Chapter 460-33A WAC

REGULATIONS CONCERNING SECURITIES INVOLVING MORTGAGES, TRUST DEEDS OR PROPERTY SALES CONTRACTS

WAC

460-33A-010 Application.
460-33A-015 Definitions.
460-33A-017 Registration not required.
460-33A-020 Optional registration procedures for mortgage paper securities.
460-33A-025 Contents of the general offering circular.
460-33A-030 Contents and filing of the specific offering circular.
460-33A-031 Minimum investor suitability requirements.
460-33A-035 Limitations on the use of optional registration of this chapter.
460-33A-036 Participation agreement.
460-33A-037 Disclosure requirements in the sale of real estate owned property.
460-33A-038 Real estate broker's opinion of value in the sale of real estate owned property.
460-33A-040 Net worth or bond requirement.
460-33A-055 Escrow account.
460-33A-060 Recordation.
460-33A-065 Service agreement.
460-33A-070 Origination and assignment.
460-33A-075 Advertising.
460-33A-080 Registration and examination of mortgage broker-dealers.
460-33A-081 Expiration of mortgage broker-dealer registration, renewal procedure.
460-33A-085 Registration and examination of mortgage securities salespersons.
460-33A-086 Expiration of mortgage securities salesperson registration, renewal procedure.
460-33A-090 Dishonest and unethical practices—Mortgage broker-dealers.
460-33A-095 Fiduciary duty—Mortgage broker-dealers.
460-33A-100 Written statement.
460-33A-105 Appraisals.
460-33A-110 Financial statements and annual reports.
460-33A-115 Books and records.
460-33A-116 Access to loan records by investors.
460-33A-120 Preservation of records.
460-33A-125 Notice of changes by mortgage broker-dealers.
460-33A-130 Notice of complaint.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-33A-016 Registration of real property securities. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-016, filed 1/13/83.] Repealed by 86-21-107 (Order SDO-140-86), filed 10/20/86. Statutory Authority: RCW 21.20.450.

460-33A-050 Banks and financial institutions. [Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-050, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-050, filed 1/13/83.] Repealed by 92-18-009, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.045.

WAC 460-33A-010 Application. (1) The rules contained in these regulations are intended to offer an optional method for the registration of "mortgage paper securities" as defined in WAC 460-33A-015(4). While applications for registration not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown, certain rules of this chapter may be modified or waived by the director, if consistent with the spirit of these rules.

(2) The application of these rules does not affect those issuers to which or to whom the debenture company sections of the Securities Act apply.

(3) These rules do not affect the statutory exemptions provided for by, nor will they be applied to, those securities or transactions exempt under RCW 21.20.310 or 21.20.320. These rules are not intended to expand or restrict the definition of "security" as defined in RCW 21.20.005.

(4) The rules contained in this chapter are only applicable to mortgage paper securities, mortgage broker-dealers and mortgage salespersons registering under this chapter.

[Statutory Authority: RCW 21.20.450. 12-10-051, § 460-33A-010, filed 4/30/12, effective 5/31/12; 01-23-002, § 460-33A-010, filed 11/7/01, effective 12/8/01; 89-17-078 (Order SDO-124-89), § 460-33A-010, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-010, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-010, filed 1/13/83.]

WAC 460-33A-015 Definitions. As used in this chapter:

(1) "Mortgage broker-dealer" means a person who is defined as a "broker-dealer" in RCW 21.20.005[(3)] and who effects transactions in mortgage paper securities registered under the provisions of this chapter.

(2) "General offering circular" means a disclosure document that gives a general description of what is involved in the purchase of mortgage paper securities and the business of offering the mortgage paper securities including a description of the mortgage broker-dealer.

(3) "Mortgage salesperson" means a person other than a mortgage broker-dealer who is defined as a "salesperson" in RCW 21.20.005[(2)] and who represents a mortgage broker-dealer in effecting offers or sales of mortgage paper securities registered under the provisions of this chapter.

(4) "Mortgage paper securities" means notes and other debt securities secured by mortgages or trust deeds on real or personal property or by a vendor's interest in a property sales contract or options granting the right to purchase any of the foregoing, including any guarantee of or interest in the foregoing.

(5) "Specific offering circular" means a disclosure document describing the specific mortgage paper securities offering, which is meant to accompany the general offering circular.

(6) "Financial institution" means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or other similarly

regulated financial institution, or holding company for any of the foregoing.

(7) "Construction loan" means a loan in which twenty-five percent or more of the loan proceeds will be used to fund future improvements to real estate securing the loan.

(8) "Income-producing properties" means real property that produces income on a regular basis.

(9) "Participation agreement" means the agreement entered into by investors in mortgage paper securities that sets forth the rights and responsibilities of the investors as to each other and as to others and that may provide for the delegation of authority and responsibility for the management of the loan underlying the mortgage paper securities, the management of property acquired by the investors through foreclosure, and other assigned duties.

[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. 12-11-087, § 460-33A-015, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 12-10-051, § 460-33A-015, filed 4/30/12, effective 5/31/12; 01-23-002, § 460-33A-015, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-015, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-015, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-015, filed 10/20/86; 83-15-043 (Order SDO-90-83), § 460-33A-015, filed 7/19/83; 83-03-025 (Order SDO-7-83), § 460-33A-015, filed 1/13/83.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 460-33A-017 Registration not required. Securities exempt from registration pursuant to RCW 21.20.310 and transactions exempt from registration pursuant to RCW 21.20.320 need not be registered under the rules of this chapter.

Note: Persons intending to rely upon RCW 21.20.320(5) should consult WAC 460-44A-075.

[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. 12-11-087, § 460-33A-017, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-017, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-017, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-017, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-017, filed 1/13/83.]

