2005 DRAFTING REQUEST

Bill

Received: **10/19/2005**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB: **1387/6**

For: **Cathy Stepp (608) 266-1832**

By/Representing: **Jay Risch**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Occupational Reg. - prof lic**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Stepp@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Real estate practice amendments

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	csundber 10/19/2005	lkunkel 10/19/2005		_____ _____			
/1			rschluet 10/19/2005	_____ _____	sbasford 10/19/2005	lnorthro 10/19/2005	

FE Sent For: None

<END>

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<END>

10/19/05

Jay Rosch / Stepp

Redraft LRB-1387/6 for senate

(OK per Scott Becher/Weichert)

3880/1

2005 – 2006 LEGISLATURE

LRB–~~1387/6~~
CTS:lxkjf

Date: today (Wednesday)

Keep

2005 BILL

AN ACT ***to repeal*** 452.01 (2) (d), 452.01 (2) (e), 452.01 (2) (f), 452.01 (2) (g), 452.01 (5m) (d) and 452.137; ***to renumber and amend*** 452.133 (2) (a); ***to amend*** 452.01 (1m), 452.01 (2) (a), 452.01 (2) (b), 452.01 (2) (h), 452.01 (3e), 452.01 (4d), 452.01 (4h), 452.01 (4p), 452.01 (4t), 452.01 (5m) (intro.), 452.01 (5m) (a), 452.01 (5m) (c), 452.01 (5r), 452.01 (7), 452.12 (3), 452.133 (1) (intro.), 452.133 (1) (a), 452.133 (1) (b), 452.133 (1) (c), 452.133 (1) (d), 452.133 (1) (e), 452.133 (1) (f), 452.133 (1) (g), 452.133 (2) (intro.), 452.133 (2) (b), 452.133 (2) (c), 452.138, 452.139 (1) and 452.14 (3) (f); ***to repeal and recreate*** 452.135; and ***to create*** 452.01 (2) (bm), 452.01 (3w), 452.01 (5j), 452.01 (5w), 452.01 (7r), 452.133 (2) (a) 2., 452.133 (2) (am), 452.133 (2) (d), 452.133 (4) and (5), 452.133 (6) and 452.134 of the statutes; **relating to:** duties of real estate brokers and salespersons.

Analysis by the Legislative Reference Bureau

This bill makes several changes to current law regarding real estate practice.

BROKERS' DUTIES TO PARTIES AND CLIENTS

Under current law, a broker providing brokerage services owes certain duties to all parties to a transaction, including the duties to: 1) provide brokerage services to all parties honestly, fairly, and in good faith; 2) 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; and 3) account for all property coming into the broker's possession within a reasonable time after receiving it. The bill deletes a broker's duty to provide brokerage services in good faith and replaces a broker's duty to account for property within a reasonable time with a duty to safeguard property held by the broker according to rules promulgated by the Department of Regulation and Licensing under authority granted by current law.

Under current law, a broker owes to the broker's client all the duties owed to a party, and additional duties to: 1) loyally represent the client's interests by placing the client's interests ahead of the interests of any other party; 2) disclose to the client all material information known to the broker and not known to the client or discoverable through reasonably vigilant observation, unless the information is confidential; and 3) fulfill any legal obligation required by the agency agreement and any legal order by the client that is within the scope of the agency agreement.

This bill modifies the duty to loyally represent the client's interests. Under the bill, a broker satisfies this duty by doing the following: 1) placing the client's interests ahead of the broker's interests; and 2) placing the client's interests ahead of the interests of nonclients in the transaction by not disclosing information and advice to nonclients if disclosure is contrary to the client's interests. The bill also creates a duty to provide, upon the client's request, information and advice on matters that are material to a transaction and a duty to negotiate on behalf of a client. Under the bill, a client may waive the broker's duty to negotiate, but only in writing.

BROKERAGE SERVICES

Under current law, a person may not engage in brokerage services unless the person is a licensed broker. Currently, brokerage services include promoting certain transactions in real estate or business opportunities. This bill specifies that brokerage services include promoting certain transactions in real estate, time shares, or businesses or their goodwill, inventory, or fixtures, whether or not the business includes real property.

