



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 09-060

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. Throughout the rule, “may not” should replace “shall not” to express a prohibition. [See s. 1.01 (2), Manual.]

b. Section DFI-Bkg 40.03 (1) states that a residential address shall not be licensed as a valid branch location. How does the department intend to determine whether an address is residential?

c. Section DFI-Bkg 40.04 (1) appears to imply that a license must list a single name. Does sub. (1) contradict subs. (2) and (3), which appear to permit multiple names under certain circumstances?

d. In s. DFI-Bkg 41.04, the department specifies a payment of \$500 upon the division’s request. Is it the department’s intent that the payment be “up to \$500” at the division’s request?

e. In s. DFI-Bkg 42.01 (4), the department refers to the provision of a statement of account “to all parties.” Is it the intent of the department that “any” party may request a statement, or that the request by a single party will result in distribution of statements to all parties to a mortgage transaction?

f. Section DFI-Bkg 42.04 (2) inappropriately uses introductory material and uses vague words like “thereof” and “such.” The subsection should be drafted more along the following lines:

DFI-Bkg 42.02 (2) A licensee shall release trust funds within 30 days after payment of a residential mortgage in full. If a residential mortgage loan or transfer of the loan is not consummated, a licensee shall release trust funds to the person who furnished the money to be held in trust within 30 days of ...

The subsection needs to spell out more clearly what “such determination” means.

g. In s. DFI-Bkg 43.02 (11) and (12), the department should insert “any of” before “the following” in the introductory material and end each of the remaining paragraphs in those subsections with periods rather than semi-colons or “and.”

h. The material created in SECTION 6 should not be underscored.

i. When creating ch. DFI-Bkg 47, the department includes a section titled “Authority and intent.” Similar sections exist for those chapters in the current administrative code. However, when recreating chs. DFI-Bkg 40 to 43, the department does not recreate sections related to authority or intent. In the interest of consistency, should the department include sections related to authority or intent for all chapters related to banking or, in the alternative, delete that section from ch. DFI-Bkg 47?

j. The department specifies January 1, 2010 as the effective date for most SECTIONS of the proposed rule. However, SECTION 8 of the proposed rule relates to activities that will take place before January 1, 2010. Should the department specify a different effective date for that SECTION of the proposed rule?

4. Adequacy of References to Related Statutes, Rules and Forms

a. Should the department refer to SECTION 9117 of 2009 Wisconsin Act 2 in the explanation of agency authority?

b. In s. DFI-Bkg 41.01 (intro.), should the department refer to s. DFI-Bkg 47.04 instead of s. DFI-Bkg 47.06?

c. In s. DFI-Bkg 47.04 (4), “sub. (1) or (2)” should replace “sub. 1 or 2”.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Throughout the rule, is it the department’s intent to create differences in the counting of time via references to “days” and “calendar days?” For example, s. DFI-Bkg 42.04 (1) refers to “60 days” while s. DFI-Bkg 42.04 (2) refers to “30 calendar days.”

b. In s. DFI-Bkg 43.02 (8), the department should replace “within” with “in.”

c. Throughout the rule, “its” should replace “their” when referencing a singular noun. For examples, see the second sentences of s. DFI-Bkg 47.05 (1) and (2).

d. In s. DFI-Bkg 47.06 (2), a period should be placed after “1” in the reference to s. 224.72 (7) (d) 1., 2007 Stats.