



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2015 Wisconsin Act 258
[2015 Assembly Bill 456]

**Changes to the Laws Governing
Real Estate Practice**

2015 Wisconsin Act 258 (the Act) makes various changes to the laws regulating real estate practice, including those discussed below.

TERMINOLOGY

The Act updates the terminology used throughout ch. 452, Stats., to reflect current real estate licensing practice. Under current law, both an individual and a business entity may be licensed as a broker, but ch. 452, Stats., refers to both as “broker,” generally. The Act provides definitions for “licensed individual brokers” and for “licensed broker business entities” to clearly identify the two types of broker licenses. The Act defines a “firm” as both an individual broker acting as a sole proprietor and as a broker that is a business entity, and replaces most references to “broker” with “firm.”

EMPLOYEES AND INDEPENDENT CONTRACTORS

The Act eliminates most references to the “employment” of licensees. Instead of being employed by a firm, a licensee may be “associated with a firm.” Under the Act, “association with a firm” means being employed by a firm, serving as an independent contractor for a firm, or both. The Act prescribes how a licensee may become associated with a firm; how association may be terminated; how the Department of Safety and Professional Services (DSPS) must be notified about the association; and how a real estate licensee may engage in real estate practice while associated with a firm. Under the Act, a real estate licensee may be associated with more than one firm at the same time, if certain conditions are met, a salesperson may be associated with only one firm at a time.

Under the Act, a real estate licensee may enter into an agreement with a firm providing that the licensee will not be treated as an employee of the firm for federal or state tax purposes.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

If a licensee enters into such an agreement and at least 75% of the compensation paid to the licensee in a calendar year, pursuant to the written agreement, is directly related to the brokerage services performed by the licensee on behalf of the firm, then the licensee is an independent contractor and is not considered an employee under any rule or law, including for the following purposes:

- Income tax withholding under ch. 71, Stats.
- Worker's compensation under ch. 102, Stats.
- Employment regulation under ch. 103, Stats.
- Minimum wage under ch. 104, Stats.
- Unemployment insurance under ch. 108, Stats.
- Wage payment claims and collection under ch. 109, Stats.
- Fair employment regulation under ch. 111, Stats.

Under the Act, a real estate licensee may be both an employee and an independent contractor for the same firm at the same time. In such a situation, the licensee is excluded from the employment-related benefits and protections described above only for activities conducted as an independent contractor, but, with one exception, the licensee is covered for activities related to employment.

Unemployment Insurance

The Act provides that a real estate licensee may not be both an employee and an independent contractor for the same firm at the same time for unemployment insurance purposes. If a real estate licensee qualifies as an independent contractor for a firm, then the licensee is not entitled to unemployment insurance coverage from that firm.

Worker's Compensation

Under the Act, a firm may elect to consider a real estate licensee who is an independent contractor an employee for worker's compensation purposes. A firm may do so by obtaining an endorsement on its worker's compensation insurance policy that covers the licensee, or, if the firm is self-insured, by filing a declaration with the Department of Workforce Development (DWD) naming the licensee as an employee for worker's compensation purposes. A declaration must satisfy specific requirements and may be revoked by the firm with written notification to DWD.

SUPERVISION OF ASSOCIATED LICENSEES

The Act provides that a firm must supervise the brokerage service activities of each associated licensee. Such supervision must be delegated to at least one licensed individual broker. Supervision includes ensuring that each associated licensee holds a valid license, retaining all transaction records, and reviewing transaction-related documents prior to the closing of a transaction. The Real Estate Examining Board (REEB) is authorized to promulgate additional supervisory requirements by rule. A firm is responsible for the acts of associated

licensees only to the extent that the firm fails to comply with the supervisory requirements established by statute and rule.

Commission and Compensation

The Act requires that all commission and compensation earned by a real estate licensee who is associated with a firm be paid directly to the firm.

BUSINESS REPRESENTATIVES FOR FIRMS

Under current law, a license may be issued to a business entity if the business entity has at least one business representative licensed as a broker. The Act clarifies that only a **broker's** license may be issued to a business entity with a business representative licensed as a broker. The Act also provides that a licensed broker may act as a business representative for more than one business entity and may act as a broker on behalf of each business entity, if each business entity consents to the arrangement in writing.