Under current law, a broker may not provide brokerage services to a party to a transaction without an agency agreement that authorizes the broker to provide the services. The agency agreement must contain a statement of the terms and conditions of the brokerage services that the broker will provide. Also under current law, a broker may not provide brokerage services to a party or a client unless the broker has provided the party or client with a disclosure form that: 1) identifies the broker's clients in the transaction; 2) states the broker's duties to the broker's clients; 3) states the broker's duties to a party; and 4) contains a statement, the text of which is prescribed by current law, describing the broker's duties to disclose certain known defects affecting a property and to maintain the confidentiality of certain other information.

Under the bill, a broker may provide brokerage services to any person in a transaction, whether or not the broker has entered into an agency agreement with a party to the transaction or has been engaged to provide brokerage services in the transaction as a subagent (see "Subagency," below), except that a broker may not negotiate on behalf of a person who is not the broker's client unless another party to the transaction is the broker's client or is a client of another broker who has engaged the broker to provide brokerage services in the transaction as a subagent, and the broker has provided to the party a disclosure form stating the broker's duties to a person receiving brokerage services from the broker. The bill deletes the requirements that the disclosure form identify the broker's client in the transaction and state the broker's duties to the broker's client. Under the bill, the disclosure form summarizes the broker's duties to parties and the broker's disclosure and confidentiality duties.

The bill creates a separate disclosure form for a broker's client. Under the bill, a broker is required to provide the form to a client not later than the time the broker enters into an agency agreement with the client. The client disclosure form summarizes the broker's duties to clients, the broker's disclosure and confidentiality duties, and the broker's duties if the client is involved in a transaction in which another party is also the broker's client (see "Multiple representation relationships and designated agency," below). The client disclosure form also contains a space for the client to indicate whether the client consents to certain multiple representation relationships.

Under the bill, if a broker is providing services to a person in a transaction in which no party is the broker's client or a client of another broker who has engaged the broker to provide brokerage services as a subagent, the broker may not provide to any party advice or opinions relating to the transaction in which the person is receiving brokerage services if doing so is contrary to the interests of the person or another person receiving services from the broker.

The bill also modifies the current definition of "negotiate." The bill specifies that providing advice or opinions that are material to a person's transaction or showing real estate to a party does not, in and of itself, constitute negotiation.

SUBAGENCY

This bill defines a subagent as a broker who is engaged by a principal broker to provide brokerage services in a transaction but who is not the principal broker's employee. A broker may not engage another broker to provide brokerage services to the broker's client as a subagent unless the agency agreement between the broker and the client authorizes the broker to engage a subagent.

Under the bill, a broker who has been engaged to provide brokerage services in a transaction as a subagent owes all parties the duties owed by a broker who is not a subagent. Additionally, in a transaction in which a subagent has been engaged by a principal broker, a subagent may not place the subagent's interests ahead of the interests of the principal broker's client in the transaction, or provide advice or opinions to parties in the transaction if doing so is contrary to the interests of the principal broker's client. A broker who has been engaged by another broker as a

subagent does not owe the principal broker's client the additional duties that a broker owes to the broker's own client.

MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY

Currently, a broker may not provide brokerage services to more than one client in a transaction (multiple representation relationship) unless the broker has entered into an agency agreement with, and made certain written disclosures to, each client, and each client has given written consent. Under current law, a broker who represents more than one client in a transaction may not place the interests of any client ahead of the interests of another client in the transaction.

Under the bill, if a broker's client does not give written consent to multiple representation relationships or if the client withdraws such consent, neither the broker nor the broker's employees may place the interests of any client ahead of the interests of any other in negotiations. A client may withdraw consent to multiple representation relationships at any time by written notice to the broker.

Also under the bill, if a client consents to multiple representation relationships the client may also consent to receiving negotiation services from the broker in a multiple representation relationship only from an employee of the broker who is not providing negotiation services to another client of the broker in the transaction ("designated agency"). In a designated agency relationship, the broker's employee may provide to the client on whose behalf the employee is negotiating information, opinions, and advice to assist the client in the negotiations, whether or not the information, opinions, and advice place the interests of one of the broker's clients ahead of the interests of another client of the broker.

If a client consents to multiple representation relationships but not to designated agency, the broker and the broker's employees may not place the interests of any client ahead of the interests of any other in negotiations.

BROKER LIABILITY

Current law provides that duties imposed on brokers by statutes or by rules supersede fiduciary duties the broker has to a party based on common law principles of agency, to the extent that common law is inconsistent with the statutes or rules. Under the bill, a broker's duties under the statutes or rules supersede any inconsistent common law duties or obligations, not just fiduciary duties based on agency principles.

