

## ☛ 07hr\_JCR-AR\_Misc\_pt13



☛ Details: Dept of Regulation and Licensing RL 16.06 (1) (a), (b) and (d) Emergency Extension Request.  
Public hearing held August 26, 2008.

(FORM UPDATED: 08/11/2010)

# WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

## 2007-08

(session year)

## Joint

(Assembly, Senate or Joint)

## Committee for Review of Administrative Rules...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

## Record of Committee Proceedings

### Joint Committee for Review of Administrative Rules

#### **Dept of Regulation and Licensing RL 16.06 (1) (a), (b) and (d) Emergency Extension Request**

Request for extension of emergency rule amending s. RL 16.06 (1) (a), (b) and (d), relating to the use of approved forms for the practice of real estate.

August 26, 2008

#### **PUBLIC HEARING HELD**

Present: (10) Senators Jauch, Lehman, Kreitlow, Grothman and Leibham; Representatives LeMahieu, Zipperer, Friske, Black and Berceau.

Absent: (0) None.

#### Appearances For

- William Black, Madison — Legal Council to the Real Estate Examining Board, Department of Regulation and Licensing

#### Appearances Against

- None.

#### Appearances for Information Only

- None.

#### Registrations For

- None.

#### Registrations Against

- None.

#### Registrations for Information Only

- None.

August 26, 2008

#### **EXECUTIVE SESSION HELD**

Present: (10) Senators Jauch, Lehman, Kreitlow, Grothman and Leibham; Representatives LeMahieu, Zipperer, Friske, Black and Berceau.

Absent: (0) None.

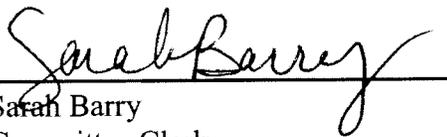
Moved by Representative Black, seconded by Representative Zipperer that **Dept of Regulation and Licensing RL 16.06 (1) (a)**,

**(b) and (d) Emergency Extension Request** be recommended for adoption.

Ayes: (10) Senators Jauch, Lehman, Kreitlow, Grothman and Leibham; Representatives LeMahieu, Zipperer, Friske, Black and Berceau.

Noes: (0) None.

ADOPTION RECOMMENDED, Ayes 10, Noes 0

  
\_\_\_\_\_  
Sarah Barry  
Committee Clerk

# Vote Record

## Joint Committee for Review of Administrative Rules

Date: 8/26

*Commerce 132 + DLL*

Moved by: \_\_\_\_\_ Seconded by: \_\_\_\_\_

AB \_\_\_\_\_ SB \_\_\_\_\_ Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_ SJR \_\_\_\_\_ Appointment \_\_\_\_\_  
 AR \_\_\_\_\_ SR \_\_\_\_\_ Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
 A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

- Be recommended for:
- Passage       Adoption       Confirmation       Concurrence       Indefinite Postponement
  - Introduction       Rejection       Tabling       Nonconcurrency

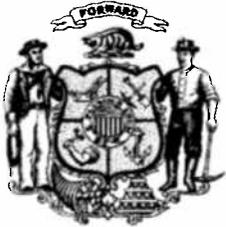
<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Senator Robert Jauch, Co-Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Daniel LeMahieu, Co-Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator John Lehman</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Pat Kreitlow</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Glenn Grothman</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Joseph Leibham</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Rich Zipperer</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Donald Friske</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Spencer Black</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Terese Berceau</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	_____	_____	_____	_____

*Both rules*

Motion Carried       Motion Failed



# WISCONSIN STATE LEGISLATURE



**Jim Doyle**  
Governor

**WISCONSIN DEPARTMENT OF  
REGULATION & LICENSING**

1400 E Washington Ave  
PO Box 8935  
Madison WI 53708-8935  
Email: [web@drl.state.wi.us](mailto:web@drl.state.wi.us)  
Voice: 608-266-2112  
FAX: 608-267-0644  
TTY: 608-267-2416

**Celia M. Jackson**  
Secretary



August 5, 2008

Senator Robert Jauch, Senate Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 118 South, State Capitol  
Madison, WI 53702

Representative Daniel LeMahieu, Assembly Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 17 North, State Capitol  
Madison, WI 53702

RE: Request for Extension of Emergency Rule

Dear Senator Jauch and Representative LeMahieu:

I am writing to request an extension of the emergency rule amending s. RL 16.06 (1) (a), (b) and (d), relating to the use of approved forms for the practice of real estate. A copy of the emergency rule is attached.

