

### Chapter REB 3

## PLEADING AND PRACTICE

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**History:** Chapter REB 3 as it existed on April 30, 1972, was repealed and a new chapter REB 3 was created. Register, April, 1972, No. 196, effective May 1, 1972.

**REB 3.01 Proceedings.** (1) General. (a) *Place.* All hearings shall be held in the county wherein the applicant for a license, or the broker complained of, or whose salesman is complained of, has his place of business. The applicant, broker, or salesman may be written waiver consent to change of place for hearing and in that event the board may in its discretion designate another place for hearing. All hearings other than those pursuant to section 452.11, Wis. Stats., shall be held at the office of the board, Milwaukee, Wisconsin, unless otherwise ordered by the board.

(b) *Public hearing.* All hearings conducted by the board or its duly authorized employees shall be open to the public, unless otherwise ordered by the presiding officer at the hearing, as provided by law.

(c) *Record.* All proceedings at hearing in contested case or in any other hearings where the board shall so determine (or any party so request) shall be taken down by a reporter, and the transcript thereof, together with all exhibits, shall be a part of the official records of such hearing.

(d) *Hearing.* Any party to the proceedings shall have the right to appear at such hearing in person, by counsel, or otherwise, to call, examine, and cross-examine witnesses and to introduce into the records, documentary or other evidence.

(2) INSTITUTION. (a) *By individual.* Proceedings going to the revocation or suspension of licenses shall be initiated on complaint verified by an individual or his representative. Where complaint is instituted by an individual said matter shall be tried by the individual or his attorney.

(b) *By board.* The board may in its discretion initiate proceedings to revoke, or suspend a license whenever an investigation by the board or its employees, discloses probable grounds therefor or in the event a complainant fails to proceed to initiate proceedings pursuant to chapter 452, Wis. Stats., by a formal complaint provided that no hearing shall be initiated on the board's own motion until a resolution duly authorizing the same has been adopted by the board.

(3) CONDUCT OF HEARING. (a) *Presiding officer.* The hearing shall be conducted and presided over by a member of the board, or such subordinate as may be designated to hear the matter by the chairman or majority of the board.

(b) *Pre-hearing conference.* In any matter pending before it, the board may direct any party or attorney for any party to appear before

the member of the board or subordinate who has the matter in charge, to consider simplification of the issues; necessity or desirability of amendments to the pleadings; obtaining admission of fact or documents which will avoid unnecessary proof; and such other matters as may aid in the disposition of the matter.

(c) *Evidence.* The board shall not be bound by common law or statutory rules of evidence. All testimony having reasonable probative value shall be admitted, but immaterial, irrelevant, or unduly repetitious testimony shall be excluded. The rules of privilege recognized by law shall be given effect. Basic principles of relevancy, materiality and probative forces, as recognized in equitable proceedings, shall govern the proof of all questions of fact. The provisions of section 227.10, Wis. Stats., shall be applicable to evidence presented at board meetings.

(d) *Oral statements and arguments.* Parties may make opening statements after appearances have been entered, and any party to the proceeding may make closing argument at the close of the hearing, which shall not be included in the stenographic report of the hearing, unless the presiding officer so directs. The board may, in its discretion, limit the amount of time for such opening statement or closing arguments.

(e) *Briefs.* The presiding officer at the hearing shall indicate whether or not the board desires briefs filed, and if so, the date on or before which such briefs shall be submitted.

(f) *Closing of hearing.* A hearing is closed when briefs have been submitted and closing arguments, if any, completed. If no briefs are to be submitted, nor closing arguments made, the hearing is closed when testimony is closed and no further evidence shall be received provided that the board may, in its discretion, upon reasonable notice to all parties and their consent thereto, reopen the hearing.

(g) *Contempt.* Contemptuous conduct at a hearing shall be grounds for exclusion from the hearing.

(4) **MOTIONS.** (a) *General.* All motions made previous to or subsequent to a hearing shall be filed in writing with the board and shall state briefly the grounds for such motion and the relief applied for. The original shall be signed and a copy thereof served upon each of the other parties. Motions made at a hearing may be stated orally and shall be included in the stenographic report of the hearing.