UNLICENSED PERSONAL ASSISTANTS

The Act defines an "unlicensed personal assistant" as an individual who is employed to provide only services for which ch. 452, Stats., does not require a license. The Act addresses the manner in which an unlicensed personal assistant is to be employed by a real estate licensee who is associated with a firm and prohibits an unlicensed personal assistant from engaging in certain activities related to real estate practice.

INDEPENDENT REAL ESTATE PRACTICE

Under the Act, a broker, but not a salesperson, who is associated with a firm may engage in the independent practice of real estate, under the broker's own name or under the name of a licensed business entity, if the broker obtains written consent from and avoids conflicts of interest with each firm with which the broker is associated. The approval must contain certain stipulations and the broker must notify DSPS of the name under which the broker will engage in independent practice.

DUTIES OWED BY REAL ESTATE LICENSEES

Under current law, brokers and subagents owe certain duties to parties to real estate transactions. The Act provides that the duties owed under current law are owed by firms and subagents and by licensees associated with a firm or subagent who provide brokerage services to one or more parties to a real estate transaction.

Disclosure Statements

The Act updates the disclosure statements that must be given to parties in a real estate transaction to clarify the duties owed to them by firms, subagents, and associated licensees. The

update includes clarifying the meanings of “multiple representation relationships”¹ with and without “designated agency.”²

LIMITED PRACTICE OF LAW BY REAL ESTATE LICENSEES

The Act codifies a Wisconsin Supreme Court decision³ which permits real estate licensees to engage in the limited practice of law by filling out, or otherwise using, REEB-approved real estate forms. The Act specifically provides that a real estate licensee may not provide legal advice, although a licensee may provide a general explanation of the general provisions of each form.

The Act also modifies the definition of “negotiate” to clarify that a real estate licensee, if asked by a party to a real estate transaction, must complete REEB-approved forms according to the party’s instruction, rather than consistent with the party’s intent.

RECORDS RETENTION

The Act requires real estate licensees to retain records related to a real estate transaction in accordance with REEB rules. Such records may be retained in electronic format.

STATUTE OF LIMITATIONS

Under current law, a person may bring certain claims against a real estate licensee for up to six years following the provision of brokerage services. Under the Act, a claim against a real estate licensee or against a firm concerning an act or omission relating to the provision of brokerage services must be brought within two years after the first of the following occurs:

- A transaction is completed or closed.
- An agency agreement is terminated.
- An unconsummated transaction is terminated or expires.

The two-year statute of limitations does not apply to disciplinary actions initiated against a real estate licensee by the REEB.

DETERMINATION OF LICENSING DISQUALIFICATION

Under current law, an unlicensed individual may request that the REEB make a binding determination as to whether the individual’s criminal record would disqualify the individual

¹ “Multiple representation relationship” means a relationship between a broker and two or more of the broker’s clients in which the clients are parties in the same transaction. [s. 452.01 (5w), Stats.]

² “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. [s. 452.01 (3w), Stats.]

³ *State ex. rel. Reynolds v. Dinger*, 14 Wis. 2d 193 (1961).

from obtaining a license. The Act permits the REEB to charge a fee, to be paid to DSPS, for the cost of making the determination.

TIME-SHARE SALESPERSONS

The Act repeals provisions related to the licensing of time-share salespersons and provides that a time-share developer, and the developer's employees, are not brokers so they do not have to obtain broker's licenses in order to sell or otherwise dispose of their time-share interests.

INACTIVE LICENSES AND REAL ESTATE APPRENTICESHIPS

The Act repeals provisions related to inactive licenses, for which a person can no longer apply, and repeals provisions related to real estate apprenticeships.

Effective date: The Act generally takes effect on July 1, 2016, except as follows: (1) the repeal of the provisions related to time-share salespersons takes effect on December 14, 2016; (2) the changes to the statute of limitations for actions brought against real estate licensees take effect on March 4, 2016, and first apply to an action that accrues on that date; and (3) the changes made to the provision of unemployment insurance coverage so as to exclude employees who also qualify as independent contractors takes effect on October 1, 2016, and first applies to employment services performed on that date.

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