



CLIFFORD OTTE

WISCONSIN STATE REPRESENTATIVE
27TH ASSEMBLY DISTRICT

April 23, 1998

To: The Members
Assembly Committee on Consumer Affairs

From: Representative Clifford Otte, Chair *CO*

MEMO

On April 23, the following clearinghouse rule was referred to the Assembly Committee on Consumer Affairs:

Clearinghouse Rule 98-008, relating to real estate brokers and real estate salespersons.

The deadline for committee action on these rules is May 26. A copy of the rules is herewith. If you are interested in requesting a hearing and/or submitting comments, please do so prior to May 8, 1998.

Shelton, Myra L.

From: Hansen, Clea
To: Shelton, Myra L.
Cc: Rittel, Donald R.; Cummings, Marlene A.
Subject: RE: CR 98-008-Relating to Real Estate Brokers/RE Salespersons
Date: Tuesday, April 28, 1998 9:41AM

DAN,
 Below is the reason for the repealing of
 RL 22.01(1(c) and (d)). Marlene said to
 send to you. If you have any questions
 please give us a call. Thanks + Have a
 Great Week!

Myra

Myra, these paragraphs were removed from the rule, because they are unnecessarily restrictive. The apprentice license permits a person to spend some time in a real estate broker's office and to gain first-hand information about the practices of the industry, as well as to be taking formal classes and preparing for the salesperson's and the broker's exam. If the person does not have a good knowledge of the English language or of other things, such as arithmetic, it should become pretty clear to the employing broker and the person that the person will have a problem passing the regular salesperson's exam. Furthermore, the broker may terminate the employment of the apprentice.

The regular broker's and salesperson's exam does contain questions on arithmetic and the terminology of real estate. Section 452.09 (3), Stats., also requires a broker or salesperson applicant to have a fair knowledge of the English language. So, ultimately, a person will need these knowledges to become a salesperson or broker.

In reality, very few people apply for apprentice licenses. Most people go to an approved school, obtain the pre-license education and take the licensing exam. Then they look for a broker who will employ them. Actually, some people might be better off becoming an apprentice before taking the licensing exam. They could, possibly, discover that they don't have the ability to function as a real estate agent and save the cost of taking the exam. The basic reason why people don't become apprentices is that brokers have very little monetary advantage in hiring them. Brokers are looking for producers whom they can put to working selling real estate. Furthermore, the industry has moved ever more toward using unlicensed personal assistants to help licensed people perform their work.

Let me know, if you need a copy of the rule proposal and/or the current rule.

From: Shelton, Myra L.
To: Hansen, Clea; Rittel, Donald R.; Cummings, Marlene A.; Haack, Pamela A.; Dusso, William
Subject: FW: CR 98-008-Relating to Real Estate Brokers/RE Salespersons
Date: Monday, April 27, 1998 4:13PM

Please note the rule reference which we received the inquiry on should be Section 32, for repealing RL 22.01(1(c) and (d) not RL 22.01(10(c) and (d). Thanks-Myra



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**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 98-008)**

TO: Ben Brancel
Speaker of the Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the DEPARTMENT OF REGULATION AND LICENSING is submitting in final draft form proposed rules relating to real estate brokers and real estate salespersons.

If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

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P. O. BOX 8935
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Administrative Rules in Final Draft Form

Department of Regulation and Licensing

Rule: Chs. RL 11 to 26

Relating to: Real Estate Brokers and Salespersons

Clearinghouse Rule: No. 98-008

Regulatory Boards

Accounting, Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Auctioneer, Barbering and Cosmetology, Chiropractic, Dentistry, Dietitians, Funeral Directors, Hearing and Speech, Medical, Nursing, Nursing Home Administrator, Optometry, Pharmacy, Physical Therapists, Psychology, Real Estate, Real Estate Appraisers, Social Workers, Marriage and Family Therapists and Professional Counselors, and Veterinary

Committed to Equal Opportunity in Employment and Licensing

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : **REPORT TO THE LEGISLATURE**
DEPARTMENT OF REGULATION : **ON CLEARINGHOUSE RULE 98-008**
AND LICENSING : **(s. 227.19 (3), Stats.)**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

This proposed rule-making order contains many amendments which relate to the definitions, statutory authority, and the form, style, placement, clarity, grammar, punctuation and plain language of the current rules.

Provisions are amended relating to the prelicense examinations and make the provisions similar to other rules of the department and boards in the department. These provisions relate to accommodations for persons with disabilities, an exemption from retaking the licensing examination that applies to persons serving in the armed forces of the United States who fail to renew their credential in a timely manner, and cheating on examinations. Provisions are amended relating to the passing score on the broker's and salesperson's prelicense examination. These sections establish procedures that testing experts agree are acceptable for establishing valid and reliable examinations. Provisions are repealed which require applicants for a temporary salesperson's permit to practice as an apprentice to either have graduated from an accredited high school or to pass a written examination covering general knowledge, including the ability to read and write the English language, a knowledge of arithmetic and the terminology used in the real estate business.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on February 26, 1998. Rick Staff, attorney, representing the Wisconsin Realtors Association, appeared and presented testimony. He suggested that s RL 24.03 (2) (a) should not be amended, as proposed. The board and the department concurred with this recommendation and the amendment has been dropped from this proposal. There were no other appearances nor were any written comments received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

All of the recommendations suggested in the Clearinghouse Report were accepted and appropriate changes, where applicable, were made except for:

Comment 5.a. which asks "...are the specified actions intended to be illustrative or inclusive?" The response is that they are illustrative; therefore the word "are" is not being replaced by the words "may include."