Under current law, a broker must supervise, and is responsible for, the acts of any broker, salesperson, or time–share salesperson employed by the broker. Under the bill, a broker is responsible for brokerage services provided on behalf of the broker by a broker, salesperson, or time–share salesperson employed by the broker.

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

1 **SECTION 1.** 452.01 (1m) of the statutes is amended to read:

452.01 **(1m)** "Agency agreement" means a written agreement between a broker and a client ~~under s. 452.135 (1)~~ in which the client authorizes the broker to provide brokerage services to the client.

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

452.01 **(2)** (a) For another person, and for commission, money, or other thing of value, negotiates or offers or attempts to negotiate a sale, exchange, purchase, or rental of, or the granting or acceptance of an option to sell, exchange, purchase, or rent, an interest or estate in real estate, a time share, or a business or its goodwill, inventory, or fixtures, whether or not the business includes real property.

SECTION 3. 452.01 (2) (b) of the statutes is amended to read:

452.01 **(2)** (b) Is engaged wholly or in part in the business of selling or exchanging interests or estates in real estate or businesses, including businesses' goodwill, inventory, or fixtures, whether or not the business includes real property, to the extent that a pattern of ~~real estate~~ sales or exchanges is established, whether or not ~~such~~ the person owns the real estate ~~is owned by such person~~ or businesses. Five sales or exchanges in one year or 10 sales or exchanges in 5 years is presumptive evidence of a pattern of sales or exchanges.

SECTION 4. 452.01 (2) (bm) of the statutes is created to read:

452.01 **(2)** (bm) For another person, and for commission, money, or other thing of value shows real estate or a business or its inventory or fixtures, whether or not the business includes real property, except that this paragraph does not include showing a property that is offered exclusively for rent.

SECTION 5. 452.01 (2) (d) of the statutes is repealed.

SECTION 6. 452.01 (2) (e) of the statutes is repealed.

SECTION 7. 452.01 (2) (f) of the statutes is repealed.

SECTION 8. 452.01 (2) (g) of the statutes is repealed.

SECTION 9. 452.01 (2) (h) of the statutes is amended to read:

452.01 **(2)** (h) For another person, and for ~~a~~ commission, money, or other thing of value, promotes the sale, exchange, purchase, option, rental, or leasing of real estate, a time share, or a business ~~opportunities~~ or its goodwill, inventory, or fixtures, whether or not the business includes real property. This paragraph does not apply to a person who only publishes or disseminates verbatim information provided by another person.

SECTION 10. 452.01 (3e) of the statutes is amended to read:

452.01 **(3e)** "Brokerage service" means any service described under sub. (2) ~~(a) to (h)~~ provided by a broker to another person.

SECTION 11. 452.01 (3w) of the statutes is created to read:

452.01 **(3w)** "Designated agency" means a multiple representation relationship in which each client of the broker in the multiple representation relationship receives negotiation services from the broker only from employees of the broker who are not providing negotiation services to any other client of the broker in the transaction.

SECTION 12. 452.01 (4d) of the statutes is amended to read:

452.01 **(4d)** "Employ~~",~~," when used in reference to a broker employing another broker, a salesperson, or a time–share salesperson, ~~includes~~ means engaging the services of another broker, a salesperson, or a time–share salesperson ~~who provides~~ to provide brokerage services to the ~~broker~~ broker's clients and customers on behalf of the broker and under the broker's supervision, including engaging a broker, salesperson, or time–share salesperson as an independent contractor.

SECTION 13. 452.01 (4h) of the statutes is amended to read:

452.01 **(4h)** "Employee~~",~~," when used in reference to an employee of a broker, ~~includes~~ means another broker, a salesperson, or a time–share salesperson who provides brokerage services to the ~~broker~~ broker's clients and customers on behalf of the broker and under the broker's supervision, including a broker, salesperson, or time–share salesperson engaged by the broker as an independent contractor.

SECTION 14. 452.01 (4p) of the statutes is amended to read:

452.01 **(4p)** "Employer~~",~~," when used in reference to a broker who is the employer of another broker, a salesperson, or a time–share salesperson, ~~includes~~ means a broker who engages the services of another broker, a salesperson, or a time–share salesperson ~~who provides services to the broker~~ to provide brokerage services to the broker's clients and customers on behalf of the broker and under the broker's supervision, including a broker who engages the services of another broker, salesperson, or time–share salesperson as an independent contractor.

