is not excluded by par. (b) and who does any of the following:

1. Originates loans for itself, as payee on the note evidencing the loan, or for another person.

2. Sells loans or interests in loans to another person.

3. Services loans or land contracts or provides escrow services, for another person and for commission, money or other thing of value.

(b) “Mortgage banker” does not include any of the following:

1. The Wisconsin housing and economic development authority, or a bank, trust company, savings bank, savings and loan association, insurance company, or a land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law.

2. A credit union which negotiates loans or any licensee under ch. 138 which negotiates loans or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan.

3. Employes of persons described in subds. 1. and 2. if the employe is performing his or her duties as an employe.

4. A landlord who, in connection with leasing real property, makes a loan to a tenant that is secured by leasehold improvements that are fixtures or improvements to real property.

5. An employe or agent of persons described in subd. 4. if the employe or agent is performing his or her duties in making leasehold improvement loans in connection with leasing real property.

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.71; 1989 a. 45; 1995 a. 27 s. 6590; Stats. 1995 s. 224.71.

Wisconsin's new mortgage banking law. Thompson. Wis. Law. March 1989.

224.72 Registration of mortgage bankers, loan originators and loan solicitors. (1) DEFINITIONS. In this section:

(a) "Net worth" means total tangible assets less total liabilities of a person, or, if the person is a natural person, total tangible assets less total liabilities exclusive of the person's principal residence and its furnishings and personal use vehicles.

(b) "Warehouse line of credit" means a line of credit to fund loans held for sale to other persons.

(1m) REGISTRATION REQUIRED. A person may not act as a mortgage banker, loan originator or loan solicitor, use the title "mortgage banker", "loan originator" or "loan solicitor", or advertise or otherwise portray himself or herself as a mortgage banker, loan originator or loan solicitor, unless the person has been issued a certificate of registration from the department.

(2) APPLYING FOR REGISTRATION. A person desiring to act as a mortgage banker, loan originator or loan solicitor shall apply for a certificate of registration to the department on forms prescribed by the department and shall pay the fee specified under sub. (8) (a). An application shall satisfy all of the following:

(a) *Verified.* The applicant shall verify the application, and if the applicant is a partnership, limited liability company or corporation, the application shall be verified as follows:

1. By at least 2 partners of the partnership.
2. By at least 2 officers of the corporation who have authority to verify the application.
3. By at least 2 members of the limited liability company.

(b) *Identity of partner, member or officer.* If the applicant is a partnership, limited liability company or corporation, the application shall identify each partner, member or officer who will use the title "mortgage banker", "loan originator" or "loan solicitor".

(3) ADDITIONAL REQUIREMENT FOR LOAN ORIGINATOR APPLICANT. In addition to the requirements of sub. (2), an applicant for registration as a loan originator shall include in the application the name of the mortgage banker who will employ the loan originator.

(4) ADDITIONAL REQUIREMENT FOR MORTGAGE BANKER APPLICANT. In addition to the requirements of sub. (2), an applicant for registration as a mortgage banker shall do one of the following:

(a) *Approval by federal agency.* Submit evidence which shows, to the department's satisfaction, that the federal department of housing and urban development has approved the applicant as a mortgagee.

(b) *File a bond.* File with the department a bond which is in the amount of \$25,000, is furnished by a company authorized to do business in this state and is approved by the department.

(c) *Minimum net worth.* Submit evidence that establishes, to the department's satisfaction, a minimum net worth of \$25,000

and a warehouse line of credit of not less than \$250,000 or a minimum net worth of \$100,000.

(5) COMPLETION OF REGISTRATION. (a) *Loan originator and loan solicitor.* Upon receiving a properly completed application for registration as a loan originator or loan solicitor and the fee specified in sub. (8) (a), the department shall issue to the applicant a certificate of registration as a loan originator or loan solicitor.

(b) *Mortgage banker.* 1. Upon receiving a properly completed application for registration as a mortgage banker, the fee specified [in] sub. (8) (b) and, except as provided in s. 224.85 (2), satisfactory evidence of compliance with sub. (4), the department shall issue to the applicant a temporary certificate of registration as a mortgage banker. A temporary certificate of registration is valid for 6 months after the date of issuance.

