

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF BANKING
ADOPTING RULES**

1 The Wisconsin Department of Financial Institutions, Division of Banking proposes an order to
2 amend DFI—Bkg 40.02(intro.), ch. DFI—Bkg 41 (“title”), DFI—Bkg 41.01(2), DFI—Bkg
3 41.01(3), DFI—Bkg 41.02(1)(title), DFI—Bkg 41.02(1), DFI—Bkg 41.02(title), DFI—Bkg
4 41.02, DFI—Bkg 42 (title), DFI—Bkg 43 (title), DFI—Bkg 43.01(2); repeal DFI—Bkg
5 40.02(1), DFI—Bkg 40.03(1), DFI—Bkg 40.03(2), DFI—Bkg 42.03(1)(title) and intro, DFI—
6 Bkg 43.02 (title) and (intro), DFI—Bkg 43.04 (5m); renumber and amend DFI—Bkg 40.02(2),
7 DFI—Bkg 40.02(3), DFI—Bkg 40.02(4), DFI—Bkg 40.02(5), DFI—Bkg 40.02(6), DFI—Bkg
8 40.02(7), DFI—Bkg 40.02(8), DFI—Bkg 40.02(9), DFI—Bkg 40.02(10), DFI—Bkg 40.03(3),
9 DFI—Bkg 40.03(4), DFI—Bkg 40.03(6), DFI—Bkg 42.03(2), DFI—Bkg 42.03(1), DFI—Bkg
10 42.03(1)(a), (b), (bm) and (e), DFI—Bkg 42.03(3), DFI—Bkg 42.03(4), DFI—Bkg 42.03(5),
11 DFI—Bkg 42.03(7), DFI—Bkg 43.03, DFI—Bkg 43.04; DFI—Bkg 40.02(2), DFI—Bkg
12 40.02(9), DFI—Bkg 40.02(14), DFI—Bkg 40.03(2)(c), DFI—Bkg 40.04, DFI—Bkg 41.01(4)
13 and DFI—Bkg 41.01(5), DFI—Bkg 41.03, DFI—Bkg 43.04(15), DFI—Bkg 43.04(16), DFI—
14 Bkg 43.04(17), DFI—Bkg 44, DFI—Bkg 45; repeal and recreate DFI--Bkg 40.03(5), DFI—Bkg
15 42.02; renumber DFI—Bkg 40.03(7), DFI—Bkg 42.03(1)(a), DFI—Bkg 42.03(1)(b), DFI—Bkg
16 42.03(1)(c), DFI—Bkg 42.03(1)(d), DFI—Bkg 42.03(6) , DFI—Bkg 43.02(1), DFI—Bkg
17 43.02(2) relating to definitions, applicability requirements, registrations, annual audits and
18 reports, trust accounts, ethical and competent practice, education, examination, brokerage
19 agreements and consumer disclosures.

Analysis Prepared by the Department of Financial Institutions, Division of Banking

Statute(s) interpreted: ss. Sections 224.72(3)(b), 224.72(7)(d)1. and 2., 224.72(7p)(a) – (c), and 224.79(1) and (2)., Stats.

Statutory authority: ss. Sections 224.72(7p)(a) – (c), 224.72(8), 224.73(3), 224.79(1) and (2), and 227.11(2), Stats.

Related statute or rule: None.

Explanation of agency authority: Pursuant to subch. II, ch. 224, the department regulates mortgage bankers, mortgage brokers and loan originators.

Summary of proposed rule: Chapters DFI—Bkg 40 to 43 have been affected by various acts since 1991; however, with the exception of the promulgation of ch. DFI—Bkg 41 regarding fees and registration pursuant to 1997 Act 45, these chapters have not been updated to reflect either these acts or current industry practices. Most recently, 2003 Act 260 required that the division establish by rule standards, for approval by the loan originator council, regarding examinations in the law of mortgage banking and mortgage brokering, and regarding a curricula of education and hours for the same. 2003 Act 260 also required the division to prescribe the form and

content of mortgage brokerage agreements and consumer disclosure statements. This rule updates administrative code provisions regarding definitions, applicability requirements, registrations, annual audits and reports, trust accounts, and ethical and competent practice; sets forth standards regarding education and examination; and sets forth the form and content of brokerage agreements and consumer disclosures. The standards in this rule have been approved by the loan originator council.

Summary of and preliminary comparison with existing or proposed federal regulation: None.

Comparison with rules in adjacent states: Illinois, Iowa, Michigan and Minnesota all regulate mortgage banking to a comparable degree in statute and rule. This includes regulating in some form mortgage brokerage agreements and consumer disclosure agreements. However, only Illinois requires some form of education and competency examination.

Summary of factual data and analytical methodologies: The department reviewed comparable statutes and regulations, industry practices, and education courses offered by industry associations. The standards set forth in the rule were also reviewed and approved by the loan originator council.

Analysis and supporting documentation used to determine effect on small business: The rule does not have a significant economic impact on small business. First, the rule consists primarily streamlining out-dated text. Second, the Wisconsin Senate (by voice vote) and Wisconsin Assembly (97 ayes, 2 noes) in 2003 Act 260 mandated competency examinations, continuing education, brokerage agreements and disclosure statements for the mortgage banking industry, and directed that the department establish certain standards and forms as part of these mandates. The proposed rule imposes no mandates and solely establishes these standards and forms and, therefore, is not the cause for any significant economic impact on small business that may result from the act.