(b) *Objection.* Any objection with respect to the conduct of the hearing including any objection to the introduction of evidence shall be stated orally together with a short statement of the grounds of such objection and shall be included in the stenographic report of the hearing. No such objection shall be deemed waived by further participation in the proceedings. Any objection with respect to the jurisdiction of the board shall be in writing and in conformity with the general rules pertaining to the motions.

(c) *Continuations.* The presiding officer with the consent of the board's members present may grant continuances and extension of adjournment and postponements.

(d) *Stipulations.* In any proceedings, the board may in its discretion accept oral stipulations of fact and the same may be introduced

as evidence with respect to any issue. The board may accept written stipulations of fact and the same may be introduced as evidence in respect to any issue.

**History:** Cr. Register, April, 1972, No. 196, eff. 5-1-72.

**REB 3.015 Public inspection of records.** (1) **PURPOSE.** The purpose of this rule is to specify the scope of availability and procedure for public inspection, duplication or copying of the records of the Wisconsin real estate examining board.

(2) **DEFINITIONS.** As used in this rule:

(a) "Board" means the real estate examining board;

(b) "Records" means all books, papers, maps, photographs, films, recordings or other documentary materials or any copy thereof, regardless of physical form or characteristics, made or received by the board, its members, or any employe in connection with any business or matter pertaining to the board or its activities which items are in the lawful possession and control of the legal custodian;

(c) "Legal Custodian" of the board's records is the executive secretary of the board;

(d) "Person" is any member of the public, representing himself, other individual(s), or entity;

(e) "Request" means expressed communication from a person to inspect, duplicate or copy board record(s).

(3) **LIMITATION ON PUBLIC INSPECTION AND COPYING.** (a) *Procedure.* Requests for inspection, duplication or copying of board records may be made by mail or in person at the office of the board during business hours on at least 24 hours notice and in such a manner as not to interfere with the efficient and orderly operation of the board's office.

(b) *Requester disclosure.* The full name, current mailing address and phone number of the person requesting any record(s) must be supplied by such person before any record(s) are provided. Such information along with a description of the record(s) provided and a list of fees paid in accordance with section REB 3.015 (3) (c) must be retained by the board.

(c) *Fees; certification; method of payment.* 1. *Fees.* Fees established by the board sufficient to cover the actual cost of equipment operation, supplies, personnel time and mailing, together with all taxes shall be paid, if copies or duplication are requested the minimum fee for any copy or duplication shall be 15¢ per page, unless such records are normally available as a public information service or for sale, in which case that fee shall not apply.

2. *Certification.* On request, copies or duplications of the inspected, duplicated or copied records(s) shall be certified by the legal custodian in accordance with section 889.08, Wis. Stats., for an additional fee of \$1.00 per certified copy.

3. *Method of payment.* Payment in cash or check must be received in advance or accompany record(s) request. Any termination of request, once duplication or copying of such record(s) has begun,

entitles the board to the original payment plus attorney fees or other costs to procure payment, unless the requester can prove the termination was in good faith.

(d) *Other limitations.* Subject to the limitations set forth in section REB 3.015 (3) (a), (b), (c), sections 943.38 and 946.72, Wis. Stats., and such orders or regulations as the legal custodian prescribes, any person may inspect, duplicate or copy an board record except:

1. Communications; oral, written, electronically taped, etc. between the board and its attorney concerning the legal rights and duties of the board with regard to pending matters within the board's jurisdiction;

2. Records containing financial, medical, social or personal histories, disciplinary data, hearsay, suspicious or inconclusive statements, which would unduly damage the reputation of the person (s) to whom they relate so as to outweigh the public benefit to be gained from inspection, duplication or copying of such records. However, the name, address, license number, date of license, type of license, reprimands, suspensions, revocations, whether the license has currently renewed, the nature and result of any disciplinary action against the licensee, pleadings, briefs, exhibits, and transcripts of disciplinary action may be revealed upon request. Complete copies of hearing transcripts are to be obtained directly from the court reporter who prepared the transcript;