SECTION 15. 452.01 (4t) of the statutes is amended to read:

452.01 **(4t)** "Employment~~",~~," when used in reference to a broker's employment of another broker, a salesperson, or a time–share salesperson, ~~includes~~ means the state of ~~providing~~ being engaged by a broker to provide services to the ~~broker by the other~~ broker's clients and customers on behalf of the broker and under the broker's supervision, including being engaged by the employing broker~~, the salesperson or the time–share salesperson~~ as an independent contractor.

SECTION 16. 452.01 (5j) of the statutes is created to read:

452.01 **(5j)** "Multiple representation relationship" means a relationship between a broker and 2 or more of the broker's clients in which the clients are parties in the same transaction.

SECTION 17. 452.01 (5m) (intro.) of the statutes is amended to read:

452.01 **(5m)** (intro.) "Negotiate" means to ~~act as an intermediary between the parties to a transaction~~ provide to a party assistance within the scope of the knowledge, skills, and training required under this chapter in developing a proposal or agreement relating to a transaction, including doing any of the following:

SECTION 18. 452.01 (5m) (a) of the statutes is amended to read:

452.01 **(5m)** (a) ~~Facilitating~~ Acting as an intermediary by facilitating or participating in ~~the parties' discussion of the terms of a contract or agreement concerning~~ communications between parties related to the parties' interests in a transaction. In this paragraph, providing advice or opinions on matters that are material to a transaction in which a person is engaged or intends to engage or showing a party real estate does not, in and of itself, constitute acting as an intermediary by facilitating or participating in communications between parties.

SECTION 19. 452.01 (5m) (c) of the statutes is amended to read:

452.01 **(5m)** (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~~ giving the party a general explanation of the provisions of the proposal.

SECTION 20. 452.01 (5m) (d) of the statutes is repealed.

SECTION 21. 452.01 (5r) of the statutes is amended 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~~ engage in a transaction.

SECTION 22. 452.01 (5w) of the statutes is created to read:

452.01 **(5w)** "Principal broker" means a broker who engages a subagent to provide brokerage services in a transaction.

SECTION 23. 452.01 (7) of the statutes is amended to read:

452.01 **(7)** "Salesperson" means any person other than a broker or time–share salesperson who is employed by a broker ~~to perform any act authorized by this chapter to be performed by a broker~~.

SECTION 24. 452.01 (7r) of the statutes is created to read:

452.01 **(7r)** "Subagent" means a broker who is engaged by another broker to provide brokerage services in a transaction, but who is not the other broker's employee.

SECTION 25. 452.12 (3) of the statutes is amended to read:

452.12 **(3)** BROKER'S LIABILITY FOR ACTS OF EMPLOYEES. Each broker shall supervise, and is responsible for, the ~~acts of,~~ brokerage services provided on behalf of the broker by any broker, salesperson, or time–share salesperson ~~employed by~~ who is an employee of the broker.

SECTION 26. 452.133 (1) (intro.) of the statutes is amended to read:

452.133 **(1)** BROKER'S DUTIES TO ALL ~~PARTIES TO~~ PERSONS IN A TRANSACTION. (intro.) ~~In~~ A broker who is providing brokerage services to a ~~party to~~ person in a transaction~~,~~ ~~a broker shall do all of the following~~ owes all of the following duties to the person:

SECTION 27. 452.133 (1) (a) of the statutes is amended to read:

452.133 **(1)** (a) ~~Provide~~ The duty to provide brokerage services ~~to all parties to the transaction~~ honestly~~,~~ and fairly ~~and in good faith~~.

SECTION 28. 452.133 (1) (b) of the statutes is amended to read:

452.133 **(1)** (b) ~~Diligently exercise~~ The duty to provide brokerage services with reasonable skill and care ~~in providing brokerage services to all parties~~.

SECTION 29. 452.133 (1) (c) of the statutes is amended to read:

452.133 **(1)** (c) ~~Disclose to each party~~ The duty to timely disclose in writing all material adverse facts that the broker knows and that the ~~party~~ person does not know or cannot discover through reasonably vigilant observation, unless the disclosure of a material adverse fact is prohibited by law.