NOTE: The bracketed language was deleted by 1995 Wis. Act 465 without being shown as stricken. No change was intended. Corrective legislation is pending.

2. If within 6 months after the date of issuance of a temporary certificate of registration under subd. 1. the holder of the temporary certificate of registration notifies the department that he or she is acting as a mortgage banker and pays to the department the fee specified in sub. (8) (a), the department shall issue to the person a certificate of registration as a mortgage banker.

(7) RENEWAL OF REGISTRATION. A loan originator, loan solicitor or mortgage banker shall renew a certificate of registration by submitting to the department a renewal application and the applicable renewal fee specified under sub. (8) (c) on or before the applicable renewal date specified under sub. (8) (c). Except as provided in s. 224.85 (2), an applicant for renewal of a certificate of registration as a mortgage banker shall, as part of the application, refile a bond that satisfies sub. (4) (b) or resubmit evidence that satisfies sub. (4) (a) or (c).

(8) FEES. (a) Each applicant shall pay an initial registration fee of \$39 to the department. If an examination is required, the applicant shall pay an examination fee, in an amount set by the department, in addition to the initial registration fee.

(b) An applicant for registration as a mortgage banker shall pay a temporary registration fee of \$10 to the department.

(c) The renewal dates and renewal fees for registrations are as follows:

1. Loan originator: January 1 of each odd-numbered year; \$94.
2. Loan solicitor: January 1 of each odd-numbered year; \$105.
3. Mortgage banker: January 1 of each odd-numbered year; \$486.

(d) The fee for a transfer of a loan originator registration is \$5.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.72; 1989 a. 45; 1991 a. 39; 1993 a. 112; 1995 a. 27 ss. 6210, 6527m, 6528m, 6535m, 6591 to 6593; Stats. 1995 s. 224.72; 1995 a. 465.

224.73 Relationship between loan originator and mortgage banker. (1) RESPONSIBILITY FOR LOAN ORIGINATOR.

A mortgage banker is responsible for, and shall supervise the acts of, a loan originator who registers under s. 224.72 (3) as an employe of the mortgage banker or a loan originator or any other person who otherwise acts on behalf of the mortgage banker.

(2) RESTRICTION ON LOAN ORIGINATOR. If the department suspends or revokes a mortgage banker's certificate of registration, a loan originator may not act on behalf of that mortgage banker during the period of suspension or revocation.

(3) TRANSFER BY LOAN ORIGINATOR. A registered loan originator may at any time apply, on forms prescribed and provided by the department, to transfer employment to another registered mortgage banker. The fee for transfer is specified under s. 224.72 (8) (d) and is payable when the loan originator files the application.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.73; 1991 a. 39; 1995 a. 27 s. 6594; Stats. 1995 s. 224.73.

224.74 Department's review of the operations of a loan solicitor, loan originator or mortgage banker. (1) AUDIT OF MORTGAGE BANKER'S OR LOAN SOLICITOR'S OPERATIONS. A mortgage banker or loan solicitor shall submit a copy of an annual audit of the mortgage banker's or loan solicitor's operations to the department within 20 days after the audit is completed.

(2) EXAMINATION. (a) *Conduct of examination and preparation of report.* The department may at any time, on its own motion or upon complaint, examine the books of account, records, condition and affairs of a mortgage banker, loan originator or loan solicitor registered under this subchapter. The department shall prepare a report of each examination conducted under this section. As part of the examination or preparation of the report, the department may examine under oath any of the members, officers, directors, agents, employees or customers of the mortgage banker, loan originator or loan solicitor. The department may require a mortgage banker, loan originator or loan solicitor who is examined under this paragraph to pay to the department a fee for the costs of conducting the examination. If the department requires a fee under this paragraph, the department shall establish the amount of the fee by rule.

