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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 98-175

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 September 1998.]

1. Statutory Authority

a. It appears that s. RL 132.02 (4) requires an applicant for registration to provide more information regarding criminal convictions or charges than is required and authorized under the statute. That section should be rewritten to require the submission of the information required under s. 440.972 (1) (c), Stats., as created by 1997 Wisconsin Act 81. [See, also, s. RL 132.03 (4).] In addition, it appears that the rule should require the submission of that information whenever a home inspector applies for renewal of his or her credentials.

b. Section 440.973 (3), Stats., provides that an individual is not eligible for examination unless the individual has satisfied registration requirements at least 30 days before the date of the examination. The statute provides for no hardship exemptions to this provision. Sections RL 133.01 (1) and 133.02 (2) provide that the department may accept applications after the normal due date if circumstances warrant the procedure. The department should explain its statutory authority for this provision.

c. Section 440.974 (2), Stats., provides in part that the department’s rules must require the completion of at least 20 hours of continuing education during each calendar year. However, s. RL 135.02 (2) and (5) appear to allow the completion of 40 hours of continuing education in a biennium. The rule should require 20 hours of continuing education during each calendar year.

2. Form, Style and Placement in Administrative Code

a. In s. RL 131.02 (16), it appears that the phrase “on behalf of a reasonable person” is unnecessary and should be deleted.

b. It appears that s. RL 131.02 (16) (b) could be deleted since the requirement set forth in that paragraph is already set forth in par. (a).

c. In the title to s. RL 132.04, “registration of” should be inserted after “of.”

d. In the second sentence of s. RL 133.01 (2), after the first occurrence of the word “of,” the following should be inserted: “an examination relating to.”

e. It appears that in the Note following s. RL 133.01 and 133.02, “otherwise” should be deleted because the use of that term implies that a person who is disabled is not a qualified applicant.

f. Section RL 133.04 should set forth objective standards by which it will be determined whether an applicant may review an examination that he or she has failed. In addition, the rule appears to assume that a decision regarding whether review of an examination will be permitted is made before the applicant files a written request with the department. The rule should be rewritten to specify that a decision will not be made until after the applicant files a written request for review. Also, who is the “examination provider” referred to in the rule? Finally, in the introduction, the phrase “all of” should precede the phrase “the following conditions apply.”

g. In s. RL 134.02 (3) (a), the phrase “or the rules promulgated under this section” should be deleted.

h. The introductory material in s. RL 134.03 (intro.) should be rewritten to correspond to the material in the subunits following the introduction. Specifically, the introductory material refers only to items which must be inspected while the subsections set forth specific requirements regarding the inspection and contents of the report. Also, the phrase “all of” should precede the phrase “the following items.”

i. In the portions of the rule which set forth acts which a home inspector is not required to do, the term “observe” is used. Should “or report on” be added to those provisions? For example, should s. RL 134.02 (10) (c) 2. be rewritten as follows: “Observe or describe the condition of non-central air conditioners.”?

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

a. In s. RL 132.05 (1) (intro.), the reference should be to s. RL 132.04 (2) because that subsection provides an alternative method of license renewal.

b. The entire rule should be reviewed to ensure that the mandated use of forms meets the requirements of s. 227.14 (3), Stats.

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

a. In s. RL 131.02 (18), should the phrase “depending on” be replaced with “including”?

b. It appears that the requirement, in s. RL 132.04 (3), to provide evidence of having successfully passed Part II of the required examination applies only to the renewal of credentials which were issued on or before December 31, 2000. As written, the rule requires any individual who is registered as a home inspector before January 1, 2001, to submit that evidence every time he or she applies for a renewal of his or her credentials, rather than only the first time he or she applies for renewal. Is this the department’s intent?

c. In s. RL 132.05 (2) (intro.), the phrase “shall cease and desist from practicing” should be replaced with “may not practice.”

d. In s. RL 133.01 (1), the phrase “at least” should precede the first occurrence of the number “30.” [See also s. RL 133.02 (1).] Also, in s. RL 133.01, the phrases “prior to January 1, 2001” and “on or before December 31, 2000” are equivalent. A consistent phrase should be used throughout the rule.

e. In s. RL 133.03 (2), where can the applicant find the “rules of conduct of the examination”?

f. Is there any limit to the number of times an applicant may retake the examination under s. RL 133.05? Also, must an applicant who fails only part of the examination retake the entire examination? Or, may the applicant only retake the part of the examination that the applicant failed?

g. Section RL 134.02 (1) should be restructured so that the definition is contained in one subsection and the substantive requirement of current sub. (1) (b) is contained in a separate subsection without using the defined term in quotation marks.

h. In s. RL 134.03 (4) (c) 2., should “lighting” be changed to “lightning”?

i. In s. RL 134.03 (5) (c) (intro.), should “or describe the condition of” be inserted after “observe”?

j. There appears to be some conflict between s. RL 134.03 (6) (a) 3. which states that a home inspector shall observe and describe the condition of hot water systems, including flues and chimneys, and par. (c) 6., which states that a home inspector shall not be required to observe the interior of flues or chimneys. This discrepancy should be clarified.

k. In s. RL 134.03 (6) (c) 5., it appears that “or” should be added after “foundation irrigation systems.”

l. In s. RL 134.03 (9) (c) 4., “or” should be inserted after “filters.”

m. In s. RL 134.04 (2) (intro.), the material after “report” should be replaced with the following: “any of the following information with respect to any item which he or she has inspected:”.

n. Section RL 135.02 (2) should be rewritten to specify that the specified number of hours of continuing education must be completed in the time period between the most recent registration and the date that the inspector applies for renewal of registration.

o. In s. RL 135.02 (7), how is an educational program approved? What conditions are used to approve the program and what type of record maintenance will be required?