The public hearing on both the emergency rule and the regular rule was held at the Department of Regulation and Licensing on June 26, 2008. The emergency rule expires on September 12, 2008. The department is requesting an extension of the emergency rule to cover the period of time this rule will be under legislative committee review.

Sincerely,

A handwritten signature in black ink, appearing to read "Celia M. Jackson".

Celia M. Jackson, Secretary  
Department of Regulation and Licensing

cc: Kim Nania, Division Administrator  
William A. Black, Legal Counsel  
Larry Martin, Executive Assistant  
Pamela Haack, Paralegal

STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF RULE-MAKING	:	
PROCEEDINGS BEFORE THE	:	ORDER ADOPTING
DEPARTMENT OF REGULATION	:	EMERGENCY RULES
AND LICENSING	:	

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ORDER

An order of the Department of Regulation and Licensing to amend RL 16.06 (1) (a), (b) and (d), relating to how to use approved forms for the practice of real estate.

Analysis prepared by the Department of Regulation and Licensing.

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ANALYSIS

**Statutes interpreted:**

Sections 452.04 (2), 452.05 (1) (b) and 452.07, Stats.

**Statutory authority:**

Sections 15.405 (11), 227.11 (2), 452.04 (2), 452.05 (1) (b) and 452.07, Stats.

**Explanation of agency authority:**

The Department of Regulation and Licensing has authority under ss. 452.05 (1) (b) and 452.07, Stats., to promulgate rules for the guidance of the real estate profession and to approve forms for use in real estate practice. The emergency rule has also been reviewed and approved by the council on forms which is currently meeting to review and revise forms for real estate transactions as provided in s. 452.06, Stats., as well as reviewed by the Real Estate Board as required by s. 452.07 (3), Stats., and recommended by the board for promulgation.

**Related statute or rule:**

Section RL 16.06.

**Plain language analysis:**

The purpose of this emergency rule is to prohibit the altering of approved real estate forms such that blank lines are inserted between provisions of department approved text, similar in form, content and appearance, such that the inserted provisions create the implication that they are approved by the department.

Section RL 16.06 (1) (a) amends a paragraph relating to the appearance and numbering of lines appearing on a page of an approved form. Section RL 16.06 (1) (b) amends a paragraph changing the words “spaces” and “blanks” to “blanks” and “blank lines.” And Section RL 16.06 (1) (d) amends a paragraph to prohibit the altering of a form except for modifying margins or font size.

**Summary of, and comparison with, existing or proposed federal regulation:**

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

**Comparison with rules in adjacent states:**

**Iowa:**

Iowa does not have rules or statutory authority relating to governmental approval of forms.

**Illinois:**

Illinois does not have rules or statutory authority relating to governmental approval of forms.

**Michigan:**

Michigan does not have rules or statutory authority relating to governmental approval of forms.

**Minnesota:**

Minnesota does not have rules or statutory authority relating to governmental approval of forms.

**Summary of factual data and analytical methodologies:**

The department reviewed a proposed draft of a modified form of the residential real estate listing contract, WB-1, which contained inserted text that appeared to be or could be construed to be approved by the department. The modified form was forwarded to the department as an example of work product that was purportedly to be the subject of a continuing education class demonstrating the allowed means to modify an approved form. The modified form was shown to industry stakeholders, the department’s council on forms, and the Real Estate Board, for review and comment. All parties agreed that the modified form was, or could be, construed to be misleading based upon its formatting that the modified text was approved by the department, when in actuality, it was not. This potential for consumer confusion was agreed to be a cause for immediate rule-making to prevent modification of forms such as WB-1 in the manner submitted.