Comment 5.b., which asks "...should the definition indicate how a sale by the owner is handled?" The response is no, Chapter RL 16 has nothing to do with how a sale by the owner is handled.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION : LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 98-008)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to *repeal* RL 12.02 (4) and (5), 12.025 (3), ch. RL 13, 16.02 (2), 18.02 (3), 22.01 (1) (c) and (d), (5) and (7) (g), 23.05 and 24.02 (11); to *renumber* RL 11.02 (2) and 16.02 (3); to *renumber and amend* RL 22.01 (1) and (1) (a); to *amend* RL 11.01, 11.02 (intro.), 12.01 (1) (a), (c) 1. (title), 1., 2. (title), 2. and (2) (a), 12.02 (1) (intro.), 12.04 (2) (intro.), 16.02 (title), 16.07, 17.025, 18.02 (5) (intro.), 22.01 (1) (b), (e), (2), (3), (4), (6), (7) (a) to (f), (h), (j) to (L), (m) (intro.), (n), (8) (a) to (e), (9) (b), (c) and (d) and (10) (b) to (d), 23.02, 23.04 (1) and (2), 24.02 (7), 24.17 (3), 25.01 (1), 25.02 (1) (intro.), (a) and (b), 25.03 (3) (r) 9., 25.035 (1), 25.06 (2) (a) 2., the Note following 25.065 (1), 25.065 (7) and 25.066 (2) (b); to *repeal and recreate* RL 12.01 (1) (b), 12.02 (2), 16.06 (4) and 26.01; and to *create* RL 11.02 (2), (3), (4) and (6), 12.005, a Note following 12.02 (3) (c), 12.026, 12.04 (2) (a) 4., 16.02 (2), (3) and (4), 22.005, a Note following 24.03 (2) (d), a Note following 24.07 (2), and 25.035 (1) (a) and (b), relating to real estate brokers and real estate salespersons.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2), 452.05, 452.07 and 452.09 (5), Stats.

Statutes interpreted: ss. 452.01, 452.09, 452.10, 452.11, 452.12, 452.13
and 452.14, Stats.

This proposed rule-making order of the Department of Regulation and Licensing contains many amendments which relate to the definitions, the statutory authority, and the form, style, placement, clarity, grammar, punctuation and plain language of the current rules.

The following sections contain changes of a more substantive nature or are specifically identified to facilitate review of the proposal:

SECTION 7 repeals and recreates s. RL 12.01 (1) (b), so that the rule no longer says that no application may be processed until all questions are complete, but so that it says that the department shall review and make a determination on an original application within 60 days after a completed application is received by the department.

SECTION 11 repeals and recreates s. RL 12.02 (2), and removes the specific grade which must be attained in order to pass the prelicense broker's and salesperson's examination. This change makes the provisions similar to other rules of the department and boards in the department which permit the department to use procedures that testing experts agree are acceptable for establishing valid and reliable examinations.

SECTION 13 repeals provisions which relate to persons discharged or separated from active military service and who were licensed as a broker or salesperson, but not within one year preceding the renewal date. These provisions permit such persons to file an application for renewal of a license without passing an examination, provided that they file an application within 6 months after discharge or separation from active military service. These provisions are repealed, because s. 440.08 (4), Stats., and s. RL 12.04 were more recently promulgated and they adequately address all late renewal situations. This SECTION also repeals provisions which permit an applicant with disabilities to take an oral examination under certain circumstances. Current federal law addresses the issue of reasonable accommodations to persons with disabilities and the newly created Note following SECTION 12 calls attention to the issue of reasonable accommodations.

SECTION 14 repeals the provision which grants applicants who fail a licensing examination the right to request a written review of the results of the examination. The current provision is repetitive of the preceding paragraph in the rule.

SECTION 18 repeals chapter RL 13, relating to petitions for declaratory rulings. Procedures for declaratory rulings are governed by the provisions in s. 227.41, Stats.

SECTION 20 repeals the definition of "license" in chapter RL 16. SECTION 4 creates the definition in chapter RL 11.

SECTION 23 clarifies the provisions relating to when a licensee may use a pre-prepared addendum form which has been prepared by a broker or the broker's attorney. This section does not substantially change the current policy.

SECTION 26 repeals the definition of "department." Chapter RL 11 already defines the term.

SECTION 32 repeals provisions which require applicants for a temporary salesperson's permit to practice as an apprentice to either have graduated from an accredited high school or to pass a written examination covering general knowledge, including the ability to read and write the English language, a knowledge of arithmetic and the terminology used in the real estate business.

