

## Chapter DFI-Bkg 40

### DEFINITIONS AND 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 RL 40 as it existed on February 28, 1991 was repealed and a new chapter RL 40 was created effective March 1, 1991. 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. Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1999, No. 525. Chapter DFI-Bkg 40 as it existed on December 31, 2009 was repealed and a new chapter DFI-Bkg 40 was created, effective January 1, 2010.

**DFI-Bkg 40.01 Definitions.** In subch. III of ch. 224, Stats., and chs. DFI-Bkg 40 to 47:

- (1) "Division" means the division of banking.
- (2) "Investor" means a mortgagee.
- (3) "Licensee" means a person licensed under s. 224.72 or 224.725, Stats.
- (4) "Loan application fee" means a fee in whole or in part imposed by a licensee for services rendered by the licensee in connection with a residential mortgage 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 a residential mortgage loan 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 licensee for that person's services rendered in connection with a residential mortgage loan application.
- (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 residential mortgage loan to a particular applicant.
- (6) "Loan commitment fee" means a fee charged by a licensee to an applicant in exchange for a promise to make a loan pursuant to a loan commitment.
- (7) "Person" means a natural person, and includes all partnerships, associations and bodies politic or corporate.
- (8) "Trust account" means an account in a depository institution in which funds are held for the benefit of a third party. A trust account may also be known as a custodial or escrow account.
- (9) "Trust funds" means all monies other than nonrefundable fees which a licensee 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. "Trust funds" does not mean loan application fees which a licensee has disclosed to a loan applicant as being nonrefundable, even though the licensee may actually refund all or part of these fees later.

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

**DFI-Bkg 40.02 Source for financing a loan.** A person who provides funding for a loan must be licensed as a mortgage banker if the person is in the business of originating loans directly with loan applicants. However, if the person who provides fund-

ing engages the services of a licensed mortgage banker or other lending institution which is lawfully engaged in the practice of originating loans, the person is not required to be licensed as a mortgage banker.

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

**DFI-Bkg 40.03 Branch offices.** (1) A residential address shall not be licensed as a valid branch location.

(2) A branch location shall not be licensed under two different licensees.

(3) Any of the following, if done by the branch, branch manager or employees of the branch, demonstrates that a license has been transferred or assigned to the branch:

(a) Assuming responsibility and liability for branch office leases, or signing rent or equipment leases for the branch location.

(b) Assuming responsibility and liability for utilities, advertising or other bills incurred by the branch.

(c) Paying for branch start up costs, including the cost of branch licenses, bank account deposits, license fees, security deposits, payroll fees or loan software fees.

(d) Signing agreements to pay monthly fees for using the mortgage banker's or mortgage broker's license.

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

**DFI-Bkg 40.04 Trade names.** (1) A licensee shall not conduct business under any name or names other than the name or names listed on the license.

(2) Before using any trade name or d/b/a designation, the licensee shall obtain approval from the division for the use of such trade name or d/b/a designation.

(3) The combined total of trade names and d/b/a designations used by a licensee in Wisconsin shall not exceed five.

**History:** CR 09-060: cr. Register December 2009 No. 648, eff. 1-1-10; 2013 Wis. Act 136: am. (2) Register March 2014 No. 699, eff. 4-1-14.

**DFI-Bkg 40.05 Surety bonds.** A mortgage banker or mortgage broker shall increase its surety bond by \$10,000 for each licensed branch location when the number of its branch locations exceeds five.

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

**DFI-Bkg 40.06 Loan processors and underwriters.** An independent contractor shall not engage in the activities of a loan processor or underwriter unless he or she is licensed under s. 224.725, Stats., and has obtained a valid unique identifier issued by the Nationwide Mortgage Licensing System.

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