SECTION 30. 452.133 (1) (d) of the statutes is amended to read:

452.133 **(1)** (d) ~~Keep~~ The duty to 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~~ person 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~~ person 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~~ person.

SECTION 31. 452.133 (1) (e) of the statutes is amended to read:

452.133 **(1)** (e) ~~Provide~~ The duty to provide accurate information about market conditions that affect ~~a~~ the person's transaction~~, to any party who requests the information~~, within a reasonable time ~~of~~ after the ~~party's~~ person's request, unless disclosure of the information is prohibited by law.

SECTION 32. 452.133 (1) (f) of the statutes is amended to read:

452.133 **(1)** (f) ~~Account for all~~ The duty to safeguard trust funds and other property ~~coming into the possession of a~~ held by the broker ~~that belongs to any party within a reasonable time of receiving the property~~ as required by rules promulgated by the department under s. 452.13 (5).

1 **SECTION 33.** 452.133 (1) (g) of the statutes is amended to read:

2 452.133 **(1)** (g) When the broker is negotiating on behalf of a party, the duty to
3 present contract proposals in an objective and unbiased manner and disclose the
4 advantages and disadvantages of the proposals.

5 **SECTION 34.** 452.133 (2) (intro.) of the statutes is amended to read:

6 452.133 **(2)** BROKER'S DUTIES TO A CLIENT. (intro.) ~~In addition to his or her duties~~
7 ~~under sub. (1), a~~ A broker providing brokerage services to his or her client ~~shall do~~
8 owes the client the duties that the broker owes to a person under sub. (1) and all of
9 the following additional duties:

10 **SECTION 35.** 452.133 (2) (a) of the statutes is renumbered 452.133 (2) (a) (intro.)
11 and amended to read:

12 452.133 **(2)** (a) (intro.) ~~Loyally~~ The duty to loyally represent the client's
13 interests by ~~placing~~ doing all of the following:

14 1. Placing the client's interests ahead of the broker's interests ~~of any other~~
15 ~~party, unless loyalty to a client violates the broker's duties under sub. (1) or s. 452.137~~
16 ~~(2)~~.

17 **SECTION 36.** 452.133 (2) (a) 2. of the statutes is created to read:

18 452.133 **(2)** (a) 2. Placing the client's interests ahead of the interests of persons
19 in the transaction who are not the broker's clients by not disclosing to persons in the
20 transaction other than the broker's clients information or advice the disclosure of
21 which is contrary to the interests of a client of the broker, unless the disclosure is
22 required by law.

23 **SECTION 37.** 452.133 (2) (am) of the statutes is created to read:

24 452.133 **(2)** (am) The duty to provide, when requested by the client, information
25 and advice to the client on matters that are material to the client's transaction and

that are within the scope of the knowledge, skills, and training required under this chapter.

SECTION 38. 452.133 (2) (b) of the statutes is amended to read:

452.133 **(2)** (b) ~~Disclose~~ The duty to 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.

SECTION 39. 452.133 (2) (c) of the statutes is amended to read:

452.133 **(2)** (c) ~~Fulfill~~ The duty to 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~~ is not inconsistent with another duty that the broker has under this chapter or any other law.

SECTION 40. 452.133 (2) (d) of the statutes is created to read:

452.133 **(2)** (d) The duty to negotiate on behalf of the client.

SECTION 41. 452.133 (4) and (5) of the statutes are created to read:

452.133 **(4)** SUBAGENT'S DUTIES. (a) A subagent owes all persons to whom a broker is providing brokerage services in a transaction the duties specified in sub. (1) but does not owe the clients of the principal broker the duties under sub. (2).

(b) A subagent may not do any of the following:

1. Place the subagent's interests ahead of the interests of the clients of the principal broker in the transaction in which the subagent has been engaged by the principal broker.

2. Provide advice or opinions to parties in the transaction if providing the advice or opinions is contrary to the interests of the clients of the principal broker in

1 the transaction in which the subagent has been engaged by the principal broker,
2 unless required by law.