SECTION 35 repeals the requirement that an apprentice who has qualified for a salesperson's or a broker's license to surrender the apprentice license to his or her sponsoring broker before a salesperson's or broker's license is issued to him or her.

SECTION 42 repeals provisions which require licensees to send written notice to the department of address changes within 30 days after the change. Section 440.11, Stats., addresses such requirements.

SECTION 44 repeals the definition of "licensee."

The proposed rules were submitted to the Real Estate Board for comment, as required under s. 452.07 (2), Stats. The Real Estate Board supports their promulgation.

TEXT OF RULE

SECTION 1. RL 11.01 is amended to read:

RL 11.01 AUTHORITY. The rules in chs. RL 11 ~~through~~ to 26 are adopted by the department pursuant to ss. 227.11 (2), 440.03 (1); and 452.07, Stats.

SECTION 2. RL 11.02 (intro.) is amended to read:

RL 11.02 DEFINITIONS. (intro.) As used in ~~these rules~~ chs. RL 11 to 26:

SECTION 3. RL 11.02 (2) is renumbered RL 11.02 (5).

SECTION 4. RL 11.02 (2), (3), (4) and (6) are created to read:

RL 11.02 (2) "Business entity" has the meaning under s. 452.01 (3j), Stats.

(3) "Business representative" has the meaning under s. 452.01 (3k), Stats.

(4) "Closing statement" means a detailed computation of the balance of the purchase price due to the seller and the balance of the purchase price due from the buyer at the time of closing.

(6) "Licensee" has the meaning under s. 452.01 (5), Stats.

SECTION 5. RL 12.005 is created to read:

RL 12.005 AUTHORITY. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 440.05, 440.06, 440.07, 440.08, 452.07, 452.09, 452.10, 452.11 and 452.12, Stats.

SECTION 6. RL 12.01 (1) (a) is amended to read:

RL 12.01 (1) (a) Forms. Applications for licenses and accompanying documents required by the provisions of ch. 452, Stats., and the rules of the department shall be made on forms

provided by the department and shall be delivered through the mails or otherwise to the department's office.

SECTION 7. RL 12.01 (1) (b) is repealed and recreated to read:

RL 12.01 (1) (b) Action on completed applications. The department shall review and make a determination on an original application for a license within 60 business days after a completed application is received by the department. An application is completed when all materials necessary to make a determination on the application and all materials requested by the department have been received.

SECTION 8. RL 12.01 (1) (c) 1. (title), 1., 2. (title) and 2. are amended to read:

RL 12.01 (1) (c) 1. (title) 'Individuals.' All applications for ~~licenses~~ a license as an individual shall be affirmed or verified by the applicant.

2. (title) 'Business entities.' Applications for a license made by a ~~corporation~~ business entity must be verified by the ~~president, except that in the event the president is unable to act and the vice president has been authorized in his or her stead, the department may accept the application verified by the vice president~~ a business representative of the business entity.

Note: Applications are available upon request to the department offices located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 9. RL 12.01 (2) (a) is amended to read:

RL 12.01 (2) (a) Non-resident brokers and salespersons. No application for a real estate broker's or salesperson's license from any ~~non-resident will~~ person not a resident of the state of Wisconsin may be processed prior to receipt by ~~this office~~ the department of an irrevocable consent to be sued as specified in s. 452.11, Stats.

SECTION 10. RL 12.02 (1) (intro.) is amended to read:

RL 12.02 (1) WRITTEN EXAMINATIONS. (intro.) Each applicant for examination to obtain a broker's or salesperson's license shall read and write a comprehensive examination in English, testing that person's competency to transact the business of a real estate broker or salesperson. The examination shall be in conformity with s. 452.09 (3), Stats., and may consist of one or 2 parts. If the examination consists of 2 parts, ~~the parts~~ they shall be designated as the uniform part and the state part, and are described as follows:

SECTION 11. RL 12.02 (2) is repealed and recreated to read:

RL 12.02 (2) COMPETENCY. (a) The score required to pass an examination, or each part of a 2-part examination, shall be based on the department's determination of the level of examination performance required for minimum acceptable competence in the profession. The department shall make the determination after consultation with subject matter experts who have received a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession.

(b) A first-time applicant who passes one part of a 2-part examination shall be conditionally credited with the part on which the passing grade was received, and may, upon application, be reexamined on the part failed at any examination administered during the 12 months following the first examination. A person who does not pass the part retaken at one of the examinations administered during the 12 months following the first examination shall revert to the status of a new applicant, and shall rewrite both parts, if reapplication is made. In addition to a passing grade, the department may require further supplemental proof of competency. In all cases, a failing grade received on the written examination shall be controlling on the question of competency.

SECTION 12. A Note following RL 12.02 (3) (c) is created to read:

Note: An otherwise qualified applicant with a disability shall be provided with reasonable accommodations.

SECTION 13. RL 12.02 (4) and (5) are repealed.