The proposed changes to s. RL 16.06 are designed to prohibit the altering of the format of approved forms and the subsequent addition of textual content, rather such changes must be made by either filling in blank lines currently inserted into the text of a form for such

purpose, or by the attachment of an addendum where proper under the currently existing rules.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:**

This rule will more clearly specify that department approved real estate contract forms cannot be substantively altered. At the start of the biennium, there were 13,090 real estate brokers licensed in Wisconsin and 15,914 real estate salespersons licensed in Wisconsin. A significant percentage of these real estate brokers and salespersons work in small businesses. This rule change should not have an effect on small business as the department is aware of only one individual that is currently altering the substantive content of department approved real estate contract forms.

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an "agency" in this section.

**Anticipated costs incurred by private sector:**

The department finds that this rule has no significant fiscal effect on the private sector.

**Fiscal estimate:**

The department estimates that this rule will require staff time in the Division of Board Services and the Office of Legal Counsel. The total one-time salary and fringe costs in the Division of Professional Credentialing and Office of Legal Counsel are estimated at \$1,600.

**Effect on small business:**

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at [larry.martin@drl.state.wi.us](mailto:larry.martin@drl.state.wi.us), or by calling (608) 266-8608.

**Agency contact person:**

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Phone: (608) 266-0495. Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us).

**Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us). Comments must be received no later than June 2, 2008.

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TEXT OF RULE

SECTION 1. RL 16.06 (1) (a), (b) and (d) are amended to read:

RL 16.06 (1) (a) Shall assure that the numbering of lines ~~and~~, line contents and the lines appearing on each page are identical to those on the department's forms.

(b) May not reproduce the form in such a manner that optional provisions are left out and blank ~~spaces~~ lines are filled in without any indication of where the optional provisions and ~~blanks~~ blank lines occur on the department's form.

(d) May not add additional blank lines, ~~provided that such lines remain unnumbered and the contents and line numbers on the department's form are not altered~~ or add additional lines containing textual content, or alter the format of the form in any other manner. "Alter the format" does not include modifying margins or font size consistent with par. (a). To add textual content or additional provisions, a licensee shall only fill in blank lines provided for that purpose on a form or add addenda containing additional or altered provisions as provided in subs. (4) and (5).

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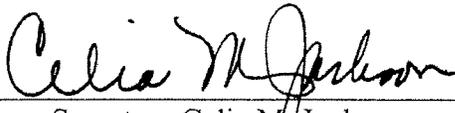
FINDING OF EMERGENCY

The Department of Regulation and Licensing finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments into effect prior to the time the amendments would take if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

The department reviewed a proposed draft of a modified form of the residential real estate listing contract, WB-1, which contained inserted text that appeared to be or could be construed to be approved by the department. The modified form was forwarded to the department as an example of work product that was purportedly to be the subject of a continuing education class demonstrating the allowed means to modify an approved form. The modified form was shown to industry stakeholders, the department's council on forms, and the Real Estate Board, for review and comment. All parties agreed that the modified form was, or could be, construed to be misleading based upon its formatting that the modified text was approved by the department, when in actuality, it was not. This potential for consumer confusion was agreed to be a cause for immediate rule-making to prevent modification of forms such as WB-1 in the manner submitted.

This rule shall take effect upon publication in the official state newspaper.

Dated 4/8/08

Agency   
Secretary Celia M. Jackson  
Department of Regulation and Licensing

RL 16.06 Emergency Rule (Use of real estate approved forms) Final 4-4-08



SENATOR BOB JAUCH  
CO-CHAIR



REPRESENTATIVE DANIEL LEMAHIEU  
CO-CHAIR

P.O. Box 7882  
MADISON, WI 53707-7882  
(608) 266-3510

P.O. Box 8952  
MADISON, WI 53708-8952  
(608) 266-9175

**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

August 26, 2008

Celia M. Jackson, Secretary  
Wisconsin Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

Dear Secretary Jackson:

The Joint Committee for the Review of Administrative Rules met in Executive Session on August 26, 2008 and adopted the following motion:

Moved by Representative Black, seconded by Representative Zipperer that the emergency rule amending s. RL 16.06 (1) (a), (b) and (d), related to the use of approved forms for the practice of real estate, be granted a 60-day emergency rule extension from the date of expiration of the current emergency rule on September 12, 2008.

Motion Passed 10-0.