Summary of Final Regulatory Flexibility Analysis: This proposed rule will have no adverse impact on small businesses.

Summary of Comments received by Legislative Review Committees: No comments were received.

Agency Contact Persons

For substantive questions on the rule, contact Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707-7876, tel. (608) 266-0451. For the agency's internal processing of the rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705.

Pursuant to the statutory authority referenced above, the Wisconsin Department of Financial Institutions, Division of Banking adopts the following:

20 SECTION 1. DFI—Bkg 40.02(intro.) is amended to read:

21 **DFI-Bkg 40.02 Definitions.** In ch. 224, subch. III, Stats., and chs. DFI-Bkg 40 to ~~43~~ 46:

22 SECTION 2. DFI—Bkg 40.02(1) is repealed.

23 SECTION 3. DFI—Bkg 40.02(2), DFI—Bkg 40.02(3), DFI—Bkg 40.02(4), DFI—Bkg
24 40.02(5), DFI—Bkg 40.02(6), DFI—Bkg 40.02(7), DFI—Bkg 40.02(8), DFI—Bkg 40.02(9) and
25 DFI—Bkg 40.02(10) are renumbered DFI—Bkg 40.02(3), DFI—Bkg 40.02(4), DFI—Bkg
26 40.02(5), DFI—Bkg 40.02(7), DFI—Bkg 40.02(10), DFI—Bkg 40.02(11), DFI—Bkg 40.02(12)
27 and DFI—Bkg 40.02(13) and DFI—Bkg 40.02(15), and DFI—Bkg 40.02(3) and DFI—Bkg
28 40.02(15), as renumbered, are amended to read:

29 **DFI—Bkg 40.02(3)** "~~Employe~~ Employee" means an individual who receives earnings as
30 payment for personal services rendered for the benefit of an employer. An individual is an
31 ~~employe~~ employee if the individual is listed on an employer's payroll records, federal and state
32 payroll deductions are taken and payroll taxes are paid for the individual, and the employer has a
33 right to control and direct the services performed by the individual, as to the result to be
34 accomplished by the services and as to the details and means by which the result is to be
35 accomplished.

36 **DFI—Bkg 40.02(15)** "Services mortgage loans or land contracts" means the receipt of payments
37 ~~for interest or principal~~ on a note or a land contract from the borrower or vendee and distribution
38 of such payments in accordance with the terms of the note, land contract or servicing agreement.

39 SECTION 4. DFI—Bkg 40.02(2) is created to read:

40 **DFI—Bkg 40.02(2)** "Division" means the division of banking.

41 SECTION 5. DFI—Bkg 40.02(9) is created to read:

42 DFI—Bkg 40.02(9) “Loan solicitor” means a loan originator that performs the limited scope of
43 activities set forth in s. DFI—Bkg 40.04.

44 SECTION 6. DFI—Bkg 40.02(14) is created to read:

45 DFI—Bkg 40.02(14) “Regular hours of operation” means at least 20 hours each week that a
46 registrant is available, either by walk-in or by appointment, to meet with customers.

47 SECTION 7. DFI—Bkg 40.03(1) and DFI—Bkg 40.03(2) are repealed.

48 SECTION 8. DFI—Bkg 40.03(3) is renumbered DFI—Bkg 40.03(1) and, as renumbered,
49 is amended to read:

50 **DFI—Bkg 40.03(1) SUBSIDIARIES OF EXEMPT PERSONS.** A subsidiary corporation of a
51 person which is exempt from registration under s. 224.71 (3) (b) and (4) (b), Stats., shall register
52 as a mortgage banker or ~~loan solicitor~~ mortgage broker when performing acts for which
53 registration is required under subch. III, ch. 224 Stats.

54 SECTION 9. DFI—Bkg 40.03(4) is renumbered DFI—Bkg 40.03(2) and DFI—Bkg
55 40.03(2)(b), as renumbered, is amended to read:

56 **DFI—Bkg 40.03(2)(b) Real estate brokers and salespersons.** A real estate licensee who finds a
57 loan for a person is not required to register as a ~~loan solicitor~~ mortgage broker if the licensee
58 does not receive a commission, money or other thing of value from any person for finding the
59 loan.

60 SECTION 10. DFI—Bkg 40.03(2)(c) is created to read:

61 DFI—Bkg 40.03(2)(c) Land contract. A loan under s. 224.71(3)(b)6, Stats., includes a land
62 contract.

63 SECTION 11. DFI—Bkg 40.03(5) is repealed and recreated as DFI—Bkg 40.03(3) to
64 read:

65 **DFI—Bkg 40.03(3) SERVICE OR PROVIDER.** A person who services loans or land contracts
66 or provides escrow services for another person and for commission, money or other thing of
67 value and who does not perform acts under s. 224.71 (3) (a) 1. and 2., Stats., is required to
68 register the sole proprietor-owner, the corporation, the limited liability company or the
69 partnership as a mortgage banker. Other officers, members, partners or employees who do not
70 use the title "mortgage banker" or "loan originator" and do not advertise or otherwise portray
71 themselves as mortgage bankers or loan originators are not required to register under s. 224.72,
72 Stats.