SECTION 14. RL 12.025 (3) is repealed.

SECTION 15. RL 12.026 is created to read:

RL 12.026 CHEATING ON EXAMINATION. An applicant may not give or receive unauthorized assistance during an examination, violate the rules of conduct of the examination, or otherwise act dishonestly. The action taken by the department for a violation of this section shall be related to the seriousness of the offense. An action may include withholding the score of the applicant, entering a failing grade for the applicant, and suspending the ability of the applicant to sit for the next scheduled examination after the examination at which the conduct occurred.

SECTION 16. RL 12.04 (2) (intro.) is amended to read:

RL 12.04 (2) MORE THAN 5 YEARS. (intro.) If an applicant files an application for renewal of a real estate license 5 or more years after the renewal date and the applicant is not registered as an inactive licensee, the applicant shall pay the late renewal fee specified in

s. ~~440.05 (1)~~ 440.08 (3), Stats., the examination fee specified in s. 440.05 (1) (b), Stats., and satisfy education and examination requirements, as follows:

SECTION 17. RL 12.04 (2) (a) 4. is created to read:

RL 12.04 (2) (a) 4. An applicant completing the education described in subds. 1. and 2. satisfies the requirements in s. 452.12 (5) (c), Stats.

SECTION 18. Chapter RL 13 is repealed.

SECTION 19. RL 16.02 (title) is amended to read:

RL 16.02 (title) DEFINITIONS.

SECTION 20. RL 16.02 (2) is repealed.

SECTION 21. RL 16.02 (3) is renumbered RL 16.02 (5).

SECTION 22. RL 16.02 (2), (3) and (4) are created to read:

RL 16.02 (2) "Exclusive agency listing" means a written listing agreement containing all of the elements of an exclusive right to sell listing, except that the owner retains the right to sell the property himself or herself without owing the listing broker a commission.

(3) "Exclusive right to sell listing" means a written listing agreement appointing a broker the exclusive agent for the sale of property for a specific period of time, and which entitles the listing broker to a commission if the property is sold by the owner, by the broker or by anyone else.

(4) "Open listing" means a written listing agreement, which may be given to any number of brokers, with the first broker to secure a buyer under the terms of the listing agreement earning the commission.

SECTION 23. RL 16.06 (4) is repealed and recreated to read:

RL 16.06 (4) Except as provided in sub. (5), a licensee may use a pre-prepared addendum form and attach it to an approved form under the following circumstances:

(a) The addendum has been prepared by the broker or the broker's attorney; and

(b) The addendum is incorporated by reference into the approved form and the approved form and the addendum are properly related to one another; and

(c) The addendum relates to the blanks on an approved form; or alters or supplants optional provisions within an approved form.

SECTION 24. RL 16.07 is amended to read:

RL 16.07 VIOLATION OF THIS CHAPTER. A licensee who violates this chapter demonstrates, ~~for purposes of s. 452.14 (3) (i), Stats.,~~ incompetency to act as a real estate licensee in a manner that, ~~for purposes of s. 452.14 (3) (i), Stats.,~~ safeguards the interests of the public and ~~shall be in violation of~~ violates s. 452.14 (3) (m), Stats.

SECTION 25. RL 17.025 is amended to read:

RL 17.025 APPLICABILITY. For the purposes of this chapter, ~~an officer of a corporation or a partner in a partnership~~ a business representative is not an employe of the ~~corporation or partnership~~ business entity.

SECTION 26. RL 18.02 (3) is repealed.

SECTION 27. RL 18.02 (5) (intro.) is amended to read:

RL 18.02 (5) (intro.) "Real estate trust account" means an account for real estate trust funds maintained at a depository institution ~~for~~ from which withdrawals or transfers can be made without delay, subject to any notice period that the depository institution is required to observe by law, and includes:

SECTION 28. RL 22.005 is created to read:

RL 22.005 AUTHORITY. The following rules are adopted pursuant to ss. 227.11 (2) and 452.09 (5), Stats.

SECTION 29. RL 22.01 (1) is renumbered RL 22.01 (1) (a) and amended to read:

RL 22.01 (1) REQUIREMENTS. ~~No broker shall employ any person to engage in the real estate business within the meaning of ss. 452.01, 452.14 and 452.09 (5), Stats., unless and until said individual has received an appropriate license from the department.~~ (a) A broker may employ a person as an apprentice under a temporary salesperson's permit.

SECTION 30. RL 22.01 (1) (a) is renumbered RL 22.01 (1) (c) and amended to read:

RL 22.01 (1) (c) Only persons who are a resident of this state, and 18 years of age or over, may apply for ~~an apprentice license~~ a temporary salesperson's permit.

SECTION 31. RL 22.01 (1) (b) is amended to read:

RL 22.01 (1) (b) ~~Any~~ A person desiring to act as an apprentice real estate salesperson shall file with the department an application for a ~~license~~ temporary salesperson's permit. ~~Said~~ The application shall be in ~~such~~ the form as prescribed by the department ~~prescribes~~ and in accordance with ss. 452.09 and 452.10, Stats.