WAC 460-33A-020 Optional registration procedures for mortgage paper securities. An applicant for registration of a mortgage paper securities offering may elect to register the offering under the rules of this chapter in lieu of following the registration procedure for debt securities under the Securities Act of Washington. Registration under this chapter requires the filing of a registration application as prescribed by the director of the department of financial institutions accompanied by the following:

(1) The general offering circular;

(2) A sample specific offering circular;

(3) The mortgage paper escrow and trust agreement;

(4) The participation agreement;

(5) The mortgage paper service agreement;

(6) The mortgage broker-dealer's articles of incorporation and bylaws or articles of organization;

(7) Sample documents to include any note, bond, mortgage, deed of trust, master deed of trust, real or personal property contract, indenture, guaranty, or other such instrument;

(8) The financial statements of the mortgage broker-dealer, including a balance sheet, profit and loss statement, and statement of cash flow as set forth in RCW 21.20.210 (14). Pursuant to RCW 21.20.210 (14)(c), if the estimated proceeds of the mortgage paper securities offering, together with the proceeds from registered offerings during the year preceding the date of filing of the mortgage paper securities offering, exceed one million dollars, said financial statements shall be audited. If such proceeds exceed five million dollars, said financial statements for the previous two fiscal years shall be audited;

(9) The subscription and acknowledgment agreements;

(10) An opinion of counsel, if requested, on the legality and validity of the mortgage paper securities being issued;

(11) An opinion of counsel, if requested, regarding the application of the usury laws to the mortgage paper securities being offered;

(12) Such other information as the director may prescribe or request.

[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. 12-11-087, § 460-33A-020, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450 and 21.20.210(14). 96-11-025, § 460-33A-020, filed 5/6/96, effective 6/6/96. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-020, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.180(8), 21.20.210(14) and 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-020, filed 10/20/86. Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-020, filed 1/13/83.]

WAC 460-33A-025 Contents of the general offering circular. (1) The general offering circular shall be in a format prescribed by the director and shall include all information required by the format.

(2) The general offering circular shall set forth the minimum suitability standards for investors as provided in WAC 460-33A-031.

(3) The general offering circular must state that purchases of mortgage paper securities may be made only by check payable to the mortgage broker-dealer's escrow account.

(4) The general offering circular shall disclose the risks to investors of holding a high concentration of their investment portfolio in mortgage paper securities.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-025, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-025, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-025, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-025, filed 1/13/83.]

WAC 460-33A-030 Contents and filing of the specific offering circular. The form and content of the specific offering circular and accompanying exhibits shall be prescribed by the director. In registering mortgage paper securities pursuant to this chapter, the registrant undertakes to furnish the specific offering circulars and required exhibits to the director for review upon request. If such a request is made prior to the distribution of a specific offering circular to prospective investors, the registrant must refrain from such distribution pending review and approval by the director.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-030, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-030, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-030, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-030, filed 1/13/83.]

WAC 460-33A-031 Minimum investor suitability requirements. (1) In addition to complying with the suitability requirements set forth in RCW 21.20.702, in each purchase, sale, or exchange of mortgage paper securities registered under the rules of this chapter, the mortgage broker-dealer shall have reasonable grounds to believe that either:

(a) The investor is an accredited investor as defined in WAC 460-44A-501; or

(b) The following requirements are satisfied:

(i) The investor has a minimum net worth of either:

(A) Two hundred fifty thousand dollars; or

(B) Seventy thousand dollars provided the investor has a minimum annual income of seventy thousand dollars; and

(ii) The prospective investment by the investor qualifies for one of the following:

(A) The investment in the mortgage paper securities being offered does not exceed twenty percent of the investor's net worth, or joint net worth with that person's spouse: Provided, That the investor's total investment in mortgage paper securities involving any one borrower or the borrower's affiliates may not exceed twenty percent of the investor's net worth, or joint net worth with that person's spouse; or

(B) The investment in the mortgage paper securities being offered does not exceed ten percent of the investor's (including spouse) taxable income for federal tax purposes for the last year: Provided, That the investor's total investment in mortgage paper securities involving any one borrower or the borrower's affiliates may not exceed twenty percent of the investor's net worth, or joint net worth with that investor's spouse.

(2) For purposes of subsections (1)(b)(i)(A) and (B) of this section, net worth shall be determined exclusive of home, home furnishings and automobiles.

(3) The mortgage broker-dealer shall document its determination that an investment in mortgage paper securities is suitable for each investor in accordance with WAC 460-33A-115 (1)(f).

[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. 12-11-087, § 460-33A-031, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-031, filed 11/7/01, effective 12/8/01; 89-17-078 (Order SDO-124-89), § 460-33A-031, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-031, filed 10/20/86.]

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 otherwise 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. 12-11-087, § 460-33A-035, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-035, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-035, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-035, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-035, filed 1/13/83.]

WAC 460-33A-036 Participation agreement. (1) In each sale of mortgage paper securities, the mortgage broker-dealer shall obtain a signed participation agreement from the investor prior to the release of funds from escrow.

(2) The participation agreement shall address the following:

(a) The rights of investors to interest on the loan and other amounts derived from the loan and the property securing the loan;

(b) The rights and responsibilities of investors to contribute additional funds;

(c) Any restrictions on transfer;

(d) Any rights of first refusal;

(e) The intended tax treatment of an investment in mortgage paper securities and income derived therefrom;

(f) The nature and the extent of the authority of the mortgage broker-dealer to negotiate any loan modifications or workouts with borrowers, or to seek or negotiate the sale or lease of real property acquired by investors through foreclosure of their lien; and

(g) The requirements for amending the participation agreement.

(3) The participation agreement shall provide that the following actions may not be taken on behalf of the investors without the consent of investors holding a majority percentage of the unpaid amount of notes or other obligations:

(a) Consenting to the sale or transfer by the borrower of the collateral securing the loan, or the substitution of a new borrower;

(b) Approving any modification to the loan that decreases the rate of interest payable to the investors;

(c) Deferring or forgiving the payment of any principal, interest, or other amounts due in connection with the loan;

(d) Making any agreements concerning the release, substitution, or exchange of any collateral, or any portion of the collateral, for the loan;

(e) Entering into any agreement to reduce the principal amount of the loan (except for actual payments of principal);

(f) Making any concession with respect to compliance with any material obligations imposed by the instruments evidencing or securing the loan; or

(g) Extending or renewing the loan.

