

1993 Assembly Bill 816

Date of enactment: **March 3, 1994**
Date of publication*: **March 17, 1994**

1993 WISCONSIN ACT 127

AN ACT *to repeal* 452.14 (3) (e); *to renumber* 452.01 (1); *to amend* 452.01 (2) (a), 452.01 (2) (d) and 452.01 (2) (f); and *to create* 452.01 (1e), 452.01 (1m), 452.01 (3e), 452.01 (3m), 452.01 (3s), 452.01 (5g), 452.01 (5m), 452.01 (5r), 452.01 (10), 452.133, 452.135, 452.137, 452.138 and 452.139 of the statutes, **relating to:** the duties of real estate brokers to parties to a transaction and superseding certain common law bases for the duties and liability of real estate brokers.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 452.01 (1) of the statutes is renumbered 452.01 (1s).

SECTION 2. 452.01 (1e) of the statutes is created to read:

452.01 (1e) “Adverse fact” means any of the following:

(a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

1. Significantly and adversely affecting the value of the property.
2. Significantly reducing the structural integrity of improvements to real estate.
3. Presenting a significant health risk to occupants of the property.

(b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations under a contract or agreement made concerning the transaction.

SECTION 3. 452.01 (1m) of the statutes is created to read:

452.01 (1m) “Agency agreement” means a written agreement between a broker and a client under s. 452.135 (1).

SECTION 4. 452.01 (2) (a) of the statutes is amended to read:

452.01 (2) (a) For another, and for commission, money or other thing of value, ~~sells, exchanges, buys or rents, negotiates~~ or offers or attempts to negotiate a sale, exchange, purchase or rental of an interest or estate in real estate;

SECTION 5. 452.01 (2) (d) of the statutes is amended to read:

452.01 (2) (d) For another and for commission, money or other thing of value, ~~sells, exchanges, buys or rents, negotiates~~ or offers or attempts to negotiate a sale, exchange, purchase or rental of any business, its goodwill, inventory, fixtures or an interest therein; or

SECTION 6. 452.01 (2) (f) of the statutes is amended to read:

452.01 (2) (f) For another, and for commission, money or other thing of value, ~~sells, exchanges or buys, negotiates~~ or offers or attempts to negotiate a sale, exchange or purchase of a time share.

SECTION 7. 452.01 (3e) of the statutes is created to read:

452.01 (3e) “Brokerage service” means any service described under sub. (2) (a) to (g) provided by a broker to another person.

SECTION 8. 452.01 (3m) of the statutes is created to read:

452.01 (3m) “Client” means a party to a transaction who has an agency agreement with a broker for brokerage services.

SECTION 9. 452.01 (3s) of the statutes is created to read:

452.01 (3s) “Customer” means a party to a transaction who is provided brokerage services by a broker but who is not a client.

SECTION 10. 452.01 (5g) of the statutes is created to read:

452.01 (5g) “Material adverse fact” means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party’s decision to enter into a contract or agreement concerning a transaction or affects or would affect the party’s decision about the terms of such a contract or agreement.

SECTION 11. 452.01 (5m) of the statutes is created to read:

452.01 (5m) “Negotiate” means to act as an intermediary between the parties to a transaction, including doing any of the following:

(a) Facilitating or participating in the parties’ discussion of the terms of a contract or agreement concerning a transaction.

(b) Completing, when requested by a party, appropriate department–approved forms or other writings to document the party’s proposal consistent with the party’s intent.

(c) Presenting to a party the proposals of other parties to the transaction and informing the party receiving a proposal of the advantages and disadvantages of the proposal.

SECTION 12. 452.01 (5r) of the statutes is created to read:

452.01 (5r) “Party” means a person seeking to sell, exchange, buy or rent an interest in real estate, a business or a business opportunity. “Party” includes a person who seeks to grant or accept an option to buy, sell or rent an interest in real estate, a business or a business opportunity.

SECTION 13. 452.01 (10) of the statutes is created to read:

452.01 (10) “Transaction” means the sale, exchange, purchase or rental of, or the granting or acceptance of an option to sell, exchange, purchase or rent, an interest in real estate, a business or a business opportunity.