SECTION 32. RL 22.01 (1) (c) and (d) are repealed.

SECTION 33. RL 22.01 (1) (e) is amended to read:

RL 22.01 (1) (e) ~~An~~ Before the application for an apprentice permit may be accepted by the department, an applicant for an apprentice license must a permit shall be indentured to a licensed real estate broker of ~~this~~ the department in good standing, ~~which broker who~~ who has agreed, in writing, to ~~said~~ an indenture agreement according to the rules of the department ~~before the application for said apprentice license will be accepted by the department.~~

Note: Applications are available upon request to the department offices located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 34. RL 22.01 (2), (3) and (4) are amended to read:

RL 22.01 (2) NUMBER. Only one apprentice ~~shall~~ may be employed for each individual holding a broker's license ~~including corporate officer broker's license~~ unless ~~said~~ the broker ~~shall~~ employ employs full time ~~salesperson~~ salespersons, in which case an additional apprentice shall be allowed for each 5 full time salespersons employed ~~but~~. However, in no case ~~will~~ may an individual, ~~partnership or corporate~~ or business entity broker ~~be allowed to employ more than~~ 3 apprentice salespersons.

(3) FEE. Each application for an apprentice ~~license~~ permit shall be accompanied by ~~a fee of \$10~~ the fee specified in s. 440.05 (6), Stats.

(4) PERIOD. An apprentice ~~license or licenses shall~~ permit may not be granted for a period to exceed one year from the date of issuance by the department and ~~shall~~ may not be ~~renewable~~ renewed.

SECTION 35. RL 22.01 (5) is repealed.

SECTION 36. RL 22.01 (6) and (7) (a) to (f) are amended to read:

RL 22.01 (6) TERMINATION. An apprentice who ~~shall leave~~ leaves the employ of the sponsoring broker for any reason shall surrender ~~said~~ the apprentice ~~license~~ permit to ~~said~~ the broker immediately upon the termination of ~~said~~ the apprenticeship by the apprentice, the broker or the department.

(7) (a) An apprentice ~~shall~~ may not at any time be allowed to close a real estate sale.

(b) An apprentice ~~shall~~ may not be allowed to advertise in ~~the news paper,~~ newspapers or telephone, directories or by signs or by any other means, nor ~~shall~~ may the broker be allowed to advertise the name of the apprentice in any manner.

(c) ~~The~~ An apprentice may use business cards, ~~but said if the business~~ cards shall clearly state "Apprentice Salesperson" in type as large as the type used for the apprentice's name.

(d) ~~The~~ An apprentice, ~~at no time, shall~~ may not be paid a portion of a commission based upon sales or on listings secured nor ~~shall~~ may he or she be allowed to be paid on a percentage basis for any other services performed.

(e) ~~The~~ An apprentice ~~shall~~ may be paid on an hourly basis only and ~~said~~ the rate of pay shall be included in the apprenticeship contract.

(f) ~~Said~~ An apprentice shall spend a minimum of 20 hours work each week; ~~said 20 hours,~~ to be spent in no less than 3 days each week, performing apprenticeship duties. A minimum of 6 hours of the 20 hours work each week shall be spent pursuing a course of study of real estate laws and procedures.

SECTION 37. RL 22.01 (7) (g) is repealed.

SECTION 38. RL 22.01 (7) (h) is amended to read:

RL 22.01 (7) (h) Enrollment in a real estate course at a school ~~recognized~~ approved by the department ~~shall meet pursuant to s. RL 25.05 or 25.06 meets~~ the requirement of a course of study for a maximum of 4 hours per week.

SECTION 39. RL 22.01 (7) (j) to (L), (m) (intro.) and (n), (8) (a) to (e), (9) (b) to (d) and (10) (b) to (d) are amended to read:

RL 22.01 (7) (j) During the first 6 months of ~~said~~ the apprenticeship, the apprentice ~~shall~~ may not be allowed to secure listing contracts, offers to purchase or any other contracts ~~except if~~ unless accompanied by a fully licensed real estate salesperson or broker.

(k) During the first month of ~~said~~ the apprenticeship, the apprentice ~~shall~~ may not be allowed to negotiate with the public, but shall spend the apprenticeship time becoming acquainted with the operation of the real estate office.

(L) After the first month of the apprenticeship, the apprentice may handle open houses and rentals, but may not draft or negotiate offers to purchase or earnest money receipts.

(m) (intro.) After ~~six~~ 6 months of the apprenticeship, the apprentice may secure listing contracts, ~~provided said~~ if the listing contracts are reviewed and approved by the broker within 24 hours after they are secured and ~~further provided said~~ if the listing contracts contain the following clause:

(n) The apprentice ~~shall~~ may not execute or have executed any rental agreement until the broker ~~shall have~~ has approved ~~said the~~ rental agreement in writing on the face of ~~said the~~ contract.

(8) BROKER'S DUTIES. (a) The broker shall at all times be responsible for the acts of ~~said the~~ apprentice salesperson and shall properly supervise ~~said the~~ apprentice.