73 SECTION 12. DFI—Bkg 40.03(6) is renumbered DFI—Bkg 40.03(4) and DFI—Bkg
74 40.03(4)(intro.), as renumbered, is amended to read:

75 **DFI—Bkg 40.03(4) NONRESIDENT PERSONS.** The primary factors which determine the
76 ~~department's~~ division's jurisdiction over nonresident persons who engage in activities described
77 in s. 224.71, Stats., are as follows:

78 SECTION 13. DFI—Bkg 40.03(7) is renumbered DFI—Bkg 40.03(5).

79 SECTION 14. DFI—Bkg 40.04 is created to read:

80 **DFI—Bkg 40.04 Loan solicitor activities. (1) A loan solicitor shall be limited to performing**
81 **only the following activities:**

82 (a) Taking information from a borrower and filling out a loan application.

83 (b) Estimating the maximum mortgage loan amount the prospective borrower can afford.

84 (c) Informing the prospective borrower about the different types of loan products available from
85 a single lender.

86 (d) Collecting financial information and related documents that are part of the application
87 process.

- 88 (e) Assisting the borrower in understanding credit problems.
- 89 (f) Providing the following:
- 90 1. The agreement and disclosures required by s. 224.79, Stats.
- 91 2. Servicing disclosure statements.
- 92 3. Affiliated business arrangement disclosures.
- 93 4. Good faith estimate.
- 94 5. HUD Settlement Costs and Information Booklet.
- 95 (g) Initiating the ordering of verifications of employment.
- 96 (h) Initiating the ordering of verifications of deposits.
- 97 (i) Initiating the ordering of requests for mortgage and other loan verifications.
- 98 (2) A loan solicitor is prohibited from accepting any funds from a loan applicant.

99 SECTION 15. ch. DFI—Bkg 41 (“title”) is amended to read:

100 ~~FEES AND REGISTRATIONS FOR MORTGAGE BANKERS, LOAN~~

101 ~~ORIGINATORS AND MORTGAGE BROKERS~~

102 SECTION 16. DFI—Bkg 41.01(2) is amended to read:

103 **DFI—Bkg 41.01(2) RENEWAL OF REGISTRATION.** ~~A registrant may renew a certificate~~

104 ~~before expiration of the registration by making an application for renewal on a form prescribed~~

105 ~~and provided by the department, and paying the fee under sub. (1). A registrant may renew a~~

106 ~~certificate after the expiration of the registration by making an application for renewal on a form~~

107 ~~prescribed and provided by the department, paying the fee under sub. (1), and paying an late fee~~

108 ~~of \$ 100.00. A registrant may renew a certificate of registration if the application for renewal~~

109 ~~and the fee required under sub. (1) are received by the division before the expiration of the~~

110 ~~certificate. An application for renewal received by the division after the expiration of the~~

111 certificate and prior to 31 days after the expiration of the certificate shall be accompanied by an
112 additional fee of \$100. A registrant whose application for renewal is not received by the division
113 within 30 days after the expiration of the certificate shall submit an application for a new
114 certificate of registration, and no business for which the certificate is required shall be conducted
115 after the certificate expires and before a new certificate is issued by the division. An application
116 for renewal of a certificate of registration shall be in a form and manner prescribed by the
117 division.

118 SECTION 17. DFI—Bkg 41.01(3) is amended to read:

119 **DFI—Bkg 41.01(3) TRANSFER.** A loan originator may ~~transfer~~ be transferred to employment
120 ~~to~~ with another registered mortgage banker or mortgage broker by ~~making an~~ application for
121 transfer ~~on~~ in a form and manner prescribed ~~and provided by the department~~ division, and ~~paying~~
122 the payment of a transfer fee of ~~\$20~~ 40.

123 SECTION 18. DFI—Bkg 41.01(4) and DFI—Bkg 41.01(5) are created to read:

124 **DFI—Bkg 41.01(4) CHANGE OF NAME AND ADDRESS.** A registrant who changes his or
125 her name or moves from the last address provided to the division shall notify the division in
126 writing within 10 business days of the change. A registrant who fails to so notify the division
127 shall pay a forfeiture of \$100.

128 **DFI—Bkg 41.01(5) WITHDRAWAL.** No registration or renewal of registration fee shall be
129 refunded unless a request to withdraw the registration or renewal of registration is received in
130 writing by the division before the division begins its investigation of the applicant.

131 SECTION 19. DFI—Bkg 41.02(1)(title), DFI—Bkg 41.02(1), DFI—Bkg 41.02(title) and
132 DFI—Bkg 41.02 are amended to read to read:

133 **DFI—Bkg 41.02(1) REGISTRATIONS** ~~AFTER JANUARY 1, 1999.~~ ~~The registration period~~
 134 ~~for mortgage banker, loan originator and mortgage broker certificates issued after January 1,~~
 135 ~~1999 is 2 years.~~ The administrator of the division of banking shall issue certificates that start
 136 and expire on the following dates:

137

Month When Certificate is Issued	Day When Certificate Expires	
January	December 31 <u>January 1</u>	All expiration dates are in the second year after the date when the certificate was issued
February	January 31 <u>February 1</u>	
March	February 28 <u>March 1</u>	
April	March 31 <u>April 1</u>	
May	April 30 <u>May 1</u>	
June	May 31 <u>June 1</u>	
July	June 30 <u>July 1</u>	
August	July 31 <u>August 1</u>	
September	August 31 <u>September 1</u>	
October	September 30 <u>October 1</u>	
November	October 31 <u>November 1</u>	
December	November 30 <u>December 1</u>	

138

139 **DFI—Bkg 41.02(2) REGISTRATIONS** PERIOD ~~ON OR BEFORE JANUARY 1, 1999.~~

140 ~~The registration period for mortgage banker, loan originator and mortgage broker certificates~~

141 ~~issued on or before January 1, 1999 shall be the same as that in sub. (1), except that the~~
142 ~~administrator of the division of banking shall select one half of all such certificates to have a~~
143 ~~registration period of one year. The expiration date for certificates having a period of one year~~
144 ~~shall be the last day of the twelfth month from which the certificate was issued. The fee for~~
145 ~~certificates having a period of one year shall be one half the fee amount prescribed in s. DFI—~~
146 ~~Bkg 41.01(1).~~ The registration period for mortgage banker, loan originator and mortgage
147 broker certificates issued by the division is 2 years.