(b) *Confidentiality.* Examination reports and correspondence regarding the reports are confidential, except that the secretary may release examination reports and correspondence in connection with a disciplinary proceeding conducted by the department, a liquidation proceeding or a criminal investigation or proceeding.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.74; 1991 a. 39; 1995 a. 27 s. 6595; Stats. 1995 s. 224.74.

224.75 Record-keeping requirements for mortgage bankers and loan solicitors. (1) REQUIRED RECORDS; LOAN DOCUMENTS. (a) *Fee record system.* A mortgage banker or loan solicitor shall establish and maintain a record system which shows all fees which a mortgage banker charged a mortgage loan applicant and the application or disposition of those fees.

(b) *Loan application record system.* A mortgage banker or loan solicitor shall establish and maintain a record system containing all of the following information for each mortgage loan application:

1. The application date.
2. The name of the applicant.
3. The address of the property to be mortgaged.
4. The disposition of the application and the reason for the particular disposition.
5. The type of loan.

(c) *Loan application documents.* A mortgage banker or loan solicitor shall maintain for each mortgage loan application all of the following documents, if used by the mortgage banker or loan solicitor in connection with the mortgage loan application file:

1. The completed loan application.
2. The loan commitment.
3. The disclosure statement required by 15 USC 1601 to 1693r and regulations adopted under that law.
4. The loan closing statement.
5. A copy of the mortgage note or bond.
6. A copy of the letter rejecting the application.
7. The appraisal report.
8. The credit report.
9. Any other documents, records or forms shown to or signed by a loan applicant.

(2) PERIOD OF RECORD RETENTION. A mortgage banker or loan solicitor shall keep for at least 25 months copies of all deposit receipts, canceled checks, trust account records, the records which a mortgage banker or loan solicitor maintains under sub. (1) (c) and other relevant documents or correspondence received or prepared by the mortgage banker or loan solicitor in connection with a loan or loan application. The retention period begins on the date

the loan is closed or, if the loan is not closed, the date of loan application. The mortgage banker or loan solicitor shall make the records available for inspection and copying by the department. If the records are not kept within this state, the mortgage banker or loan solicitor shall, upon request of the department, promptly send exact and complete copies of requested records to the department.

(3) CONTENTS OF CREDIT AND APPRAISAL REPORTS. (a) *Credit report.* If a mortgage banker or loan solicitor charges a loan applicant a separate fee for a credit report, the credit report shall consist, at a minimum, of a written statement indicating the name of the credit reporting agency which investigated the credit history of the applicant.

(b) *Appraisal report.* If a mortgage banker or loan solicitor charges a loan applicant a separate fee for an appraisal report, the appraisal report shall consist, at a minimum, of a written statement indicating the appraiser's opinion of the value of the property appraised for mortgage loan purposes, the basis for that opinion and the name of the person who conducted the appraisal.

(4) RESPONSIBILITY FOR FORMS. A mortgage banker or loan solicitor is responsible for the preparation and correctness of all entries on forms, documents and records which are under the mortgage banker's or loan solicitor's control and which are not dependent on information provided by the loan applicant or a 3rd party.

(5) ACCOUNTING PRACTICES. A mortgage banker or loan solicitor shall maintain its books and records in accordance with generally accepted accounting principles.

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.75; 1995 a. 27 s. 6596; Stats. 1995 s. 224.75.

224.76 Mortgage banker, loan originator and loan solicitor trust accounts. A mortgage banker, loan originator or loan solicitor shall deposit in one or more trust accounts all funds other than nonrefundable fees which it 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. A mortgage banker or loan solicitor may maintain trust accounts in 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. The mortgage banker or loan solicitor shall notify the department of the location of its trust accounts and shall authorize the department to examine and audit any trust account as the department considers it necessary.

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.76; 1995 a. 27 s. 6597; Stats. 1995 s. 224.76.

224.77 Discipline of mortgage bankers, loan originators and loan solicitors. (1) PROHIBITED CONDUCT. The department may revoke, suspend or limit the certificate of registration of a mortgage banker, loan originator or loan solicitor, or reprimand a mortgage banker, loan originator or loan solicitor, if it finds that the mortgage banker, loan originator or loan solicitor did any of the following:

(a) Made a material misstatement in an application for registration, or in information furnished to the department.