(4) The participation agreement shall provide that to the extent the mortgage broker-dealer owns an interest in the loan, the mortgage broker-dealer, or any successor or assignee, shall be bound by the terms of the participation agreement.

(5) The participation agreement shall provide that investors holding interests representing at least ten percent of the unpaid amount of the loan, or that hold interests representing at least ten percent of the property acquired by investors through foreclosure, may call a meeting of the investors in the loan.

(6) The participation agreement shall provide that in the event a loan is foreclosed and the property that secures the loan is sold, the excess of the sale proceeds after payment of expenses and repayment of any funds advanced by the mortgage broker-dealer or others shall be distributed to the investors, including the mortgage broker-dealer to the extent it owned an interest in the loan and owns an interest in the property, in proportion to their respective interests in the loan. The participation agreement shall not provide for any such excess to be distributed to the mortgage broker-dealer except to the extent the mortgage broker-dealer owned an interest in the loan and owns an interest in the property.

(7) The participation agreement shall not provide for the payment of late fees, default interest, or other fees and expenses that are assessed against a borrower who has defaulted on a loan, but that are not paid prior to foreclosure, to the mortgage broker-dealer in the event the investors acquire the real property securing the loan at the foreclosure sale. The mortgage broker-dealer may, however, be compensated at a reasonable rate for services performed in pursuing foreclosure and the management or sale of property acquired by investors through foreclosure.

(8) The participation agreement shall not provide for the indemnification of the mortgage broker-dealer by the investors for acts or omissions that constitute a violation of the Securities Act of Washington, chapter 21.20 RCW, or the rules adopted thereunder.

[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. 12-11-087, § 460-33A-036, filed 5/17/12, effective 6/17/12.]

WAC 460-33A-037 Disclosure requirements in the sale of real estate owned property. The following apply to real property acquired by owners of mortgage paper securities through foreclosure or otherwise in settlement of the note or bond which is the subject of the mortgage paper security (real estate owned or REO):

(1) The mortgage broker-dealer shall provide investors a written disclosure document when making a recommendation to investors to sell REO.

(2) The disclosure document required by subsection (1) of this section shall include an appraisal meeting the requirements of WAC 460-33A-105 and dated within twelve months of the recommendation unless:

(a) A real estate broker's opinion of value dated within twelve months of the recommendation is obtained pursuant to WAC 460-33A-038;

(b) In offering the mortgage paper securities to the current owners, the loan-to-value ratio was established by relying on the tax assessment valuation pursuant to WAC 460-33A-105(6). In this instance, the specific offering circular required by subsection (1) of this section may use the current tax assessment valuation; or

(c) The investors, excluding the mortgage broker-dealer and its affiliates, holding a majority percentage interest in the unpaid amount of the notes or other obligations consent to the waiver of this requirement. The mortgage broker-dealer may not require investors to consent to this waiver prior to issuing its recommendation to sell REO.

(3) Regardless of whether an appraisal is required or furnished pursuant to subsection (2) of this section, investors holding a majority percentage interest in the unpaid amount of the notes or other obligations may direct the mortgage broker-dealer to obtain an appraisal or a new appraisal that is dated within twelve months of the mortgage broker-dealer's recommendation. The costs of such an appraisal shall be the responsibility of the mortgage paper security investors unless the mortgage broker-dealer agrees to pay for the appraisal.

(4) The disclosure document required by subsection (1) of this section shall disclose the following:

(a) A summary of the purchase and sale agreement;

(b) The estimated expenses and other disbursements from the sale proceeds together with the estimated net proceeds to investors if the sale is approved;

(c) A summary of property marketing completed prior to receipt of the purchase and sale agreement;

(d) Estimated marketing period necessary to obtain fair market value of the property established by the current appraisal, if an appraisal is required under subsection (2) or (3) of this section;

(e) Current appraised value or a real estate broker's opinion of value pursuant to WAC 460-33A-038 of the property, as well as the appraised value of the property at the time the loan was originated, if an appraisal or opinion of value is required under subsection (2) or (3) of this section;

(f) Current tax assessed value of the property, as well as the tax assessed value at the time the loan was originated;

(g) A summary of the reasons for which the mortgage broker-dealer is making the recommendation to investors to accept the purchase and sale agreement;

(h) A summary of the options available to investors should they elect to reject the purchase and sale agreement;

(i) The right of investors to obtain upon written request a list of all investors holding an interest in the property subject to the purchase and sale agreement and their respective addresses; and

(j) The right of investors holding a majority percentage of the interest in the property to remove the mortgage broker-dealer as the servicing agent in accordance with WAC 460-33A-035(11).

(5) If the terms of the purchase and sale agreement include seller financing, the disclosure document required in this section shall disclose the following in addition to the disclosure required under subsection (4) of this section:

(a) A loan application completed by the prospective buyer;

(b) The credit report of the prospective buyer;

(c) The financial statements of the prospective buyer, if available;

(d) A comparison of the loan terms in the original offering with those proposed in the purchase and sale agreement; and

(e) A summary of the options available to an individual investor who does not wish to participate in the loan should investors holding a majority percentage of the interest in the property accept the purchase and sale agreement.

(6) The disclosure document required in this section shall be sent to all the investors holding an interest in the property subject to the purchase and sale agreement at their last known addresses at least ten days prior to the closing date of the sale.

[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. 12-11-087, § 460-33A-037, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-037, filed 11/7/01, effective 12/8/01.]