148 SECTION 21. DFI—Bkg 41.03 is created to read:

149 **DFI—Bkg 41.03 Provider, course and examination fees.** The following fees shall apply
150 under ch. DFI—Bkg 45:

151 (1) For approval and renewal of approval of education providers, \$100.

152 (2) For approval and renewal of approval of courses, \$150.

153 (3) For applying to take or retake the loan originator competency examination, \$150.

154 SECTION 20. DFI—Bkg 42 (title) is amended to read:

155 **~~MORTGAGE BANKING—AUDIT~~ ANNUAL REPORTS AND TRUST ACCOUNTS**

156 SECTION 21. DFI—Bkg 42.02 is repealed and recreated to read:

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

164 SECTION 22. DFI—Bkg 42.03(1)(title) and intro are repealed.

165 SECTION 23. DFI—Bkg 42.03(1)(a) is renumbered DFI—Bkg 40.02(1).

166 SECTION 24. DFI—Bkg 42.03(1)(b) is renumbered DFI—Bkg 40.02(16).

167 SECTION 25. DFI—Bkg 42.03(1)(c) is renumbered DFI—Bkg 40.02(17).

168 SECTION 26. DFI—Bkg 42.03(1)(d) is renumbered DFI—Bkg 40.02(18).

169 SECTION 27. DFI—Bkg 42.03(2) is renumbered DFI—Bkg 42.03(1), and DFI—Bkg
170 42.03(1)(a), (b), (bm) and (e), as renumbered, are amended to read:

171 **DFI—Bkg 42.03(1) GENERAL REQUIREMENTS FOR TRUST ACCOUNTS.** (a) *Type of*

172 *account.* A registrant shall deposit all trust funds received by the registrant or the registrant's

173 ~~employes~~ employees in a trust account ~~with a maturity of no more than 31 days~~ in a depository

174 institution authorized to do business in Wisconsin or which is federally chartered. The account

175 shall be identified as a trust account. The division may prohibit a registrant from establishing or

176 maintaining a trust account in a financial institution if the division believes that the financial

177 institution is operating in an unsafe or unsound manner.

178 (b) *Time of deposit.* A registrant shall deposit all trust funds received by the registrant or the

179 registrant's ~~employes~~ employees in a trust account within 24 hours of receipt of such trust funds.

180 If funds are received on a day prior to a holiday or other day when the depository institution is

181 closed, the registrant shall deposit the funds on the next business day of the depository

182 institution. A registrant may satisfy this requirement by mailing trust funds to the depository

183 institution within ~~24~~ 48 hours after receipt of the trust funds.

184 (bm) *Deposit of loan application fee by ~~loan solicitor~~ mortgage broker.* A registered ~~loan~~

185 ~~solicitor~~ mortgage broker who receives a loan application fee, ~~as defined in s. DFI Bkg 43.02~~

186 ~~(4);~~ from an applicant for a loan shall make a good faith estimate of that portion of the loan

187 application fee which will be needed to pay for services rendered by a third party incident to the
188 processing of the loan application, such as a fee or a charge for a credit report or a real estate
189 appraisal. The ~~loan solicitor~~ mortgage broker shall follow either one of the following 2
190 procedures relating to that portion of the loan application fee which is needed to pay for the
191 services rendered by a third party or which is imposed on behalf of any other person.

192 (e) *Responsibility of ~~employees~~ employees*. An ~~employee~~ employee of a registrant who receives
193 trust funds shall promptly submit the funds to the registrant.

194 SECTION 28. DFI—Bkg 42.03(3) is renumbered DFI—Bkg 42.03(2), and DFI—Bkg
195 42.03(2)(title) and DFI—Bkg 42.03(2), as renumbered, are amended to read:

196 **DFI—Bkg 42.03(2) DUTY TO NOTIFY THE ~~DEPARTMENT~~ DIVISION ABOUT TRUST**
197 **ACCOUNTS.** Upon request by the ~~department~~ division, ~~pursuant to s. 224.74 (1), Stats.~~, the
198 registrant shall provide the ~~department~~ division with the name and number of every trust account
199 maintained by the registrant in a depository institution and the name and address of the
200 depository institution in which the registrant holds each account.

201 SECTION 29. DFI—Bkg 42.03(4) is renumbered DFI—Bkg 42.03(3) and, as renumbered,
202 is amended to read:

203 **DFI—Bkg 42.03(3) AUTHORIZATION TO EXAMINE TRUST ACCOUNTS.** Upon the
204 ~~department's~~ division's request, a registrant shall obtain the certification of every depository
205 institution in which a registrant maintains a trust account, attesting to the existence of the account
206 and consenting to the examination and audit of the account by a duly authorized representative of
207 the ~~department~~ division. The registrant shall have sufficient documentation from the trust
208 account available to make an adequate examination.