(b) The broker shall make available suitable instructions and a course of study for ~~said the~~ apprentice, including real estate procedures, real estate law, office procedures and sales techniques.

(c) The broker shall pay ~~said the~~ apprentice an hourly rate of pay which ~~shall~~ may not be less than ~~\$1 per hour~~ the minimum wage required by state and federal law.

(d) The broker shall prepare and ~~have executed~~ execute an apprenticeship contract which shall include the rate of pay, the hours to be spent by the apprentice, the instructions or course of study that will be offered to the apprentice and a schedule of commissions to be paid after the apprentice has obtained a salesperson's or broker's license. A copy of ~~said the~~ contract shall be filed with the department.

(e) The broker may include in ~~said the~~ apprenticeship contract, reasonable employment requirements after termination of ~~said the~~ apprenticeship, but in no case, ~~shall said~~ may the employment right extend beyond 2 years after the termination of the year's apprenticeship.

(9) (b) The apprentice shall obey all office rules of the broker and ~~also special~~ any other rules set forth in the apprentice contract.

(c) The apprentice ~~shall~~ may not engage in any real estate activities outside of the scope of his or her apprenticeship employment.

(e) The apprentice shall keep and maintain a record in the broker's office, ~~a log book entering therein containing~~ the date, activity and work hours ~~spent each day while~~ working on said apprenticeship, including time spent at school or attending a course of

instruction. The entries ~~on each page of said log in the record~~ shall be thoroughly reviewed, and ~~initialed be noted as having been reviewed,~~ by the broker.

(10) (b) Upon informal written complaint filed with the department by either the broker or apprentice, the board may hold a formal or informal hearing to review an apprentice ~~license permit~~ or apprenticeship program.

(c) The department may suspend or revoke an apprentice ~~license permit~~ if the apprentice has violated any of the rules ~~of apprenticeship, statutes or rules of the department~~ in this chapter.

(d) The department may suspend or revoke a broker's license if the broker has violated any of the ~~apprenticeship rules, statutes or rules of the department~~ rules in this chapter.

SECTION 40. RL 23.02 is amended to read:

RL 23.02 (title) CHANGE OF NAME OR ADDRESS. Any person licensed under ch. 452, Stats., who ~~wishes to change~~ changes the name appearing on a current license or moves from the last address provided to the department shall notify the department in writing of the new name or address within 30 days ~~after~~ of the change ~~of name.~~

SECTION 41. RL 23.04 (1) and (2) are amended to read:

RL 23.04 (1) APPLICATION. A licensed broker who intends to conduct business under a different form of business ~~organization, as provided in s. 452.12 (2), Stats.~~ entity, shall apply for a new license. Upon payment of the fee specified in s. 440.05 ~~(8) (1), Stats.,~~ the department shall issue to the applicant, without examination, a license under the new form of ~~organization~~ entity.

(2) NEW LICENSE REQUIRED. A broker shall not engage in real estate activities under a different form of business ~~organization~~ entity until a new license is issued.

Note: Applications are available upon request to the department offices located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 42. RL 23.05 is repealed.

SECTION 43. RL 24.02 (7) is amended to read:

RL 24.02 (7) "Commonly controlled corporation" means one of 2 or more corporations in which the same person or persons own stock in ~~both~~ each of the corporations, possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of ~~both~~ the corporations.

SECTION 44. RL 24.02 (11) is repealed.

SECTION 45. A Note following RL 24.03 (2) (d) is created to read:

Note: Paragraph (d) recognizes that licensees are not required to have the knowledge, skills or training possessed by, for example, persons such as home inspectors, plumbers, electricians or land surveyors.

SECTION 46. A Note following RL 24.07 (2) is created to read:

Note: Certain "material adverse facts", as defined in s. RL 24.02 (12), may not be disclosed by law. For example, unless specifically authorized by a seller, a licensee may not disclose to a potential buyer the actual minimum sales price the seller will accept. See s. 452.133 (1) (d), Stats.

SECTION 47. RL 24.17 (3) is amended to read:

RL 24.17 (3) VIOLATION OF STATUTES, ADMINISTRATIVE CODE AND DISCIPLINARY ORDERS. Licensees shall not violate any provisions ~~of~~, terms or conditions of, or aid or abet the violation of ch. 452, Stats., chs. RL, ~~Wis. Adm. Code 11 to 26~~ or any formal disciplinary order of, the real estate board.

SECTION 48. RL 25.01 (1) is amended to read:

RL 25.01 (1) "Accredited institution of higher education" means a law school accredited by the American bar association or other schools accredited by one of the regional institutional accrediting commissions or associations which have been recognized by the U.S. ~~commissioner~~ department of education.