(b) Made a substantial misrepresentation in the course of practice injurious to one or more of the parties to a transaction.

(c) Made a false promise that influences, persuades or induces a client to act to his or her injury or damage.

(d) Pursued a continued and flagrant course of misrepresentation, or made false promises, whether directly or through agents or advertising.

(e) Acted for more than one party in a transaction without the knowledge and consent of all parties on whose behalf the mortgage banker, loan originator or loan solicitor is acting.

(f) Accepted a commission, money or other thing of value for performing an act as a loan originator unless the payment is from a mortgage banker who is registered under s. 224.72 (3) as employing the loan originator.

(g) As a loan originator, represented or attempted to represent a mortgage banker other than the mortgage banker who is registered under s. 224.72 (3) as employing the loan originator.

(h) Failed, within a reasonable time, to account for or remit any moneys coming into the mortgage banker's, loan originator's or loan solicitor's possession which belong to another person.

(i) Demonstrated a lack of competency to act as a mortgage banker, loan originator or loan solicitor in a way which safeguards the interests of the public.

(j) Paid or offered to pay a commission, money or other thing of value to any person for acts or services in violation of this subchapter.

(k) Violated any provision of this subchapter, ch. 138 or any federal or state statute, rule or regulation which relates to practice as a mortgage banker, loan originator or loan solicitor.

(L) Engaged in conduct which violates a standard of professional behavior which, through professional experience, has become established for mortgage bankers, loan originators or loan solicitors.

(m) Engaged in conduct, whether of the same or a different character than specified elsewhere in this section, which constitutes improper, fraudulent or dishonest dealing.

(o) In the course of practice as a mortgage banker, loan originator or loan solicitor, except in relation to housing designed to meet the needs of elderly individuals, treated a person unequally solely because of sex, race, color, handicap, sexual orientation, as defined in s. 111.32 (13m), religion, national origin, age or ancestry, the person's lawful source of income, or the sex or marital status of the person maintaining a household.

(p) Intentionally encouraged or discouraged any person from purchasing or renting real estate on the basis of race.

(q) Because of the age or location of the property or the race of the loan applicant, rather than because of the credit worthiness of the applicant and the condition of the property securing the loan:

1. Refused to negotiate, to offer or to attempt to negotiate a land contract, loan or commitment for a loan, or refused to find a loan.

2. Found a loan or negotiated a loan on terms less favorable than are usually offered.

(2) CONDUCT OF OFFICERS, DIRECTORS AND OTHERS. The department may revoke, suspend or limit a certificate of registration issued under this subchapter or reprimand a mortgage banker or loan solicitor registered under this subchapter, if a director, officer, trustee, partner or member of the mortgage banker or loan solicitor or a person who has a financial interest in or is in any way connected with the operation of the mortgage banker's or loan solicitor's business is guilty of an act or omission which would be cause for refusing to issue a certificate of registration to that individual.

(3) ORDERS OF THE DEPARTMENT. (a) *Orders to prevent or correct actions.* The department may issue general and special orders necessary to prevent or correct actions by a mortgage banker, loan originator or loan solicitor that constitute cause under this section for revoking, suspending or limiting a certificate of registration.

(b) *Types of special orders.* Special orders may direct a mortgage banker, loan originator or loan solicitor to cease and desist from engaging in a particular activity or may direct the mortgage banker, loan originator or loan solicitor to refund or remit to a loan applicant or borrower amounts that the mortgage banker, loan originator or loan solicitor got from actions which constitute cause under this section for revoking, suspending or limiting a certificate of registration.

(c) *Judicial review.* Orders of the department are subject to review as provided in ch. 227.

(4) PERIOD OF DISCIPLINARY ACTION; INELIGIBILITY FOR REGISTRATION. (a) *Period.* Except as provided in par. (b), the depart-

ment shall determine in each case the period that a revocation, suspension or limitation of a certificate of registration is effective.