209 SECTION 30. DFI—Bkg 42.03(5) is renumbered DFI—Bkg 42.03(4) and DFI—Bkg
210 42.03(4)(b) 1. and 2., as renumbered, are amended to read:

- 211 1. Within 10 calendar days after payment of the loan in full; or,
212 2. If a loan or the transfer thereof is not consummated, within 10 calendar days after such
213 determination, to the person who furnished the money held in trust; ~~or, .~~

214 SECTION 31. DFI—Bkg 42.03(6) is renumbered DFI—Bkg 42.03(5).

215 SECTION 32. DFI—Bkg 42.03(7) is renumbered DFI—Bkg 42.03(6) and, as renumbered,
216 is amended to read:

217 **DFI—Bkg 42.03(6) ADVANCE DEPOSITS IN ESCROW ACCOUNTS.** In any transaction, in
218 connection with a loan, in which a registrant requires a borrower or prospective borrower to
219 deposit a sum of money in a tax or insurance escrow account for the purpose of assuring
220 payment of taxes, insurance premiums or other charges with respect to the property, the
221 registrant shall comply with the ~~Real Estate Settlement Procedures Act of 1974 (RESPA),~~ 12
222 USC 2601 *et seq.*, as amended, and all regulations related thereto if the transaction involves a
223 "federally related mortgage loan," as the phrase is defined in 12 USC 2602, as amended.

224 SECTION 33. DFI—Bkg 43 (title) is amended to read:

225 **ETHICAL AND COMPETENT PRACTICE BY MORTGAGE BANKERS, LOAN**

226 **ORIGINATORS AND ~~LOAN SOLICITORS~~ MORTGAGE BROKERS**

227 SECTION 34. DFI—Bkg 43.01(2) is amended to read:

228 **DFI—Bkg 43.01(2)** The intent of the ~~department~~ division in adopting the rules in this chapter is
229 to establish minimum standards of conduct for mortgage bankers, ~~loan solicitors~~ mortgage
230 brokers and loan originators and to define that conduct which may result in disciplinary action by
231 the ~~department~~ division, pursuant to s. 224.77, Stats.

232 SECTION 35. DFI—Bkg 43.02 (title) and (intro) are repealed.

233 SECTION 36. DFI—Bkg 43.02(1) is renumbered DFI—Bkg 40.02(6).

234 SECTION 37. DFI—Bkg 43.02(2) is renumbered DFI—Bkg 40.02(8).

235 SECTION 38. DFI—Bkg 43.03 is renumbered DFI—Bkg 43.02 (intro.) and DFI—Bkg
236 43.02(intro.), as renumbered, is amended to read:

237 **DFI-Bkg 43.02 Improper, fraudulent or dishonest dealing.** The following conduct, without
238 limitation because of enumeration, constitutes improper, fraudulent or dishonest dealing by a
239 mortgage banker, loan originator or ~~loan solicitor~~ mortgage broker prohibited by s. 224.77 (1)
240 (m), Stats.:

241 SECTION 39. DFI—Bkg 43.04 (5m) is repealed.

242 SECTION 40. DFI—Bkg 43.04 is renumbered DFI—Bkg 43.03, and DFI—Bkg 43.03
243 (title), (intro), (4), (8), (9), (11) and (14)(a), as renumbered, are amended to read:

244 **DFI-Bkg 43.03 Incompetency to act as a mortgage banker, loan originator or ~~loan solicitor~~**
245 **mortgage broker.** The following conduct, without limitation because of enumeration,
246 demonstrates a lack of competency to act as a mortgage banker, loan originator, or ~~loan solicitor~~
247 mortgage broker in a way which safeguards the interest of the public prohibited by s. 224.77 (1)
248 (i), Stats.:

249 **DFI—Bkg 43.03(4)** Failing to notify the ~~department~~ division in writing of the use of a trade
250 name prior to doing business under the trade name.

251 **DFI—Bkg 43.03(8)** Being convicted of a crime, the circumstances of which substantially relate
252 to the practice of a mortgage banker, a loan originator or a ~~loan solicitor~~ mortgage broker.

253 **DFI—Bkg 43.03(9)** Failing to notify the ~~department~~ division of any criminal conviction, ~~the~~
254 ~~circumstances of which substantially relate to the practice of a mortgage banker, a loan~~

255 ~~originator or a loan solicitor.~~ A certified copy of a judgment of a court of record showing such
256 conviction, within this state or without, records from the Consolidated Court Automation
257 Program, or records from the department of justice crime information bureau shall be
258 presumptive evidence of conviction.

259 **DFI—Bkg 43.03(11)** Giving or receiving referral fees in violation of ~~the federal real estate~~
260 ~~settlement procedures act,~~ 12 USC 2607, and regulations relating to it, to the extent that the ~~act~~
261 section is applicable to a registrant.

262 **DFI—Bkg 43.03(14)(a)** Failing to provide or disclose in writing to the prospective borrower, at
263 the time of or prior to the issuance of a loan commitment, a good faith estimate of all charges and
264 information that is required by ~~the federal Real Estate Settlement Procedures Act (RESPA), 12~~
265 ~~USC 2603 to 2604~~ 2601 et seq and ~~the regulations adopted under the Act~~ any regulations
266 promulgated under those sections.