3. Records of statements made during or deliberations after a quasi-judicial hearing which bear a proper relationship to the issues;

4. Any record which is a part of an existing investigation which may result in administrative, civil or criminal action or which relates to such a pending action, if the disclosure of such record would substantially impede or frustrate such investigation or action unless the person charged, investigated or otherwise under discussion requests public availability of such record;

5. Personnel files of the board members and staff;

6. Records obtained under a clear pledge of confidentiality, if the pledge was made in order to obtain the information contained in them and the legal custodian has determined that the harm to the public interest that would result from permitting inspection outweighs the public interest in full inspection, duplication and copying of public records, unless the requester has specific statutory or judicial authority to require disclosure.

(4) JUSTIFICATION FOR REFUSING INSPECTION, DUPLICATION, COPYING.

(a) Whenever the legal custodian of the board records, determines that the public interest in withholding full inspection exceeds the public benefit to be gained by granting inspection, full inspection, duplication or copying of board records may be denied. In each case the legal custodian must provide specific sufficient reasons for refusing the request. The legal custodian may delegate to another his authority to permit access to public records, yet retain the right to be promptly notified when questionable requests arise and require in such case that the requested record (s) be delivered to him so that he can determine, at that time, whether or not there are any specific sufficient reasons to deny inspection, duplication or copying of the

record. A request may not be denied solely because the person making the request refuses to identify the other person or entity being represented or is unwilling to state the reasons for making the request or has no special interest in the subject matter of the document. Mere statements that the records are "confidential" or that disclosure of them would be "contrary to public policy" are insufficient to deny inspection, duplication or copying of board records.

(b) *Review relief.* A person may institute a mandamus action to compel access to board records if the legal custodian or other person delegated authority in accordance with section REB 3.015 (4) (a), when tendered the appropriate fee and requested to permit inspection, duplication or copying of board records, refuses to allow such a request for reasons which the requester alleges are legally insufficient pursuant to section REB 3.015 (4) (a).

(5) **EXCEPTIONS.** Nothing contained herein shall prevent the board from furnishing a record(s) when required to do so by a court, or when requested to do so by a public officer in the official discharge of his duties, or pursuant to any statutory provision, under such safeguards as may be appropriate.

(6) **RECORDS; LOCATION, DISPOSITION.** All records of the board, or its members, shall be filed and maintained in the board office and handled in accordance with section 16.80, Wis. Stats.

*History:* Cr. Register, November, 1976, No. 251, eff. 12-1-76.

**REB 3.02 Pleadings.** (1) **PREPARATION.** All papers filed in connection with any hearing shall be either printed or typewritten and as far as practicable, shall be on paper 8½ inches wide, 13 inches long. Pleadings shall bear the name and mailing address of the party in said proceeding or his representative representing the same. All pleadings, notices, and other papers, shall be captioned: BEFORE THE WISCONSIN REAL ESTATE EXAMINING BOARD. In all pleadings, as far as practicable, each paragraph shall be separately numbered consecutively.

(2) **CONTENTS.** (a) *Complaint.* The complaint shall be verified and shall include: The full name and address of the person making the complaint, hereinafter referred to as the complainant; the full name and address of the person against whom the complaint is made, hereinafter referred to as the respondent; an allegation that respondent is either a licensed broker or salesman, and if the respondent is a salesman, then the full name and address of the broker employer; and a clear and concise statement of the facts constituting the alleged complaint including the time and place of occurrence of particular acts and the names of persons involved.

(b) *Answer.* The answer to a complaint shall be verified by the respondent or his representative and shall include a specific denial of each material allegation of the charges which are controverted by the respondent or a statement of any new material constituting a defense or mitigating the offense or matter charged, which the respondent wishes to have considered.

(3) **ADMISSIONS.** Every material allegation of the charges not controverted in the answer shall be taken as true, but new matter in the answer shall be deemed controverted without any reply.