(b) *Ineligibility.* 1. Except as provided in subd. 2., if the department revokes a certificate of registration under sub. (1), the person is not eligible for a certificate of registration until the expiration of a period which may not exceed 2 years after the effective date of the revocation.

2. If the department revokes a certificate of registration under sub. (1) (p) or (q), the person is not eligible for a certificate of registration until 5 years after the effective date of the revocation.

(5) PENALTIES FOR CERTAIN DISCRIMINATORY CONDUCT. (a) *Mandatory revocation or suspension.* Notwithstanding sub. (1) (intro.) and (4), if the department finds that a mortgage banker, loan originator or loan solicitor has violated sub. (1) (p) or (q), the department shall:

1. For the first offense, suspend the registration of the mortgage banker, loan originator or loan solicitor for not less than 90 days.

2. For the 2nd offense, revoke the registration of the mortgage banker, loan originator or loan solicitor.

(b) *Other penalties.* The penalty under par. (a) may be imposed in addition to any penalty imposed under s. 66.432, 106.04 or 224.80.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.77; 1993 a. 112; 1995 a. 27 ss. 6598 to 6600; Stats. 1995 s. 224.77.

224.78 Fee splitting. A mortgage banker, loan originator or loan solicitor may not pay a person who is not registered under this subchapter a commission, money or other thing of value for performing an act as a mortgage banker, loan originator or loan solicitor.

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.78; 1995 a. 27 s. 6601; Stats. 1995 s. 224.78.

224.80 Penalties and private cause of action. (1) PENALTIES. A person who violates s. 224.72 (1m) may be fined not more than \$1,000 or imprisoned for not more than 6 months or both. The district attorney of the county where the violation occurs shall enforce the penalty under this subsection on behalf of the state.

(2) PRIVATE CAUSE OF ACTION. A person who is aggrieved by an act which is committed by a mortgage banker, loan originator or loan solicitor and which is described in s. 224.77 (1) may recover all of the following in a private action:

(a) An amount equal to the greater of the following:

1. Twice the amount of the cost of loan origination connected with the transaction, except that the liability under this subdivision may not be less than \$100 nor greater than \$1,000 for each violation.

2. The actual damages, including any incidental and consequential damages, which the person sustained because of the violation.

(b) The aggregate amount of costs and expenses which the court determines were reasonably incurred by the person in connection with the action, together with reasonable attorney fees, notwithstanding s. 814.04 (1).

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.80; 1989 a. 45; 1995 a. 27 s. 6602; Stats. 1995 s. 224.80.

224.81 Limitation on actions for commissions and other compensation. A person who is engaged in the business or acting in the capacity of a mortgage banker, loan originator or loan solicitor in this state may not bring or maintain an action in this state to collect a commission, money or other thing of value for performing an act as a mortgage banker, loan originator or loan solicitor without alleging and proving that the person was registered under this subchapter as a mortgage banker, loan originator or loan solicitor when the alleged cause of action arose.

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.81; 1995 a. 27 s. 6603; Stats. 1995 s. 224.81.

224.82 Compensation presumed. In a prosecution arising from a violation of this subchapter, proof that a person acted as a mortgage banker, loan originator or loan solicitor is sufficient, unless rebutted, to establish that compensation was received by, or promised to, that person.

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.82; 1995 a. 27 s. 6604; Stats. 1995 s. 224.82.

224.85 Applicability of subchapter to certain nonprofit corporations. (1) In this section:

(a) “Community–based organization” is an organization that

meets the definition in s. 16.30 (1) and that is described in section 501 (c) (3) of the internal revenue code and which is exempt from taxation under section 501 (a) of the internal revenue code.

(b) “Housing authority” has the meaning given in s. 16.30 (2).

(2) Except for registration under s. 224.72 (1m), (2), (5) and (7) and discipline under s. 224.77 (1) (a) and (4), this subchapter does not apply to a mortgage banker, loan originator or loan solicitor that is a community–based organization or a housing authority that provides services to low–income individuals directly related to housing assistance.

History: 1995 a. 465.