WAC 460-33A-038 Real estate broker's opinion of value in the sale of real estate owned property. (1) As an alternative to the requirement to obtain an updated appraisal in the sale of real estate owned property pursuant to WAC 460-33A-037(2), the mortgage broker-dealer may obtain a real estate broker's opinion of value which discloses the following:

(a) The identity of the client and any intended users, by name or type;

(b) The intended use of the opinion of value;

(c) The identity of the real estate involved in the opinion of value, including the physical and economic property characteristics relevant to the property;

(d) The purpose of the opinion of value, including the type and definition of value and its source;

(e) The effective date of the opinion of value;

(f) Sufficient information to disclose to the client and any intended users of the opinion of value the scope of work used to develop the opinion of value;

(g) All assumptions, hypothetical conditions, and limiting conditions that affected the analyses, opinions, and conclusions;

(h) The information analyzed, the procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;

(i) The use of the real estate existing as of the date of value and the use of the real estate reflected in the opinion of value; and, when the purpose of the assignment is market value, a description of the rationale and support of the real estate broker's opinion of the highest and best use of the real estate; and

(j) The qualifications of the real estate broker relating to the preparation of the opinion of value.

(2) The real estate broker's opinion of value must be in writing and be signed by the real estate broker. The mortgage broker-dealer must maintain a copy of the opinion of value in accordance with WAC 460-33A-115 (1)(l).

(3) The written consent of any real estate broker who is named as having prepared an opinion of value in connection with the mortgage paper securities offering shall be kept on file by the mortgage broker-dealer. The mortgage broker-dealer must maintain a copy of the written consent of the real estate broker in accordance with WAC 460-33A-115 (1)(l).

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-038, filed 11/7/01, effective 12/8/01.]

WAC 460-33A-040 Net worth or bond requirement. (1) All persons and entities meeting the definition of a mortgage broker-dealer must meet and maintain one of the following at all times:

(a) A minimum tangible net worth, as determined by generally accepted accounting principles, of the greater of one hundred thousand dollars or ten percent of the amount of securities registered pursuant to this chapter up to a maximum of one million dollars; or

(b) File a surety bond in a form acceptable to the securities administrator with a face amount of the greater of one hundred thousand dollars or one percent of the amount of securities registered pursuant to this chapter up to a maximum of two hundred fifty thousand dollars; or

(c) In the event the mortgage broker-dealer and any affiliate does not handle the funds of investors and borrowers, minimum tangible net worth of five thousand dollars, as determined by generally accepted accounting principles.

(2) Every mortgage broker-dealer must maintain a positive net worth, as determined by generally accepted accounting principles, at all times.

(3) Every mortgage broker-dealer that fails to comply with the net worth requirements set forth in this section must inform the securities division of such failure within seventy-two hours at which time all sales of securities must be suspended.

[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. 12-11-087, § 460-33A-040, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-040, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-040, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.060 and 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-040, filed 10/20/86. Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-040, filed 1/13/83.]

WAC 460-33A-055 Escrow account. (1) **Escrow account required.** All funds received from investors to purchase mortgage paper securities shall be deposited within forty-eight hours of receipt in an escrow account acceptable to the director. All checks by which purchases or investments are made shall be made payable to the escrow account.

(2) **Escrow agent.** The escrow account shall be maintained in a financial institution as set forth in WAC 460-33A-015(6), with an escrow agent registered under chapter 18.44 RCW, or with some other independent escrow agent acceptable to the director. The entity acting as the escrow agent must be independently audited or examined, in a manner acceptable to the director, on a regular basis.

(3) **Disbursements from escrow account.** All necessary disbursements shall be made from the escrow account. Funds held in the escrow account shall be returned to investors on the sixty-first day from deposit in the account if the funds have not previously been disbursed following the recordation of the applicable instrument in accordance with WAC 460-33A-060(1).

(4) **Interest on funds held in escrow account.** No interest earned on escrow account funds shall be paid to the mortgage broker-dealer or its affiliates.

(5) **Prohibition on commingling funds of mortgage broker-dealer in escrow account.** Funds belonging to the mortgage broker-dealer shall not be commingled in the escrow account except insofar as the mortgage broker-dealer purchases mortgage paper securities for its own account. Payments to which a mortgage broker-dealer is entitled in connection with a particular loan or sale of mortgage paper securities shall be promptly distributed to the mortgage broker-dealer upon the closing of the loan or the recordation of the applicable instrument in accordance with WAC 460-33A-060(1).

(6) **Contents of escrow agreement.** The escrow account required to be maintained pursuant to WAC 460-33A-055 shall be governed by an agreement that provides:

(a) Funds may be disbursed from the escrow account only to a specific loan escrow, where funds will be disbursed only upon closing and recordation, or to return the funds to the investors;

(b) Funds will not be held in the escrow account for more than sixty days without disbursing the funds and that funds maintained in such account shall be returned to the investor on the sixty-first day from deposit in the account;

(c) Funds held in the escrow account will not be subject to the mortgage broker-dealer's creditors;

(d) The escrow agent agrees that the escrow account is subject to examination at any reasonable time by the securities division; and

(e) The escrow agent agrees to follow the law of escrow and maintain its independence from all parties to the agreement, including the mortgage broker-dealer.

[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. 12-11-087, § 460-33A-055, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-055, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-055, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-055, filed 8/17/89, effective 9/17/89. Statutory Authority: RCW 21.20.250 and 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-055, filed 10/20/86. Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-055, filed 1/13/83.]

WAC 460-33A-060 Recordation. (1) **Instrument.** Every person acting as a mortgage broker-dealer or its agent selling mortgage paper securities must record the applicable instrument in the applicable place before any disbursement of funds takes place. Such recorded instrument must bear the name of the lien holder or beneficiary and not the name of the mortgage broker-dealer unless the mortgage broker-dealer is the actual lender. Such recorded instrument must reflect the amount or percentage of the loan purchased by the investor.

(2) **Notice to investors.** Every person acting as a mortgage broker-dealer or its agent selling mortgage paper securities must provide notice of recording to the investor within ten days of receipt by the mortgage broker-dealer of the

recorded instrument. The notice must be in writing and must include a copy of the recorded instrument.

