

WAC 460-33A-035 Limitations on the use of optional registration of this chapter. Unless the director makes a special notation on the permit issued to the mortgage broker-dealer granting permission to offer the following types of securities based upon a showing that the investors will be adequately protected, the following types of securities cannot be offered or sold under the rules of this chapter:

(1) Offerings involving construction loans may not be sold using the rules of this chapter unless the loan to value ratio, as determined utilizing the current value of the property without considering future improvements, is within the limits established by subsection (7) of this section.

(2) Offerings involving the mortgage broker-dealer, its officers, agents, affiliates, and persons controlling the mortgage broker-dealer or affiliates may not be sold as part of the optional registration of the rules of this chapter unless the registration with the director includes a full description of these transactions. An offering "involves" the persons listed where the person is the owner, the borrower, or has an interest in the proceeds other than fees, commissions, or mark-ups.

(3) Offerings involving documents reserving the right to subordinate the position of any investor to any mortgage, trust deed or lien created at or after the sale.

(4) Offerings involving pooling or participations involving more than ten investors may not be sold under the optional registration of the rules of this chapter. However, where the amount of the loan is greater than five hundred thousand dollars and the loan is secured by a first lien, the registrant may sell to the number of investors that results from dividing the loan amount by fifty thousand dollars. A husband and wife and their dependents may be counted as one investor.

(5) Offerings in which the real property or other collateral securing the notes or other obligations is not within this state unless the general offering circular contains disclosure of all material facts concerning the relevant laws of the state in which the real property is situated and a risk factor discussing the risks of investing in out-of-state real estate.

(6) Offerings involving notes or other obligations secured by a single mortgage, deed of trust or real estate contract or a single group of mortgages, deeds of trust or real estate contracts that are not identical in their underlying terms, including the right to direct or require foreclosure, rights to and rate of interest, and other incidents of being an investor, and the sale to each investor is not upon the same terms; provided however, an offering may be subject to adjustment for the face or principal amount or percentage interest purchased and for interest earned or accrued.

(7) Offerings in which the aggregate principal amount of the notes or other obligations sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, exceed the following percentages of the current market value (as determined by WAC 460-33A-105) of the real property:

(a) Single-family residences - Eighty percent.

(b) Commercial and income-producing properties - Seventy percent.

(c) Unimproved property which has been zoned for commercial or residential development - Fifty percent. For purposes of this section, "unimproved property" includes real property with structures that cannot be legally occupied, do not substantially conform with the appraisal of the property prepared pursuant to WAC 460-33A-105, or oth-

erwise lack the functional attributes or basic amenities customarily found in the type of structures in question.

(d) Other real property - Forty percent.

(8) Offerings involving real estate paper in which a default in any note or other obligation will not be a default in all notes or other obligations concerning a specific loan.

(9) Loans in which investors are required to designate the servicing agent as their attorney-in-fact with respect to documents and instruments, other than those described below, which would otherwise require signing or other action by the investors:

(a) Escrow instructions concerning the closing and collection of the loan;

(b) Instruments necessary to substitute investors; and

(c) Partial or full satisfaction or release of the deed of trust or other security instrument pursuant to the provisions of the deed of trust or security agreement upon receipt of the appropriate payment.

(10) Offerings in which the investors holding a majority percentage of the unpaid amount of any loan may not remove the servicing agent.

(11) A registrant requesting a modification under this section must request it in writing and must provide satisfactory evidence that the interest of the public will be adequately protected.

[Statutory Authority: RCW 21.20.060, [21.20].070, [21.20].090, [21.20].100, [21.20].180, [21.20].210, [21.20].250, [21.20].270, and [21.20].450. WSR 12-11-087, § 460-33A-035, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. WSR 01-23-002, § 460-33A-035, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. WSR 92-18-009, § 460-33A-035, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. WSR 86-21-107 (Order SDO-140-86), § 460-33A-035, filed 10/20/86; WSR 83-03-025 (Order SDO-7-83), § 460-33A-035, filed 1/13/83.]