267 SECTION 41. DFI—Bkg 43.04(15) is created to read:

268 **DFI—Bkg 43.04(15)(a)** Except as provided in par. b, in any transaction in which a registrant
269 enters into an agreement or contract with a prospective borrower for the purpose of finding a
270 loan or negotiating a land contract, loan or commitment for a loan, including a provision or
271 otherwise disclosing that either of the following are nonrefundable:

272 1. A fee or charge imposed on behalf of a third party for services rendered by the third party
273 incident to the processing of an application, such as a charge for a credit report or appraisal.

274 2. A fee or deposit in whole or in part imposed on behalf of any other registrant for that person's
275 services rendered in connection with a loan application.

276 (b) Paragraph (a) does not apply to a mortgage banker or loan originator who finds a loan or

277 negotiates a land contract, loan or commitment for a loan which will be originated by the
278 mortgage banker or the loan originator's mortgage banker employer.

279 SECTION 42. DFI—Bkg 43.04(16) is created to read:

280 **DFI—Bkg 43.04(16) Failing to notify the division that a federal agency under s. 224.72(4)(a)1.a.**
281 **– d., Stats., has withdrawn its approval of the applicant as a mortgagee.**

282 SECTION 43. DFI—Bkg 43.04(17) is created to read:

283 **DFI—Bkg 43.04(17) Failing to maintain the requirements set forth in ss. 227.72(4) and (4m),**
284 **Stats.**

285 SECTION 44. DFI—Bkg 44 is created to read:

286 **CHAPTER DFI-BKG 44**

287 **MORTGAGE BROKER AGREEMENTS AND**

288 **CONSUMER DISCLOSURE STATEMENTS**

289 **DFI-Bkg 44.01 Mortgage Broker Agreements (1) A mortgage broker agreement under s.**
290 **224.79(1), Stats., shall contain all of the following:**

291 **(a) The name, address, telephone number and license number of the mortgage broker.**

292 **(b) A list of all terms and conditions.**

293 **(c) A list of services to be provided.**

294 **(d) A disclosure of mortgage broker fees.**

295 **(e) A disclosure of application fees.**

296 **(f) The signatures of the applicant and interviewer, the title of the interviewer and the date**
297 **the agreement was signed.**

298 **(2) A mortgage broker agreement under s. 224.79(1), Stats., shall be on white paper sized 8 ½” x**
299 **11” and in Times New Roman font style 12 or greater.**

300 (3) A mortgage broker agreement shall be on a form prescribed by the department.

301 Note: A copy of the form and instructions for using the form may be obtained by writing to the

302 Department of Financial Institutions, Division of Banking, Mortgage Banking Section, 345 W.

303 Washington Avenue, 4th Floor, P.O. Box 7876, Madison, WI 53707-7876, or may be

304 downloaded from the department's website, www.wdfi.org.

305 **DFI-Bkg 44.02 Consumer Disclosure Statement (1) A consumer disclosure statement under s.**

306 224.79(2), Stats., shall contain all of the following:

307 (a) The name, address, telephone number and license number of the mortgage broker.

308 (b) A statement of duties.

309 (c) A statement of the nature of relationship.

310 (d) A disclosure of compensation.

311 (e) The signature of the applicant and the date the agreement was signed.

312 (2) A consumer disclosure statement shall be on white paper sized 8 ½" x 11" and in Times New

313 Roman font style 12 or greater.

314 (3) A consumer disclosure statement shall be on a form prescribed by the department.

315 Note: A copy of the form and instructions for using the form may be obtained by writing to the

316 Department of Financial Institutions, Division of Banking, Mortgage Banking Section, 345 W.

317 Washington Avenue, 4th Floor, P.O. Box 7876, Madison, WI 53707-7876, or may be

318 downloaded from the department's website, www.wdfi.org.

319 SECTION 45. DFI—Bkg 45 is created to read:

320 **CHAPTER DFI-BKG 45**

321 **EDUCATION AND EXAMINATION**

322 **DFI—Bkg 45.01 Standards for education for loan originators. (1) SUBJECTS.** The
323 following subjects qualify for the loan originator education required by s. 224.72(7)(d)1.:
324 (a) State and Federal Law. 1. The provisions of subch III, ch. 224, Stats.; ch. 428, Stats; ss.
325 138.052 to 138.06, Stats.; and chs. DFI—Bkg 40 to 46.
326 2. The Fair Housing Act, the Equal Credit Opportunity Act (ECOA), the Home Mortgage
327 Disclosure Act (HMDA) and other fair lending laws.
328 3. The Home Ownership Equity Protection Act (HOEPA).
329 4. The Truth in Lending Act, Regulation Z and the Commentary to Regulation Z.
330 5. The Real Estate Settlement Procedures Act (RESPA).
331 6. The Fair Credit Reporting Act (FCRA).
332 7. Federal National Mortgage Association (FNMA or Fannie Mae) guidelines.
333 8. Government National Mortgage Association (GNMA or Ginnie Mae) guidelines.
334 9. Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac) guidelines.
335 (b) Practice and procedure. 1. Loan origination procedures, including pre-qualifying borrowers,
336 residential loan applications, underwriting standards, mortgage loan packaging, loan
337 documentation, loan closings and loan servicing.
338 2. Types of mortgage loans, including Federal Housing Authority (FHA) and Veterans
339 Administration (VA) loans.
340 3. U.S. Department of Housing and Urban Development (HUD) closing statement.
341 4. Brokerage fees and limitations.