[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. 12-11-087, § 460-33A-060, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-060, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-060, filed 1/13/83.]

WAC 460-33A-065 Service agreement. (1) Every person acting as a mortgage broker-dealer, or an agent or affiliate thereof, who undertakes to service a mortgage paper security shall have a written agreement with the investors setting forth specifically what services will be provided.

(2) The service agreement shall provide:

(a) That payments received on the note, bond or obligation be immediately deposited to a trust account and in accordance with the provisions of this rule;

(b) That such payments shall not be commingled with the assets of the servicing agent or used for any transaction other than the transaction for which the funds are received;

(c) That payments received on the note, bond or obligation shall be transmitted to the investors pro rata according to their respective interests within thirty-one days after receipt thereof by the agent. If the source for such payment is not the maker of the note, bond or obligation, the agent will inform the investors of the source for payment. A broker or servicing agent who transmits to the investors such broker's and/or servicing agent's own funds to cover payments due from the borrower but unpaid may recover the amount of such advances from the trust fund when the past due payment is received;

(d) That the servicing agent will file a request for notice of default upon any prior encumbrances and promptly notify the investors of any default on such prior encumbrances or on the note or other obligations subject to the servicing agreement;

(e) That any fee to be collected by the servicing agent shall be reasonable in relation to the services performed;

(f) That the servicing agent may not accept, provide, or charge any undisclosed compensation or realize any undisclosed remuneration;

(g) That in the event a borrower defaults on a loan or the investors acquire property that secured a loan, the servicing agent shall send, at least once every calendar quarter or ninety-day period, each investor a statement setting forth all income and expenses incurred in connection with the loan or the property during that period, or since the last statement, within fifteen days after the end of the calendar quarter or ninety-day period or receipt of an investor's request for a statement, until such time that the default has been cured or the property has been sold, at which time a final statement shall be provided to each investor;

(h) That any provision providing for the indemnification of the servicing agent shall not provide for indemnification by the investors for acts or omissions that constitute a violation of the Securities Act of Washington, chapter 21.20 RCW, or the rules adopted thereunder;

(i) That whenever the servicing agreement requires the consent or approval of the investors, the investors shall have a minimum of fifteen days from the date the request for consent or approval is sent by the servicing agent to approve or disapprove of the matter in writing unless a shorter period of time is permitted under this chapter or consented to in writing by investors holding interests representing a majority interest in the unpaid amount of the loan; and

(j) That the servicing agent will, upon request by an investor, provide a list of the investors holding an interest in a loan to the investor, along with the respective percentage interests in that loan held by each investor and their most recent mailing addresses on file with the servicing agent.

(3) The servicing agreement shall not provide for the payment of late fees, default interest, or other fees and expenses that are assessed against a borrower who has defaulted on a loan, but that are not paid prior to foreclosure, to the mortgage broker-dealer in the event the investors acquire the real property securing the loan at the foreclosure sale. The mortgage broker-dealer may, however, be compensated at a reasonable rate for services performed in pursuing foreclosure and the management or sale of property acquired by investors through foreclosure.

(4) Every person acting as a mortgage broker-dealer, or an agent or affiliate thereof, that provides servicing on loans sold as mortgage paper securities owes the duties of a fiduciary to each investor.

(5) Any notices to investors concerning the servicing of the loan in which they have invested, or property that has been acquired by investors through foreclosure, shall be sent to each investor at the investor's last known address.

[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. 12-11-087, § 460-33A-065, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-065, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-065, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-065, filed 1/13/83.]

WAC 460-33A-070 Origination and assignment. Every mortgage broker-dealer or his agent or affiliate that originates loan transactions and later intends to offer these as mortgage paper securities to investors must obtain the permission of the director. Every mortgage broker-dealer or its agent or affiliate that purchases or takes mortgage paper in its own name, whether for its own account or the account of others, and intends to offer such as mortgage paper securities to investors must disclose its interest in the property or the transaction and must not disburse funds from the escrow account until the applicable instrument has been properly recorded in the name of the investors.

[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. 12-11-087, § 460-33A-070, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-070, filed 11/7/01, effective 12/8/01; 86-21-107 (Order SDO-140-86), § 460-33A-070, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-070, filed 1/13/83.]

WAC 460-33A-075 Advertising. (1) No person effecting a transaction in mortgage paper securities shall advertise in any manner any statement or representation, with regard to any mortgage paper security, which is false, misleading or deceptive.

(2) Every mortgage broker-dealer or its agent shall file with the director seven calendar days prior to use, true copies of all advertising materials. If not disallowed by written

notice or otherwise within seven calendar days from the date filed, the material may be disseminated. No person shall use any such material in any way after the director gives written notice that such material contains any statement or omission that is false or misleading.

(3) All advertisements concerning the offer or sale of mortgage paper securities that are not rated by a nationally recognized statistical rating organization or insured against loss shall include the following legend: Mortgage paper securities are not rated or insured against loss and may be subject to substantial risks that are further described in the general and specific offering circulars. Past performance is not a guarantee of future results. Investors are urged to read the general and specific offering circulars prior to investing.

[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. 12-11-087, § 460-33A-075, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-075, filed 11/7/01, effective 12/8/01; 86-21-107 (Order SDO-140-86), § 460-33A-075, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-075, filed 1/13/83.]

WAC 460-33A-080 Registration and examination of mortgage broker-dealers. (1) Every person acting as a mortgage broker-dealer, unless otherwise exempt, must first obtain a broker-dealer's license under the provisions of this chapter.

(2) Every applicant under this section shall provide the director proof of compliance with WAC 460-33A-040.

(3) Every applicant for registration as a mortgage broker-dealer shall file a completed mortgage broker-dealer application form, together with the applicable filing fee.

