

Chapter DFI-Bkg 42

MORTGAGE BANKING AUDIT REPORTS AND TRUST ACCOUNTS

DFI-Bkg 42.01 Authority.

DFI-Bkg 42.02 Annual audit by mortgage bankers and loan solicitors.

DFI-Bkg 42.03 Trust accounts.

Note: Chapter RL 42 was renumbered chapter DFI-Bkg 42 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.

DFI-Bkg 42.01 Authority. This chapter is adopted pursuant to ss. 227.11 (2), 224.74, 224.75 and 224.76, Stats.

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91.

DFI-Bkg 42.02 Annual audit by mortgage bankers and loan solicitors. (1) ANNUAL AUDIT BY MORTGAGE BANKERS. (a) Registered mortgage bankers shall obtain an annual independent audit report pertaining to their financial operations covering the preceding fiscal year. The report shall be obtained and submitted to the department within 6 months after the close of the fiscal year. The audit report shall be signed by an independent certified public accountant. The audit shall be conducted in accordance with generally accepted auditing standards and the financial statements included in the audit report shall be prepared in accordance with generally accepted accounting principles. An audit conducted for a governmental agency which complies with this standard may be accepted by the department, provided that the audit pertains to the complete operation of the registrant and not just the specific program or project supervised by the governmental agency.

(b) An annual audit report submitted by a mortgage banker to the department shall include at least the following documents:

1. A balance sheet;
2. A statement of operations; and
3. A statement which shows the registrant's net worth, including, when appropriate, a statement of stockholders' equity or retained earnings and a statement of cash flows.

(c) In lieu of the audit under par. (a), a mortgage banker who is registered during a specific fiscal year, but does not engage in the business of mortgage banking that fiscal year may submit to the department an affidavit stating that the mortgage banker did not engage in the business of mortgage banking during that fiscal year.

(1m) ANNUAL REPORTS BY LOAN SOLICITORS. Registered loan solicitors shall, within 6 months after the end of their fiscal year, prepare and send to the department an annual report pertaining to their activities as a loan solicitor covering the preceding fiscal year. The annual report shall be prepared on a form prescribed by the department by an officer of a corporation, a partner of a partnership or a sole proprietor registrant and be submitted by that person to the department. The annual report shall include at least the following information:

(a) The name and number of every trust account maintained by the loan solicitor in a depository institution and the name and address of the depository institution.

(b) The balance in each trust account maintained by the loan solicitor as of the date on which the report is prepared by the loan solicitor.

(c) The total amount of fees charged mortgage loan applicants and persons for whom the loan solicitor agreed to find a loan.

(d) In summary form, the disposition of the fees in par. (c).

(e) The number and type of applications for mortgages processed by the loan solicitor.

(f) Other information, similar to that which is contained in pars. (a) to (e), relating to the activities of the loan solicitor when acting as a loan solicitor.

Note: A copy of the annual report form may be obtained from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) AUDITS BY LOAN SOLICITOR EMPLOYEES. A registered loan solicitor who performs all loan solicitor activities as an employee of a registered loan solicitor is not required to submit an audit to the department, provided that the loan solicitor-employee's employer reports on all of the operations of the employer and all of the employer's loan solicitors.

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91; r. and recr. (1), cr. (1m), July, 1993, No. 451, eff. 8-1-93.

DFI-Bkg 42.03 Trust accounts. (1) DEFINITIONS. In subch. III, ch. 224, Stats., and chs. DFI-Bkg 42 to 43:

(a) "Depository institution" means 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.

(b) "Trust account" means an account in a depository institution, as specified in s. 224.76, Stats., 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.

(c) "Trust funds" means all monies other than nonrefundable fees which a registrant 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.

(d) "Trust funds" does not mean loan application fees which a registrant has disclosed to a loan applicant as being nonrefundable, even though the registrant may actually refund all or part of these fees later.

(2) GENERAL REQUIREMENTS FOR TRUST ACCOUNTS. (a) *Type of account.* A registrant shall deposit all trust funds received by the registrant or the registrant's employees in a trust account with a maturity of no more than 31 days in a depository institution authorized to do business in Wisconsin or which is federally chartered.

(b) *Time of deposit.* A registrant shall deposit all trust funds received by the registrant or the registrant's employees in a trust account within 24 hours of receipt of such trust funds. If funds are received on a the registrant shall deposit the funds on the next business day of the depository institution. A registrant may satisfy this requirement by mailing trust funds to the depository institution within 24 hours after receipt of the trust funds.

(bm) *Deposit of loan application fee by loan solicitor.* A registered loan solicitor who receives a loan application fee, as defined in s. DFI-Bkg 43.02 (1), from an applicant for a loan shall make a good faith estimate of that portion of the loan application fee which will be needed to pay for services rendered by a third party incident to the processing of the loan application, such as a fee or a charge for a credit report or a real estate appraisal. The loan solicitor shall follow either one of the following 2 procedures relating to that portion of the loan application fee which is needed to pay for the services rendered by a third party or which is imposed on behalf of any other person.

1. Deposit that portion of the loan application fee in a trust account and disburse it from the trust account to pay for the services rendered by a third party.

2. Direct the applicant to make payment directly to the third party.

(c) *Statement of account.* Upon reasonable notice, a registrant shall promptly provide a statement of account to all parties to a mortgage transaction.

(d) *Commingling funds.* A registrant may deposit only trust funds in the registrant's trust account and may not commingle personal funds in a trust account, except that a registrant may deposit and keep in an account an amount of personal funds which is necessary to cover customary advances or service charges relating to the account.

(e) *Responsibility of employes.* An employe of a registrant who receives trust funds shall promptly submit the funds to the registrant.

(3) DUTY TO NOTIFY THE DEPARTMENT ABOUT TRUST ACCOUNTS. Upon request by the department, pursuant to s. 224.74 (1), Stats., the registrant shall provide the department with the name and number of every trust account maintained by the registrant in a depository institution and the name and address of the depository institution in which the registrant holds each account.

(4) AUTHORIZATION TO EXAMINE TRUST ACCOUNTS. Upon the department's request, a registrant shall obtain the certification of every depository institution in which a registrant maintains a trust account, attesting to the existence of the account and consenting to the examination and audit of the account by a duly authorized representative of the department.

(5) DISBURSEMENT OF TRUST FUNDS. (a) Withdrawal of fees and commissions. A registrant shall withdraw fees or commis-

sions from trust accounts maintained by the registrant within 24 hours after the fees or commissions are payable or in accordance with any written agreement or contract, except that fees relating to the servicing of monthly mortgage payments shall be withdrawn from trust accounts within 60 days after monthly payments are received.

(b) *Release of trust funds.* A registrant shall release trust funds:

1. Within 10 calendar days after payment of the loan in full;

2. If a loan or the transfer thereof is not consummated, within 10 calendar days after such determination, to the person who furnished the money held in trust; or,

(6) AFTER CLOSING ESCROW AGREEMENTS. If a registrant requires or permits funds to be placed in escrow until some future occurrence, such as repair or completion escrows, and the parties request that the registrant hold these funds, a written agreement to that effect shall be prepared by the parties or an attorney. If the registrant holds these funds, the registrant shall place the funds in the registrant's trust account.

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

History: Cr. Register, February, 1991, No. 422, eff. 3-1-91; cr. (2) (bm), July, 1993, No. 451, eff. 8-1-93.