3 **(5)** DUTIES WITHOUT AGENCY OR SUBAGENCY RELATIONSHIP. If a broker is providing
4 brokerage services to a person who is a party or a prospective party to a transaction,
5 and the broker does not have an agency agreement with the person and is not a
6 subagent of another broker in the transaction, then the broker owes the person the
7 duties under sub. (1) and may not, unless required by law, provide advice or opinions
8 relating to the transaction in which the person is receiving brokerage services if
9 providing the advice or opinions is contrary to the interests of a party to a current
10 or prospective transaction with the person receiving the brokerage services.

11 **SECTION 42.** 452.133 (6) of the statutes is created to read:

12 452.133 **(6)** WAIVER OF DUTIES. The duties imposed by subs. (1), (2) (a), (am), (b),
13 and (c), (4), and (5) may not be waived. A client may waive, in part or in full, the
14 broker's duty under sub. (2) (d), except that a waiver under this subsection is not
15 effective unless the broker provides to the client a written disclosure containing all
16 of the following:

17 (a) A copy of the text of sub. (2) (d) and s. 452.01 (5m), and a statement that,
18 as a consequence of the client's waiver, the broker will have no legal duty to perform
19 the duty imposed by sub. (2) (d).

20 (b) A statement that as a consequence of the client's waiver, the client may
21 require the assistance of an attorney or another service provider to fulfill the client's
22 goals and contractual duties in the transaction.

23 **SECTION 43.** 452.134 of the statutes is created to read:

24 **452.134 Agency relationships; multiple representation relationships.**
25 **(1)** AGENCY RELATIONSHIP NOT REQUIRED. (a) Subject to par. (b), a broker may provide

1 brokerage services to any person in a transaction, whether or not the broker has
2 entered into an agency agreement with a party to the transaction or the broker has
3 been engaged to provide brokerage services in the transaction as a subagent.
4 (b) A broker may not negotiate on behalf of a party to a transaction unless a
5 party to the transaction is one of the following:
6 1. The broker's client.
7 2. A client of a principal broker who has engaged the broker as a subagent.
8 **(2)** MULTIPLE REPRESENTATION RELATIONSHIPS; CONSENT REQUIRED. A broker may
9 not provide brokerage services in a multiple representation relationship unless all
10 of the broker's clients in the multiple representation relationship have consented to
11 a multiple representation relationship in writing.
12 **(3)** DESIGNATED AGENCY; CONSENT REQUIRED. (a) A broker in a multiple
13 representation relationship may not engage in designated agency unless all of the
14 broker's clients in the relationship have consented to designated agency in writing.
15 A client may withdraw consent to designated agency by written notice to the broker
16 at any time.
17 (b) If a broker is engaged in designated agency, the broker's employee who is
18 negotiating on behalf of a client of the broker in the transaction may provide to the
19 client on whose behalf the employee is negotiating information, opinions, and advice
20 to assist the client in the negotiations, whether or not the information, opinions, and
21 advice place the interests of one of the broker's clients ahead of the interests of
22 another client of the broker.
23 **(4)** MULTIPLE REPRESENTATIONS RELATIONSHIP WITHOUT DESIGNATED AGENCY. If a
24 broker's client in a multiple representation relationship does not consent to
25 designated agency or withdraws consent to designated agency, the broker and the

1 broker's employees may not place the interests of any client ahead of the interests
2 of any other in the negotiations.

3 **SECTION 44.** 452.135 of the statutes is repealed and recreated to read:

4 **452.135 Disclosure of duties. (1)** (a) A broker may not negotiate on behalf
5 of a party who is not the broker's client unless the broker provides to the party a copy
6 of the following written disclosure statement:

7 BROKER DISCLOSURE TO CUSTOMERS

8 You are a customer of the broker. The broker is either an agent of another party
9 in the transaction or a subagent of another broker who is the agent of another party
10 in the transaction. The broker, or a salesperson acting on behalf of the broker, may
11 provide brokerage services to you. Whenever the broker is providing brokerage
12 services to you, the broker owes you, the customer, the following duties:

13 The duty to provide brokerage services to you fairly and honestly.

14 The duty to exercise reasonable skill and care in providing brokerage services
15 to you.

16 The duty to provide you with accurate information about market conditions
17 within a reasonable time if you request it, unless disclosure of the information is
18 prohibited by law.

19 The duty to disclose to you in writing certain material adverse facts about a
20 property, unless disclosure of the information is prohibited by law.

21 The duty to protect your confidentiality. Unless the law requires it, the broker
22 will not disclose your confidential information or the confidential information of
23 other parties.