(4)(a) Every applicant under this section shall submit to the director proof that the individual applicant, an officer if the applicant is a corporation, a manager if the applicant is a limited liability company, or a general partner if the applicant is a partnership has passed the uniform securities agent law examination (series 63) within the last two years.

(b) Any individual out of the business of effecting transactions in securities for less than two years and who has previously passed the required examination in (a) of this subsection or the Washington state securities examination shall not be required to retake the examination in order for the mortgage broker-dealer to be eligible for registration under this chapter.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-080, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.070 and 21.20.450. 95-16-026, § 460-33A-080, filed 7/21/95, effective 8/21/95. Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-080, filed 8/17/89, effective 9/17/89. Statutory Authority: RCW 21.20.060 and 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-080, filed 10/20/86. Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-080, filed 1/13/83.]

WAC 460-33A-081 Expiration of mortgage broker-dealer registration, renewal procedure. A license issued to a mortgage broker-dealer shall expire on the expiration date of the securities registration of the mortgage paper securities offered by the mortgage broker-dealer. The license shall be renewed, or if not renewed, shall terminate at the expiration of the issuer's securities registration.

[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. 12-11-087, § 460-33A-081, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-081, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.070 and 21.20.450. 95-16-026, § 460-33A-081, filed 7/21/95, effective 8/21/95.]

WAC 460-33A-085 Registration and examination of mortgage securities salespersons. (1) Every person acting as a mortgage securities salesperson, unless otherwise exempt, must first obtain a salesperson's license under the provisions of this chapter and be employed by a broker-dealer or mortgage broker-dealer.

(2) Every applicant under this section shall file a completed Form U-4, together with the applicable filing fee.

(3) Every applicant under this section shall submit proof of passage of the uniform securities agent law examination (series 63) within the last two years.

[Statutory Authority: RCW 21.20.070 and 21.20.450. 95-16-026, § 460-33A-085, filed 7/21/95, effective 8/21/95. Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-085, filed 8/17/89, effective 9/17/89. Statutory Authority: RCW 21.20.070, 21.20.080 and 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-085, filed 10/20/86. Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-085, filed 1/13/83.]

WAC 460-33A-086 Expiration of mortgage securities salesperson registration, renewal procedure. A license issued to a mortgage securities salesperson shall expire on the expiration date of the securities registration of the mortgage paper securities offered by the mortgage broker-dealer. The license shall be renewed, or if not renewed, shall terminate at the expiration of the issuer's securities registration.

[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. 12-11-087, § 460-33A-086, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-086, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.070 and 21.20.450. 95-16-026, § 460-33A-086, filed 7/21/95, effective 8/21/95.]

WAC 460-33A-090 Dishonest and unethical practices—Mortgage broker-dealers. The phrase "dishonest and unethical practices" as used in RCW 21.20.110 (1)(g) includes the following acts by mortgage broker-dealers or mortgage salespersons:

(1) To cause investors to sign reconveyances of title, quit claim deeds, or any other like instruments before such instruments are required in connection with some transaction such as payoff or foreclosure.

(2) To fail to deliver, within a reasonable time, to the investor proceeds, received by the mortgage broker-dealer, of sale, refinancing, or foreclosure of an obligation owned by the investor.

(3) To engage in any dishonest or unethical practice as set forth in WAC 460-21B-060 or 460-22B-090.

(4) To fail to comply with the material terms of agreements between the mortgage broker-dealer and the investors in mortgage paper securities.

(5) To obtain an agreement from investors in mortgage paper securities that provides for the indemnification of the mortgage broker-dealer or its affiliates by investors for violations of the Securities Act of Washington, chapter 21.20 RCW, or the rules adopted thereunder.

[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. 12-11-087, § 460-33A-090, filed 5/17/12, effective 6/17/12. Statutory

Authority: RCW 21.20.450. 01-23-002, § 460-33A-090, filed 11/7/01, effective 12/8/01; 86-21-107 (Order SDO-140-86), § 460-33A-090, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-090, filed 1/13/83.]

WAC 460-33A-095 Fiduciary duty—Mortgage broker-dealers. A mortgage broker-dealer owes the duties of a fiduciary to investors in mortgage paper securities. For the purposes of this section, examples of these duties include, but are not limited to, the following:

(1) A mortgage broker-dealer must act in the best interests of and in the utmost good faith toward the investors in mortgage paper securities;

(2) In the event a conflict arises in connection with a mortgage broker-dealer acting as an agent for both mortgage borrowers and investors in mortgage paper securities, every mortgage broker-dealer shall resolve the conflict in favor of the investors in mortgage paper securities;

(3) A mortgage broker-dealer shall disclose any potential and actual conflicts of interest it may have in mortgage paper securities transactions to the prospective investors in mortgage paper securities;

(4) A mortgage broker-dealer must comply with the material terms of agreements with investors in mortgage paper securities, including servicing and participation agreements;

(5) A mortgage broker-dealer must use reasonable care in performing its duties; and

(6) A mortgage broker-dealer has a duty to allow reasonable access to each investor to pertinent records concerning loans in which the investor has invested and property in which the investor has acquired an interest through foreclosure.

[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. 12-11-087, § 460-33A-095, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-095, filed 11/7/01, effective 12/8/01.]

WAC 460-33A-100 Written statement. Every person selling a mortgage paper security that is required to be registered under the regulations of this chapter shall obtain a signed receipt for the general and the specific offering circulars containing all the applicable information required by WAC 460-33A-025 and 460-33A-030 from the investor or his agent before the investor shall be obligated to fund the transaction. No person shall permit the investor to sign such receipt if any of the required information is omitted. The mortgage broker-dealer shall retain an executed copy of receipt for four years.

[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. 12-11-087, § 460-33A-100, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-100, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-100, filed 1/13/83.]

WAC 460-33A-105 Appraisals. (1) An appraisal of each parcel of real property or other property which secures or relates to a transaction subject to the provisions of this chapter shall be made by an independent appraiser. The appraisal shall be kept on file by the mortgage broker-dealer for four years.