Pursuant to s. 227.24(2)(c), stats., we are notifying the Legislative Reference Bureau of the Committee's action through copies of this letter.

Sincerely,

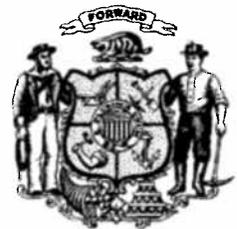
Senator Bob Jauch  
Senate Co-Chair

Representative Daniel LeMahieu  
Assembly Co-Chair

Cc: Bruce Hoesly, Legislative Reference Bureau  
Ron Sklansky, Legislative Council



# WISCONSIN STATE LEGISLATURE



## Barry, Sarah

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**Subject:** JCRAR Hearing  
**Location:** 411 South  
**Start:** Tue 8/26/2008 10:00 AM  
**End:** Tue 8/26/2008 11:00 AM  
**Recurrence:** (none)

**DRL Rule:** Bill Black, legal council to the Real Estate Examining Board, will provide testimony on the DRL rule on real estate forms.

**Commerce Rule:** Steve Sabatke from Commerce will be there. He has extensive experience with the program and is copied on this email if you have further questions. He is an Economic Development specialist in our Bureau of Business Finance and Compliance.

Sarah...Sam Rockweiler from Commerce will also be at the hearing as well. He drafted the administrative rules for the program upon the direction of the committee I chaired.

Steve Sabatke

In person: Grothman, Jauch, LeMahieu, Lehman, Friske, Black

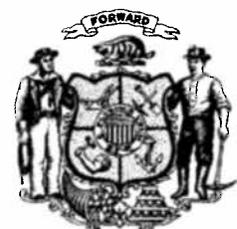
By phone: Leibham, (Kreitlow possibly)

Not attending: Berceau & possibly Kreitlow

Berceau  
- yes / yes -  
Kreitlow  
yes / yes



# WISCONSIN STATE LEGISLATURE





Wisconsin REALTORS' Association  
e-mail: wra@wra.org | Web site: www.wra.org

Michael J. Spranger, ABR, CRS, GRI, Chairman  
e-mail: sprangerm@firstweber.com  
William Malkasian, CAE, President  
e-mail: wem@wra.org

TO: All Legislators  
FROM: Michael Theo, Vice President for Legal and Public Affairs  
Kevin King, General Counsel  
DATE: April 14, 2008  
RE: Department of Regulation and Licensing Emergency Rules re: Forms

The Wisconsin REALTORS® Association fully supports the order of the Department of Regulation and Licensing (DRL) adopting an emergency rule amending Wisconsin Administrative Code § RL 16.06 (1) (a), (b) and (d).

***Unlike many other states, Wisconsin requires all real estate licensees to use state approved contractual forms. The purpose of the emergency rule is to prohibit certain alterations of DRL forms.***

#### **Background**

DRL is authorized by statute to promulgate rules for the guidance of real estate practice and to approve contractual forms for use by real estate brokers and licensees in Wisconsin. This emergency rule would prohibit blank lines from being added to the DRL forms (in addition to the blank lines already provided therein). This change is necessary to prohibit real estate licensees from adding new lines and provisions to the contract while giving consumers the impression that the new content is actually part of the state-approved forms. If additional content needs to be added to a DRL form to accomplish the intent of the party for whom the form is being drafted, it can be inserted in the blank lines provided within the form or as an addendum to the form, as authorized under existing rules.

#### **Need**

This emergency rule is necessary to avoid significant consumer confusion. Without this rule, consumers could be presented with unapproved contractual language being presented as if it had received DRL approval. An example of one such form, containing additional content that reasonably could be misconstrued as being approved by the DRL, was provided to both the Department's Real Estate Board as well as its Real Estate Contractual Forms Advisory Committee. This form purportedly was being used in a continuing education course as a means of demonstrating "allowable" means of modifying a DRL form. After seeing this, the Real Estate Board and the Forms Advisory Committee were so concerned that each recommended immediate action to amend the existing administrative rule as proposed. On behalf of the 16,000 professional REALTORS® in Wisconsin, we wholeheartedly agree with DRL regarding the potential risks of inaction and thus urge support for this emergency rule.