24 The duty to safeguard trust funds and other property the broker holds.

1 The duty, when negotiating, to present contract proposals in an objective and
2 unbiased manner and disclose the advantages and disadvantages of the proposals.
3 Please review this information carefully. A broker or salesperson can answer
4 your questions about brokerage services, but if you need legal advice, tax advice, or
5 a professional home inspection, contact an attorney, tax advisor, or home inspector.
6 This disclosure is required by section 452.135 of the Wisconsin statutes and is
7 for information only. It is a plain–language summary of a broker's duties to a
8 customer under section 452.133 (1) of the Wisconsin statutes.
9 (b) If a broker is providing brokerage services as a subagent to a principal
10 broker, the broker shall provide a copy of the written disclosure statement under par.
11 (a) to any person who is not the principal broker's client and who receives brokerage
12 services from the broker within the scope of the agreement between the broker and
13 the principal broker.
14 **(2)** (a) Except as provided in sub. (b), a broker shall provide to a client a copy
15 of the following written disclosure statement not later than the time the broker
16 enters into an agency agreement with the client:
17 BROKER DISCLOSURE TO CLIENTS
18 Under Wisconsin law, a broker owes certain duties to all parties to a
19 transaction:
20 The duty to provide brokerage services to you fairly and honestly.
21 The duty to exercise reasonable skill and care in providing brokerage services
22 to you.
23 The duty to provide you with accurate information about market conditions
24 within a reasonable time if you request it, unless disclosure of the information is
25 prohibited by law.

1 The duty to disclose to you in writing certain material adverse facts about a
2 property, unless disclosure of the information is prohibited by law.
3 The duty to protect your confidentiality. Unless the law requires it, the broker
4 will not disclose your confidential information or the confidential information of
5 other parties.
6 The duty to safeguard trust funds and other property the broker holds.
7 The duty, when negotiating, to present contract proposals in an objective and
8 unbiased manner and disclose the advantages and disadvantages of the proposals.
9 Because you have entered into an agency agreement with a broker, you are the
10 broker's client. A broker owes additional duties to a client.
11 The broker will provide, at your request, information and advice on real estate
12 matters that affect your transaction, unless you release the broker from this duty.
13 The broker must provide you with all material facts affecting the transaction, not
14 just adverse facts.
15 The broker will fulfill the broker's obligations under the agency agreement and
16 fulfill your lawful requests that are within the scope of the agency agreement.
17 The broker will negotiate for you, unless you release the broker from this duty.
18 The broker will not place the broker's interests ahead of your interests. The
19 broker will not, unless required by law, give information or advice to other parties
20 who are not the broker's clients, if giving the information or advice is contrary to your
21 interests.
22 If you become involved in a transaction in which another party is also the
23 broker's client (a "multiple representation relationship"), different duties may apply.
24 MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED
25 AGENCY

1 A multiple representation relationship exists if a broker has an agency
2 agreement with more than one client who is a party in the same transaction. In a
3 multiple representation relationship, if all of the broker's clients in the transaction
4 consent, the broker may provide services to the clients through designated agency.
5 Designated agency means that different salespersons employed by the broker
6 will negotiate on behalf of you and the other client or clients in the transaction, and
7 the broker's duties will remain the same. Each salesperson will provide information,
8 opinions, and advice to the client for whom the salesperson is negotiating, to assist
9 the client in the negotiations. Each client will be able to receive information,
10 opinions, and advice that will assist the client, even if the information, opinions, or
11 advice gives the client advantages in the negotiations over the broker's other clients.
12 A salesperson will not reveal any of your confidential information to another party
13 unless required to do so by law.
14 If a designated agency relationship is not in effect you may authorize or reject
15 a multiple representation relationship. If you authorize a multiple representation
16 relationship the broker may provide brokerage services to more than one client in a
17 transaction but neither the broker nor any of the broker's salespersons may assist
18 any client with information, opinions, and advice which may favor the interests of
19 one client over any other client. If you do not consent to a multiple representation
20 relationship the broker will not be allowed to provide brokerage services to more than
21 one client in the transaction.
22 INITIAL ONLY ONE OF THE THREE LINES BELOW:
23 _____I consent to designated agency.
24 _____I consent to multiple representation relationships, but I do not consent
25 to designated agency.

1 _____I reject multiple representation relationships.