SECTION 14. 452.133 of the statutes is created to read:

452.133 Duties of brokers. (1) DUTIES TO ALL PARTIES TO A TRANSACTION. In providing brokerage services to a party to a transaction, a broker shall do all of the following:

(a) Provide brokerage services to all parties to the transaction honestly, fairly and in good faith.

(b) Diligently exercise reasonable skill and care in providing brokerage services to all parties.

(c) Disclose to each party all material adverse facts that the broker knows and that the party does not know or

cannot discover through reasonably vigilant observation, unless the disclosure of a material adverse fact is prohibited by law.

(d) Keep confidential any information given to the broker in confidence, or any information obtained by the broker that he or she knows a reasonable party would want to be kept confidential, unless the information must be disclosed under par. (c) or s. 452.23 or is otherwise required by law to be disclosed or the party whose interests may be adversely affected by the disclosure specifically authorizes the disclosure of particular confidential information. A broker shall continue to keep the information confidential after the transaction is complete and after the broker is no longer providing brokerage services to the party.

(e) Provide accurate information about market conditions that affect a transaction, to any party who requests the information, within a reasonable time of the party’s request, unless disclosure of the information is prohibited by law.

(f) Account for all property coming into the possession of a broker that belongs to any party within a reasonable time of receiving the property.

(g) When negotiating on behalf of a party, present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

(2) DUTIES TO A CLIENT. In addition to his or her duties under sub. (1), a broker providing brokerage services to his or her client shall do all of the following:

(a) Loyal represent the client’s interests by placing the client’s interests ahead of the interests of any other party, unless loyalty to a client violates the broker’s duties under sub. (1) or s. 452.137 (2).

(b) Disclose to the client all information known by the broker that is material to the transaction and that is not known by the client or discoverable by the client through reasonably vigilant observation, except for confidential information under sub. (1) (d) and other information the disclosure of which is prohibited by law.

(c) Fulfill any obligation required by the agency agreement, and any order of the client that is within the scope of the agency agreement, that are not inconsistent with another duty that the broker has under this chapter or any other law.

(3) PROHIBITED CONDUCT. In providing brokerage services, a broker may not do any of the following:

(a) Accept any fee or compensation related to the transaction from any person other than the broker’s client, unless the broker has the written consent of all parties to the transaction.

(b) Act in a transaction on the broker’s own behalf, on behalf of the broker’s immediate family or firm, or on behalf of any organization or business entity in which the broker has an interest, unless the broker has the written consent of all parties to the transaction.

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(c) Except as provided in s. 452.19, refer, recommend or suggest to a party to the transaction the services of an individual or entity from which the broker may receive compensation for a referral or in which the broker has an interest, unless the broker has disclosed the fact that he or she may receive compensation or has disclosed his or her interest in the individual or entity providing the services.

SECTION 15. 452.135 of the statutes is created to read:

452.135 Confirmation and disclosure of relationship. (1) No broker may provide brokerage services without an agency agreement that authorizes the broker to provide those brokerage services. The agency agreement shall contain a statement of the terms and conditions of the brokerage services that the broker will provide, including a statement required under s. 452.138, if applicable.

(2) No broker may provide brokerage services to a party to a transaction unless the broker has provided to the party a written agency disclosure form containing all of the following:

(a) A statement of which party is the broker's client or, if the broker is providing brokerage services to more than one client under s. 452.137, a statement of which parties are the broker's clients.

(b) A statement of the broker's duties to his or her client under s. 452.133 (2).

(c) A statement of the broker's duties to a party under s. 452.133 (1).