(2) The appraisal shall be prepared and reported in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by The Appraisal Foundation.

(3) The appraisal shall reflect the value of the property on an "as is" basis not "subject to repair," "per plans and specifications," or otherwise.

(4) The appraisal shall conform to the following requirements:

(a) The appraisal shall be prepared by a competent, independent appraiser acceptable to the administrator; and

(b) The appraiser shall be appropriately licensed in conformance with The Real Estate Appraiser Act, chapter 18.140 RCW.

(5) The effective date of the appraisal must be within the twelve-month period prior to the sale of the mortgage paper security.

(6) The written consent of any appraiser who is named as having prepared an appraisal in connection with the mortgage paper securities offering shall be kept on file by the mortgage broker-dealer.

(7) In lieu of the appraisal required by this section, the mortgage broker-dealer may elect to rely on the most recent tax assessment valuation of each parcel of real property.

(8) The specific offering circular shall disclose the ratio of 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, compared to the most recent tax assessment valuation of the real property or the appraised amount, if an appraisal was obtained pursuant to this section. If the loan to value ratio is disclosed based on the appraised value of the real property, the specific offering circular shall also disclose the most recent tax assessment valuation of the real property.

[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. 12-11-087, § 460-33A-105, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-105, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-105, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-105, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-105, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-105, filed 1/13/83.]

WAC 460-33A-110 Financial statements and annual reports. Every mortgage broker-dealer shall file with the director upon registration under WAC 460-33A-080 and annually, a report containing financial statements prepared in accordance with generally accepted accounting principles by an independent certified public accountant, or by the chief executive and accounting officers of the mortgage broker-dealer who shall certify that they each have verified the material accuracy and completeness of the information contained therein. The annual report shall include, but not be limited to the receipt and disposition of all funds handled in connection with transactions subject to the rules of this chapter. The annual report shall be filed with the director within one hundred twenty days after the close of the period of the report unless, for good cause shown, the director in writing, extends the time therefor. The report shall contain the following:

(1) Total number of sales, as principal or agent, subject to the rules of this chapter during the period; and

(2) Total dollar volume of such sales.

[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. 12-11-087, § 460-33A-110, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-110, filed 11/7/01, effective 12/8/01; 86-21-107 (Order SDO-140-86), § 460-33A-110, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-110, filed 1/13/83.]

WAC 460-33A-115 Books and records. Each mortgage broker-dealer has a duty to make and keep current in this state books and records relating to its business. This duty includes the duty to make, keep and preserve the records referenced in WAC 460-21B-050, as well as the following records concerning sales of mortgage paper securities and other asset-backed securities:

(1) A file for each loan which the mortgage broker-dealer has funded through sales of mortgage paper securities and other asset-backed securities, including securities not registered pursuant to chapter 460-33A WAC, which file shall contain the following:

(a) A copy of each appraisal or tax assessment valuation;

(b) Copies of all documents of title representing current interests in the real property securing the loan;

(c) Copies of title insurance policies and any other insurance policies on the real property securing the loan;

(d) Evidence of payments for the purchase of securities in the loan to include copies of checks submitted by investors, ACH payments, and records of other electronic payments;

(e) A copy of the signed participation agreement for each investor;

(f) The acknowledgment of receipt by each investor of the specific and general offering circulars or other disclosure materials;

(g) The subscription agreement for each investor;

(h) A copy of the investor suitability questionnaire for each investor and documentation of the mortgage broker-dealer's determination that an investment in mortgage paper securities or other asset-backed securities is suitable for each investor in accordance with RCW 21.20.702 and WAC 460-33A-031. If the mortgage broker-dealer has not verified the suitability of an investment in mortgage paper securities for an investor within the prior twelve months, the mortgage broker-dealer shall conduct a reasonable inquiry to verify that further investment in mortgage paper securities is suitable based on the criteria set forth in WAC 460-33A-031 and document such a determination. As an alternative to maintaining this documentation in the loan files, the mortgage broker-dealer may maintain this documentation in separate files provided a list of all investors participating in the loan is included in the loan file with an indication of the location of this documentation for each investor;

(i) The specific offering circular for the offering or other offering materials provided in sales of asset-backed securities;

(j) All correspondence with investors relating to the loan;

(k) The loan application of the borrower and all supporting documents such as the credit report on the borrower;

(l) Copies of all service agreements with investors relating to the loan;

(m) Copies of the escrow instructions and settlement statements relating to the loan;

(n) Copies of all real estate broker's opinions of value obtained in accordance with WAC 460-33A-038 and their written consent to use their opinions of value in connection with an offering of mortgage paper securities.

(2) A file for each loan for which the mortgage broker-dealer is soliciting funds through the sale of mortgage paper or other asset-backed securities, which file shall contain the same items required under subsection (1) of this section except for those items which are not yet available because the mortgage paper or asset-backed security has not yet been sold.

(3) A file containing copies of all service agreements required under WAC 460-33A-065.

(4) Ledgers (or other records) reflecting all assets, liabilities, income, expense, and capital accounts.

(5) Ledgers, accounts (or other records) itemizing separately each cash account of every customer including, but not limited to, all funds in the mortgage broker's escrow and trust account, all proceeds of sale, refinancing, foreclosure, or similar transaction involving the real or personal property securing a loan funded by sales of mortgage paper, and all moneys collected from the borrower on behalf of the investors.

(6) A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of net liquid assets as of the trial balance date pursuant to WAC 460-33A-040. Such trial balances and computations shall be prepared currently at least once a month.

(7) A questionnaire or application for employment executed by each agent of such broker-dealer, which questionnaire or application shall be approved in writing by an authorized representative of such broker-dealer and shall contain at least the following information with respect to each such person:

(a) His or her name, address, Social Security number, and the starting date of his or her employment or other association with the broker-dealer.

(b) His or her date of birth.

(c) The educational institutions attended by him or her and whether or not he or she graduated therefrom.