SECTION 49. RL 25.02 (1) (intro.), (a) and (b) are amended to read:

RL 25.02 (1) EDUCATIONAL REQUIREMENTS. (intro.) Each applicant for an original real estate broker's license shall do one of the following:

(a) Present evidence satisfactory to the department of successful completion, within 5 years before application for a license, of the 36-hour educational program in sub. (2) which has been approved in accordance with this chapter and either satisfy educational requirements in s. RL 25.03 (3) or present evidence satisfactory to the department of licensure as a salesperson in ~~Wisconsin~~;

(b) Submit proof that the applicant has received 20 semester hour credits in real estate or real estate related law courses from an accredited institution of higher education. A quarter hour credit equals 2/3 of a semester hour credit; ~~or~~.

SECTION 50. RL 25.03 (3) (r) 9. is amended to read:

RL 25.03 (3) (r) 9. Mortgage banking - ~~ss. 440.71 s. 224.71~~, Stats., and s. RL 40.03 (4) (b).

SECTION 51. RL 25.035 (1) is amended to read:

RL 25.035 (1) (intro.) An applicant who has held an active real estate salesperson's license in another licensing jurisdiction within the 2-year period prior to filing an application for an original real estate salesperson's license may satisfy the requirements of s. RL 25.03 (3) if the applicant submits evidence of attendance at no less than 13 hours of education in sub. (2) at a school approved by the department under s. RL 25.05 or 25.06. ~~Some or all contents in s. RL 25.03 (3) may be completed at any school.~~ all of the following:

SECTION 52. RL 25.035 (1) (a) and (b) are created to read:

RL 25.035 (1) (a) Attendance at no less than 13 hours of education in sub. (2) at a school approved by the department under s. RL 25.05 or 25.06.

(b) Attendance at 59 hours of education on some or all contents of s. RL 25.03 (3), completed at any school.

SECTION 53. RL 25.06 (2) (a) 2. is amended to read:

RL 25.06 (2) (a) 2. Be a properly licensed or certified person by the department or other governmental agency who is engaged in the real estate aspects of appraising, financing, marketing, brokerage management, real property management, real estate counseling, real property law, or other related subjects and has been for at least 5 years continuously engaged in such practice.

SECTION 54. The Note following RL 25.065 (1) is amended to read:

Note: The contents of the continuing education programs and courses are not designated in ~~this chapter~~ the Wisconsin administrative code, pursuant to an exemption under s. 227.01 (13) (zj), Stats. This information may be obtained from the Wisconsin Department of Regulation and Licensing, 1400 East Washington Avenue, Room 281, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 55. RL 25.065 (7) is amended to read:

RL 25.065 (7) A licensee may complete less than the complete continuing education program designated by the department under s. ~~452~~ 452.05 (1) (d) and (g), Stats., and subsequently take the continuing education examination conducted by the department.

SECTION 56. RL 25.066 (2) (b) is amended to read:

RL 25.066 (2) (b) Be a properly licensed or certified person by the department or other governmental agency who engaged in the real estate aspects of appraising, financing, marketing, brokerage management, real property management, real estate counseling, real property law, or other related subjects and has been for at least 5 years continuously engaged in such practice.

SECTION 57. RL 26.01 is repealed and created to read:

RL 26.01 AUTHORITY. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 452.07 and 452.12 (6), Stats.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____
Marlene A. Cummings, Secretary
Department of Regulation and Licensing

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

WISCONSIN LEGISLATIVE COUNCIL STAFF



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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-008

AN ORDER to repeal RL 12.02 (4) and (5), 12.025 (3), chapter RL 13, 16.02 (2), 18.02 (3), 22.01 (1) (c) and (d), (5) and (7) (g), 23.05 and 24.02 (11); to renumber RL 11.02 (2) and 16.02 (3); to amend RL 11.01, 11.02 (intro.), 12.01 (1) (c) 1. (title), 1. and 2. and (2) (a), 12.02 (1) (intro.), 12.04 (2) (intro.), 15.03 (1), 16.02 (title), 16.06 (4), 16.07, 17.025, 18.02 (5) (intro.), 22.01 (1) (a), (b) and (e), (2), (3), (4), (6), (7) (a) to (f), (h), (j) to (n), (8) (a) to (e), (9) (b), (c) and (d) and (10) (b) to (d), 23.02, 23.04 (1) and (2), 24.02 (7), 24.03 (2) (a), 24.17 (3), 25.01 (1), 25.02 (1) (a), 25.03 (3) (r) 9., 25.035 (1), 25.06 (2) (a) 2., the Note following 25.065 (1), 25.065 (7) and 25.066 (2) (b); to repeal and recreate RL 12.01 (1) (b), 12.02 (2), 22.01 (1) and 26.01; and to create RL 11.02 (2), (3) and (5), 12.005, the Note following 12.02 (3) (c), 12.026, 12.04 (2) (a) 4., 16.02 (3), (4) and (5), 22.005, the Note following 24.03 (2) (d), the Note following 24.07 (2) and 25.035, relating to real estate brokers and real estate salespersons.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

01-20-98 RECEIVED BY LEGISLATIVE COUNCIL.

02-16-98 REPORT SENT TO AGENCY.