342 5. Prepayment penalties.

343 6. Appraisal analysis, review, standards and underwriting.

344 7. Credit scoring, open-end credit, closed-end credit.

345 8. Subprime lending, including high cost and other covered loans.

346 9. Commercial lending.

347 10. Fraud detection and prevention.

348 11. Predatory lending.

349 (c) Actions and ethics. 1. Administrative actions and criminal penalties under subch. III, ch. 224,
350 Stats., and ch. 428, Stats.

351 2. Ethics for loan originators.

352 (d) Developments. New developments in the law, practice and procedure.

353 (e) Other. Such other subjects submitted by the division to, and subsequently approved by, the
354 loan originator council.

355 (2) HOURS. The loan originator education requirement under s. 224.72(7)(d)1., Stats., shall be
356 met with 16 hours of education in the subjects listed under sub. (1)(a) – (e), with a minimum of
357 two of those hours to be met by the subjects listed under sub. (1)(d).

358 **DFI—Bkg 45.02 Standards for education for loan solicitors. (1) SUBJECTS. The following**
359 **subjects qualify for the loan solicitor education required by s. 224.72(7)(d)1., Stats.:**

360 (a) State and Federal Law. 1. The provisions of subch III, ch. 224, Stats.; ch. 428, Stats; ss.
361 138.052 to 138.06, Stats.; and chs. DFI—Bkg 40 to 46.

362 2. The Fair Housing Act, the Equal Credit Opportunity Act (ECOA), the Home Mortgage
363 Disclosure Act (HMDA) and other fair lending laws.

364 3. The Home Ownership Equity Protection Act (HOEPA).

365 4. The Truth in Lending Act, Regulation Z and the Commentary to Regulation Z.

366 5. The Real Estate Settlement Procedures Act (RESPA).

367 6. The Fair Credit Reporting Act (FCRA).

368 7. Role of government sponsored enterprises in the mortgage market.

369 (b) Practice and procedure. 1. Loan origination procedures, including pre-qualifying borrowers,
370 residential loan applications and loan documentation.

371 2. Types of mortgage loans, including Federal Housing Authority (FHA) and Veterans
372 Administration (VA) loans.

373 3. Brokerage fees and limitations.

374 4. Credit scoring, open-end credit, closed-end credit.

375 5. Fraud detection and prevention.

376 (c) Actions and ethics. 1. Administrative actions and criminal penalties under subch. III, ch. 224,
377 Stats., and ch. 428, Stats.

378 2. Ethics for loan originators.

379 (d) Developments. New developments in the law, practice and procedure.

380 (e) Other. Such other subjects submitted by the division to, and subsequently approved by, the
381 loan originator council.

382 (2) HOURS. The loan solicitor education requirement under s. 224.72(7)(d)1., Stats., shall be
383 met with 12 hours of education in the subjects listed under ss. DFI—Bkg 45.02(1)(a) – (e), with
384 a minimum of two of those hours to be met by the subjects listed under s. DFI—Bkg 45.02(1)(d).

385 **DFI—Bkg 45.03 Course testing.** Every education course under s. 224.72(7)(d)1., Stats., shall
386 include a closed-book test, to be administered at the course, of the materials presented at the
387 course.

388 **DFI—Bkg 45.04 Compliance.** An applicant shall submit evidence, in a form and manner
389 prescribed by and satisfactory to the division, that the applicant has met the education
390 requirements of s. 224.72(7)(d)1., Stats.

391 **DFI-Bkg 45.05 Standards for competency examinations. (1) LOAN ORIGINATORS.** The
392 subjects listed under ss. DFI—Bkg 45.01(1)(a) – (e) shall be included in the loan originator
393 competency examinations required by ss. 224.72(3)(b) and 224.72(7)(d)2, Stats.

394 (2) LOAN SOLICITORS. The subjects listed under ss. DFI—Bkg 45.02(1)(a) – (e) shall be
395 included in the loan solicitor competency examinations required by ss. 224.72(3)(b) and
396 224.72(7)(d)2, Stats.

397 **DFI—Bkg 45.06 Compliance.** An applicant shall submit evidence, in a form and manner
398 prescribed by and satisfactory to the division, that the applicant has met the examination
399 requirements of ss. 224.72(3)(b) and 224.72(7)(d)2., Stats., and shall pay the fee prescribed by
400 the division.

401 **DFI-Bkg 45.07 Requirements for approval of providers. (1) APPLICATION OF**
402 CONTINUING EDUCATION PROVIDERS. An entity or individual seeking initial approval or
403 reapproval from the division, or its designee, as a continuing education provider shall submit an

404 application in a form and manner prescribed by and satisfactory to the division. The division may
405 require the following information and materials to be submitted with the application:

406 (a) A description of the experience and education that qualifies the applicant to be a provider.

407 (b) A description of the provider's organizational structure, registration policies, fee schedules
408 and promotional materials.

409 (c) A description of the provider's student record systems including the methods for
410 documenting attendance.

411 (d) The method used by the provider for evaluating instructors.

412 (e) Such other information as required by the division.

413 (2) CRITERIA FOR APPROVAL. To be approved, continuing education providers shall do all
414 of the following:

415 (a) Certify that instructors are experienced and qualified in the mortgage banking industry. Each
416 instructor shall satisfy at least one of the following criteria:

417 1. Has been engaged in the mortgage banking industry or the practice of teaching mortgage
418 courses for the last three years.