(d) A statement regarding confidentiality that shall be in the following form:

NOTICE TO CLIENTS AND CUSTOMERS

A BROKER IS REQUIRED TO MAINTAIN THE CONFIDENTIALITY OF ALL INFORMATION GIVEN TO THE BROKER IN CONFIDENCE AND OF ALL INFORMATION OBTAINED BY THE BROKER THAT HE OR SHE KNOWS A REASONABLE PARTY WOULD WANT TO BE KEPT CONFIDENTIAL, UNLESS THE INFORMATION IS REQUIRED TO BE DISCLOSED BY LAW. THE FOLLOWING INFORMATION IS REQUIRED TO BE DISCLOSED BY LAW:

1. MATERIAL ADVERSE FACTS, AS DEFINED IN SECTION 452.01 (5g) OF THE WISCONSIN STATUTES.

2. ANY FACTS KNOWN BY THE BROKER THAT CONTRADICT ANY INFORMATION INCLUDED IN A WRITTEN INSPECTION REPORT ON THE PROPERTY OR REAL ESTATE THAT IS THE SUBJECT OF THE TRANSACTION.

TO ENSURE THAT THE BROKER IS AWARE OF WHAT SPECIFIC INFORMATION YOU CONSIDER CONFIDENTIAL, YOU MAY LIST THAT INFORMATION IN THE SPACE BELOW THAT IS MARKED "CONFIDENTIAL INFORMATION". AT A LATER TIME, YOU MAY ALSO PROVIDE THE BROKER WITH OTHER WRITTEN NOTIFICATION

OF WHAT INFORMATION YOU CONSIDER TO BE CONFIDENTIAL.

CONFIDENTIAL INFORMATION:

.....

(e) Any additional information that the broker determines is necessary to clarify the broker's relationship to his or her client or customer.

SECTION 16. 452.137 of the statutes is created to read:

452.137 Brokers providing services to more than one client in a transaction. (1) No broker may provide brokerage services to more than one client in a transaction without an agency agreement under s. 452.135 (1) with each client and a written consent to multiple representation. The consent to multiple representation shall contain a statement of the broker's duties under s. 452.133 (1) to a party to the transaction who is not a client, a statement of the broker's duties to the client under s. 452.133 (2), and a statement that the clients understand the broker's duties and consent to the broker providing brokerage services to more than one client. The consent to multiple representation may contain additional disclosures by the broker or additional agreements between the broker and the clients that do not violate any duty of a broker under this chapter.

(2) A broker who represents more than one client in a transaction owes the duties specified in s. 452.133 (2) to each client.

(3) If a broker is providing brokerage services to more than one client in a transaction, no client may be considered to know any information that the broker knows unless the broker informs the client of that information or the client has other actual knowledge of that information.

SECTION 17. 452.138 of the statutes is created to read:

452.138 Brokers providing services in more than one transaction. A broker may provide brokerage services simultaneously to more than one party in different transactions unless the broker agrees with a client that the broker is to provide brokerage services only to that client. If the broker and a client agree that the broker is to provide brokerage services only to that client, the agency agreement under s. 452.135 (1) shall contain a statement of that agreement.

SECTION 18. 452.139 of the statutes is created to read:

452.139 Changes in common law duties and liabilities of brokers and parties. (1) FIDUCIARY DUTIES OF BROKER. The duties of a broker specified in this chapter or in rules promulgated under this chapter shall supersede any fiduciary duties of a broker to a party based on common law principles of agency to the extent that those common law fiduciary duties are inconsistent with the duties specified in this chapter or in rules promulgated under this chapter.

(2) MISREPRESENTATION BY BROKER. (a) A client is not liable for a misrepresentation made by a broker in

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connection with the broker providing brokerage services, unless the client knows or should have known of the misrepresentation or the broker is repeating a misrepresentation made to him or her by the client.

(b) A broker who is providing brokerage services to a client and who retains another broker to provide brokerage services to that client is not liable for a misrepresentation made by the other broker, unless the broker knew or should have known of the other broker's misrepresentation or the other broker is repeating a misrepresentation made to him or her by the broker.

(c) Nothing in this subsection limits the liability of a

broker under s. 452.12 (3) (a) for misrepresentations made by an employe who is a broker. Nothing in this subsection limits the liability of a client for a misrepresentation that the client makes in connection with brokerage services.

SECTION 19. 452.14 (3) (e) of the statutes is repealed.

SECTION 20. Initial applicability. This act first applies to agreements for brokerage services made on the effective date of this SECTION.

SECTION 21. Effective date. This act takes effect on the first day of the 7th month beginning after publication.