(d) A complete, consecutive statement of all his or her business connections for at least the preceding ten years, including his or her reason for leaving each prior employment, and whether the employment was part time or full time.

(e) A record of any denial of a certificate, membership or registration, and of any disciplinary action taken, or sanction imposed, upon him or her by any federal or state agency, or by any national securities exchange or national securities association, including a record of any finding that he or she was a cause of any disciplinary action or had violated any law.

(f) A record of any denial, suspension, expulsion or revocation of a certificate, membership or registration of any broker-dealer with which he or she was associated in any capacity when such action was taken.

(g) A record of any permanent or temporary injunction entered against him or her or any broker-dealer with which he or she was associated in any capacity at the time such injunction was entered.

(h) A record of any arrests, indictments or convictions for any felony or any misdemeanor, except minor traffic offenses, of which he or she has been the subject.

(i) A record of any other name or names by which he or she has been known or which he or she has used.

(8) A file containing all written complaints and memoranda prepared by the mortgage broker-dealer summarizing each oral complaint received from investors in mortgage paper securities or other securities sold by the mortgage broker-dealer.

[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. 12-11-087, § 460-33A-115, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-115, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-115, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-115, filed 10/20/86.]

WAC 460-33A-116 Access to loan records by investors. (1) An investor in mortgage paper securities has a right to access the books and records maintained by a mortgage broker-dealer concerning the loan underlying the mortgage paper securities purchased by that investor, as well as records concerning property in which an investor has acquired an interest through foreclosure of loans sold as mortgage paper securities, to the extent it is reasonably necessary in the interest of the investor.

(2) Every mortgage broker-dealer shall provide investors in mortgage paper securities and their agents and attorneys access to the books and records required to be maintained by WAC 460-33A-115 (1) and (2), except for the records set forth in WAC 460-33A-115 (1)(d) through (h) to the extent those records concern investments in mortgage paper securities by persons other than the requestor, concerning loans in which the investors have invested. Every mortgage broker-dealer shall provide investors in mortgage paper securities and their agents and attorneys the opportunity to inspect and copy books and records during ordinary business hours at the mortgage broker-dealer's principal office if the investor or its agent or attorney gives the mortgage broker-dealer notice of the investor's demand at least five business days before the date on which the shareholder wishes to inspect and copy. A mortgage broker-dealer may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(3) Every mortgage broker-dealer shall furnish to an investor in mortgage paper securities, and to the legal representative of a deceased investor or investor under legal disability:

(a) Without demand, any information concerning the mortgage paper securities purchased that is reasonably required for the proper exercise of the investor's rights under the participation agreement or this chapter; and

(b) On demand, any other information concerning the mortgage paper securities purchased, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

[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. 12-11-087, § 460-33A-116, filed 5/17/12, effective 6/17/12.]

WAC 460-33A-120 Preservation of records. The records required in WAC 460-33A-115 of these rules shall be preserved according to the following requirements:

(1) Every mortgage broker-dealer shall preserve in this state for a period of not less than three years, the first two years of which shall be in an easily accessible place:

(a) All records required to be made pursuant to WAC 460-33A-115 of these rules.

(b) All check books, bank statements, cancelled checks and cash reconciliations except for the loan files required to be kept by WAC 460-33A-115(1) which shall be kept in an accessible place for the life of the loans involved.

(c) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of the broker-dealer, as such.

(d) Originals of all communications received and copies of all communications sent by the broker-dealer (including inter-office memoranda and communications) relating to his business, as such.

(e) All trial balances, computations of net liquid assets (and working papers in connection therewith), financial statements, branch office reconciliations and internal audit working papers, relating to the business of the broker-dealer, as such.

(f) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(g) All written agreements (or copies thereof) entered into by the mortgage broker-dealer relating to its business as such, including agreements with respect to any account.

(2) Every mortgage broker-dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all charter documents, minute books and stock certificate books.

(3) Every mortgage broker-dealer shall maintain and preserve in an easily accessible place all records required under WAC 460-33A-115(7) of these rules until at least three years after the agent has terminated his or her employment and any other connection with the broker-dealer.

(4) If a mortgage broker-dealer who has been subject to the requirements of this section ceases to hold a certificate as a mortgage broker-dealer, such mortgage broker-dealer shall, for the remainder of the periods of time specified in this section, continue to preserve the records which it theretofore preserved pursuant to this section.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-120, filed 11/7/01, effective 12/8/01; 86-21-107 (Order SDO-140-86), § 460-33A-120, filed 10/20/86.]

WAC 460-33A-125 Notice of changes by mortgage broker-dealers. (1) Each mortgage broker-dealer shall, upon any material change in the information contained in its application for registration promptly file an amendment to such application setting forth the changed information (and in any event within thirty days after the change occurs).

(2) Each mortgage broker-dealer shall notify the director of the employment of any new agent in Washington and of the termination of employment of any agent in Washington, giving the full name and Social Security number of the individual involved, the date of employment or termination, and the location of the office in which he or she was or will be employed by submitting a completed FINRA Form U-4 to

the director or the director's designee within twenty-one days after the event occurs.

(3) Each mortgage broker-dealer shall notify the director of the termination of employment of any agent in Washington by submitting a completed FINRA Form U-5 to the director or the director's designee, within thirty days after the event occurs.

[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. 12-11-087, § 460-33A-125, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-125, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-125, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-125, filed 10/20/86.]

WAC 460-33A-130 Notice of complaint. Each mortgage broker-dealer who has filed a complaint against any of its partners, officers, directors, agents licensed in Washington with any law enforcement agency, any other regulatory agency having jurisdiction over the securities industry, or with any bonding company regarding any loss arising from alleged acts of such person, shall send a copy of such complaint to the director, within ten days following its filing with such other agency or bonding company.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-130, filed 11/7/01, effective 12/8/01; 86-21-107 (Order SDO-140-86), § 460-33A-130, filed 10/20/86.]