419 2. Has been properly licensed as a mortgage banker, mortgage broker or loan originator for the
420 past 5 years and demonstrates to the division that he or she is of good character and has the
421 knowledge and breadth of experience in the subject area for which he or she will be providing
422 instruction.

423 3. Is a licensed attorney engaged in the field of mortgage banking-related law.

424 4. Is a licensed certified public accountant engaged in mortgage banking-related practice.

425 (b) Show that information provided to comply with [http://folio.legis.state.wi.us/cgi-](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=94425&infobase=code.nfo&jump=Ins%2028.06%281%29&softpage=Document)
426 [bin/om_isapi.dll?clientID=94425&infobase=code.nfo&jump=Ins%2028.06%281%29&softpage](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=94425&infobase=code.nfo&jump=Ins%2028.06%281%29&softpage=Document)
427 [=Document](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=94425&infobase=code.nfo&jump=Ins%2028.06%281%29&softpage=Document) - JUMPDEST Ins 28.06(1)sub. (1) is likely to support a comprehensive and
428 accurate treatment of the subjects required in each chapter.

429 (c) Certify that the provider shall comply with s. DFI—Bkg 45.09, Stats.

430 (3) APPLICATION APPROVAL AND EXPIRATION OF APPROVAL. Upon receipt of an
431 application for approval of a provider and the required fee, the division shall determine if the
432 application meets the requirements of this chapter and if the program provides for instruction of
433 courses in a manner required by this chapter. Provider approval shall expire pursuant to the
434 schedule set forth in s. DFI—Bkg 41.02(1).

435 **DFI-Bkg 45.08 Requirements for approval of courses. (1) COURSE APPROVAL. (a) Upon**
436 receipt of an application for approval or renewal of approval of a course from an approved
437 continuing education provider and the required fee, the division, or its designee, shall determine
438 if the course meets the requirements set forth in this chapter. The application for approval or
439 renewal of approval shall be in a form and manner prescribed by and satisfactory to the division.
440 Course approval shall expire 2 years from the date the course was approved by the division.

441 (b) The following information shall be furnished with the request for approval of a continuing
442 education course:

443 1. Name and address of the provider.

444 2. Name of the instructor.

445 3. Name, telephone number and signature of the contact person for the provider.

446 4. Course title.

447 5. The date the course will initially be offered.

448 6. The location where the course will initially be offered.

449 7. An outline including a schedule of times when topics will be presented; the topics covered in
450 the course, listed individually; and a summary of the instruction given and the material covered
451 for each topic.

452 8. Number of credit hours requested.

453 9. A description of the qualifications of each instructor and the subject matter the instructor will
454 be teaching.

455 10. Such other information as the division deems necessary.

456 (c) The course shall be conducted in accordance with the course outline and summary materials
457 approved by the division. After the provider has been notified of any deficiency, failure to
458 correct the deficiency shall automatically void the course approval for any course held after
459 notice.

460 (d) A provider shall provide to the division, in a manner acceptable to the division, written
461 notification at least 10 days in advance of offering an approved course on the date or at a location
462 other than, or in addition to, the date or location provided in the initial request for approval.

463 (2) NOTIFICATION. Within 10 days of a change to an approved course, approved providers
464 shall notify the division of any course information as required by this chapter that has changed
465 since filing, and on which course approval was based, with the division.

466 **DFI-Bkg 45.09 Evidence of attendance for continuing education courses. (1) Providers shall**
467 **submit to the division a list, in a form and manner prescribed by and satisfactory to the division,**
468 **of course attendees who satisfactorily completed continuing education programs. The list shall**

469 include the loan originator's name, Wisconsin certificate of registration number, date of birth,
470 course number, course title, date and location of the course, number of credit hours for which the
471 course has been approved and any other information required by the division. Submitting the list
472 shall constitute certification by the provider that the students listed personally attended the
473 reported instruction and successfully completed the reported instruction. The list shall be
474 furnished to the division within 10 days following the date of completion of continuing
475 education programs. Failure to submit the required information to the division may result in a
476 withdrawal of the provider's approval.

477 (2) (a) The provider of a continuing education program shall maintain attendance records for 4
478 years.

479 (b) Credit for attending a course shall not be awarded to loan originators for courses completed
480 prior to the date the course has been approved by the division.

481 **DFI-Bkg 45.10 Investigation and review. (1) The division, or its designee, may investigate and**
482 **review all provider and course applications, and any previously approved providers, courses and**
483 **instructors. The method and timing of the reviews shall be determined by the division and may**
484 **consist of any of the following:**

485 (a) Consideration of information available from state, federal, or local agencies, private
486 organizations or agencies, or interested persons.

487 (b) Conferences with officials, representatives, and former students of the provider involved.

488 (c) A public hearing respecting the program, course, or instructor involved, with 10 days written
489 notice to the provider, instructor, or both.

490 (d) Investigation by visitation without notice to the provider.

491 (e) Information furnished by the applicant with any application for approval.
492 (f) Any other information the division or its designee deems relevant to the investigation.
493 (2) If, after investigation or review, the division denies or withdraws approval of any program or
494 course, the division shall promptly give written notification that includes the reasons for the
495 denial or withdrawal.

496 **Effective date.** This rule takes effect as provided in s. 227.22 (2) (intro.), Stats.

Dated: _____

Agency: _____

Michael J. Mach, Administrator
Department of Financial Institutions
Division of Banking