2 NOTE: YOU MAY WITHDRAW YOUR CONSENT TO DESIGNATED
3 AGENCY OR TO MULTIPLE REPRESENTATION RELATIONSHIPS BY
4 WRITTEN NOTICE TO THE BROKER AT ANY TIME. YOUR BROKER IS
5 REQUIRED TO DISCLOSE TO YOU IN YOUR AGENCY AGREEMENT THE
6 COMMISSION OR FEES THAT YOU MAY OWE TO YOUR BROKER. IF YOU
7 HAVE ANY QUESTIONS ABOUT THE COMMISSION OR FEES THAT YOU MAY
8 OWE BASED UPON THE TYPE OF AGENCY RELATIONSHIP YOU SELECT
9 WITH YOUR BROKER YOU SHOULD ASK YOUR BROKER BEFORE SIGNING
10 THE AGENCY AGREEMENT.

11 SUBAGENCY

12 The broker may, with your authorization in the agency agreement, engage
13 other brokers who assist your broker by providing brokerage services for your
14 benefit. A subagent will not put the subagent's own interests ahead of your interests.
15 A subagent will not, unless required by law, provide advice or opinions to other
16 parties if doing so is contrary to your interests.

17 Please review this information carefully. A broker or salesperson can answer
18 your questions about brokerage services, but if you need legal advice, tax advice, or
19 a professional home inspection, contact an attorney, tax advisor, or home inspector.

20 This disclosure is required by s. 452.135 of the Wisconsin statutes and is for
21 information only. It is a plain–language summary of a broker's duties to you under
22 section 452.133 (3) of the Wisconsin statutes.

23 (b) If a client enters into an agency agreement with a broker to receive
24 brokerage services related to real estate primarily intended for use as a residential
25 property containing one to 4 dwelling units, and the written disclosure statement

under par. (a) is not incorporated into the agency agreement, the broker shall request the client's signed acknowledgment that the client has received a copy of the written disclosure statement.

SECTION 45. 452.137 of the statutes is repealed.

SECTION 46. 452.138 of the statutes is amended 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 47. 452.139 (1) of the statutes is amended to read:

452.139 **(1)** ~~FIDUCIARY~~ COMMON LAW 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~~ duties or obligations under common law ~~principles of agency~~ to the extent that those common law ~~fiduciary~~ duties or obligations are inconsistent with the duties specified in this chapter or in rules promulgated under this chapter.

SECTION 48. 452.14 (3) (f) of the statutes is amended to read:

452.14 **(3)** (f) Accepted from any person except the broker's, salesperson's, or time–share salesperson's employer, if the broker, salesperson, or time–share salesperson is employed as a salesperson or time–share salesperson by a broker, a commission or valuable consideration as a salesperson or time–share salesperson for the performance of any act specified in this chapter or as compensation for referring

1 a person to another broker, salesperson, or time–share salesperson or to any other
2 person in connection with a ~~real estate~~ transaction;

3 **SECTION 49. Initial applicability.**

4 (1) The treatment of sections 452.133 (1) (intro.) (a), (b), (c), (d), (e), (f), and (g),
5 (2) (intro.), (am), (b), (c), and (d), (4), (5), and (6) and 452.134 of the statutes, the
6 renumbering and amendment of section 452.133 (2) (a) of the statutes, and the
7 creation of section 452.133 (2) (a) 2. of the statutes first apply to agency agreements
8 entered into, modified, or renewed on the effective date of this subsection.

9 (2) The treatment of section 452.12 (3) of the statutes first applies to brokerage
10 services provided on the effective date of this subsection.

11 **SECTION 50. Effective date.**

12 (1) This act takes effect on the first day of the 6th month beginning after the
13 effective date of this subsection.

14 **(END)**

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3880/1dn
CTS:...:...
lmk

(date)

Senator Stepp:

This draft is identical to LRB–1387/6.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3880/1dn
CTS:lmk:rs

October 19, 2005

Senator Stepp:

This draft is identical to LRB–1387/6.

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Northrop, Lori

From: Risch, Jay
Sent: Wednesday, October 19, 2005 12:24 PM
To: LRB.Legal
Subject: Draft review: LRB 05-3880/1 Topic: Real estate practice amendments

It has been requested by <Risch, Jay> that the following draft be jacketed for the SENATE:

Draft review: LRB 05-3880/1 Topic: Real estate practice amendments