RNS:DD:kjf;lah

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 98-008

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. The department's analysis could be more comprehensive. It is recognized that most of the rule consists of technical revisions; however, the technical nature of the revision and the rationale for the revision are not always obvious, particularly regarding repeals. The department's analysis gives the reader very little specific information on the rule, forcing the reader to review the text of the rule simply to determine what the rule does.

b. The title to s. RL 12.01 (1) (a) is incorrectly formatted. [See s. 1.05 (1) (d), Manual.]

c. In s. RL 12.01 (2) (a), "may" should be substituted for "will."

d. In s. RL 12.02 (2) (b), first sentence, "A first-time applicant" should replace the language that precedes "who." In the last sentence, "may not" should replace "cannot." It appears "supplemented" is not the appropriate word; the last sentence could end with a period after "competency."

e. In s. RL 12.026, second sentence, "for a violation of this section" should follow "department." The last sentence should begin with "An action."

f. The new sentence in s. RL 15.03 (1) should be in a separate definition section for the chapter.

g. In SECTIONS 22 and 23, it appears that the renumbering should be revised so that in SECTION 22, s. RL 16.02 (3) is renumbered s. RL 16.02 (5); in SECTION 23, s. RL 16.02 (2), (3) and (4) should be created.

h. Section RL 16.07 would be improved if the clause “, for purposes of s. 452.14 (3) (i), Stats.,” followed “demonstrates.”

i. In the treatment clause of SECTION 30, “(intro.)” should follow “(1).”

j. It is suggested that s. RL 22.01 (1) (intro.) be made a paragraph of sub. (1) rather than an introductory clause. The paragraphs that follow do not necessarily relate back to the introductory clause. The paragraph would read simply: “(a) A broker may employ a person as an apprentice under a temporary salesperson’s permit.”

k. It is suggested that s. RL 22.01 (1) (e) begin with the clause “Before the application for an apprentice person may be accepted by the department . . .”, rather than ending with that clause. Also, “shall” should replace “must.”

l. Section RL 22.01 (7) (c) should be revised so that it begins: “An apprentice may use business cards if the business cards clearly state”

m. In s. RL 22.01 (7) (d), “, at no time,” should be stricken and “not” should follow the first underscored “may.”

n. In s. RL 22.01 (6) (e), “may” should replace “shall.”

o. In s. RL 22.01 (6) (f), first sentence, the semicolon should be stricken, the underscored “the” deleted, “20 hours” stricken and “;” should follow the stricken “20 hours.”

p. In s. RL 22.01 (7) (h), the underscored comma should be deleted.

q. In s. RL 22.01 (7) (j), “except if” should be stricken and replaced by “unless.”

r. In s. RL 22.01 (7) (m) (intro.), the second comma should be stricken, “provided” should be replaced by “if” and “further provided” should be stricken and replaced by “if.”

s. In s. RL 22.01 (8) (d), there is a typographical error: “repair” should be “prepare.” The current reference to “hours to be spent by the apprentice” is awkward.

t. The treatment clause of SECTION 40 can simply read: “RL 23.02 is amended to read:”.

u. Section RL 24.03 (2) (a) should begin: “A licensee”

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

a. In s. RL 22.01 (10) (d), is reference to “any other law substantially related to real estate practice” too broad? See s. 452.14 (3), Stats.

b. The reference in s. RL 23.04 (1) to “as provided in s. 452.12 (2), Stats.,” is inaccurate in the context of that subsection. It appears the cross-reference can be deleted.

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

- a. In s. RL 12.026, last sentence, are the specified actions intended to be illustrative or inclusive? If inclusive, "are" should replace "may include."
- b. In s. RL 16.02 (5), should the definition indicate how a sale by the owner is handled?
- c. Section RL 16.06 (4) is still awkwardly worded, despite the attempt to improve the subsection. For example, it is not clear to what the first "which" in the first sentence refers. Further clarification would be helpful. In the second sentence, "relates" should be "relate."
- d. In s. RL 22.01 (7) (b), "or" should replace each of the first two commas.
- e. In s. RL 22.01 (8) (c), should "state and federal" precede "law"?
- f. In s. RL 22.01 (9) (e), is the continuing reference to "log book" antiquated?
- g. Section RL 24.02 (7) continues to be unclear. Instead of referring in the second line to "2 or more of the corporations," should the definition refer to "each of the corporations"?
- h. In s. RL 24.17 (3), the first "or" should be replaced by a comma and a comma should follow the second "of."
- i. Section RL 25.02 (1) (a) and (b) should end with periods. It appears that "do one of the following" should precede the colon in sub. (1) (intro.).

Assembly

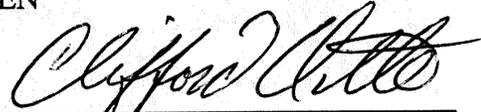
Committee Report

The committee on **Consumer Affairs**, reports and recommends:

Clearinghouse Rule 98-008

Relating to real estate brokers and real estate salespersons.
Submitted by the Department of Regulation and Licensing.

May 22, 1998 - NO ACTION TAKEN



Representative Clifford Otte
Chair