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(4) **DEFAULT.** The default of a party in answering a complaint filed pursuant to Wis. Adm. Code section REB 3.01 (2) (a) shall constitute an admission of all the allegations of said complaint and the default of a party in appearing shall constitute an admission of all the allegations of said complaint or if said hearing is on the board's own motion section REB 3.01 (2) (b) shall be an admission of all the allegations of the notice of hearing in said case. Neither event shall preclude the board from hearing said material and taking such evidence as they shall determine necessary and proper in disposing of the matter.

**History:** Cr. Register, April, 1972, No. 196, eff. 5-1-72.

**REB 3.03 Service of process.** (1) **GENERAL.** Complaint, notice, order or other process of the board may be served as prescribed by section 885.03, Wis. Stats., for service of summons and subpoena, by any member or duly authorized employe of the board or may be served by registered mail addressed to any party at his last known address, or to his attorney of record, or to an address furnished by the person or concern to either the board or the secretary of state. Service may be proved by affidavit. Service by registered mail may be proved by the post office return receipt, in which case the time of service is the date borne by the receipt. Papers required to be filed with the board shall be mailed to the office of the board.

(2) **NON-RESIDENT.** Service of process and pleadings under section 452.14, Wis. Stats., may be made upon the board, any member thereof, the executive secretary or in the absence of the executive secretary from his office in Milwaukee then upon the secretarial stenographer in charge of the Milwaukee office.

(3) **NOTICE OF HEARING.** A copy of the complaint shall be served in the manner prescribed for the service of process upon the broker or salesman complained against by personal service or by mailing same to his last known business address, and in case the complaint is against a salesman, a copy of the complaint shall also be served upon the broker for whom he is acting. The board shall not, in the absence of consent by the parties concerned, set a date for a hearing going to the revocation of a license until the person complained against has filed his answer with the board or until the 10 days allowed for the filing of such answer has expired. Matters shall be set for hearing as promptly as possible and within 30 days after the filing of the complaint. At least 10 days prior to the date of hearing, the board shall send written notice of the time and place of such hearing to the complainant and the persons complained against and to their respective attorneys or agents of record by mailing same to the last known address of such persons.

(4) **ADJOURNMENTS OF HEARING.** The licensee complained against or the complainant has the right to be represented by an attorney at the hearing. Petition for requests for adjournment or postponement of a hearing shall be for good cause, made by the attorney for the licensee (person) complained against; by the licensee or by the complainant or his attorney. Said notice must be made in writing and shall be personally served on the board at least 7 days prior to the date of hearing. In event adjournment is granted, the board may consider suspension of the licensee's real estate license pending hearing pursuant to section 452.10 (2), Wis. Stats., during the period of the adjournment. Only one adjournment or postponement will be

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granted. Failure to timely contact attorney shall not be valid grounds for adjournment.

(5) **SUBPOENAS.** Any member or duly authorized employe of the board may issue subpoenas for the attendance of any party or witness at a hearing. Subpoenas shall be in the form and contents pursuant to chapter 885, Wis. Stats. Respondents shall be provided with subpoenas on demand addressed to the board. Subpoenas shall be served in the manner prescribed by law or as enumerated herein for service of process.

(6) **ORDER OF DENIAL.** The order of denial shall include the broker's or salesman's name, the license applied for, a statement or finding giving the reason for denial; and the order made by the board. It shall be served in the manner prescribed herein for service of process by the board.

(7) **EXTENSION OF TIME.** The board in its discretion, may grant an extension of time for the service of process.

**History:** Cr. Register, April, 1972, No. 196, eff. 5-1-72.

**REB 3.04 Fees.** (1) **WITNESSES.** No witness subpoenaed at the instance of parties other than the board shall be entitled to compensation from the state for attendance or travel.

(2) **DEPOSITION.** Depositions taken by any party to the proceedings other than the board shall be paid for by said party. The board upon receiving such deposition as evidence may in its discretion apportion the cost of such deposition between the party and the board and pay such proportionate cost. Any deposition taken by or on behalf of the board shall be paid by the board and any party desiring a copy thereof shall pay the proper cost for such copy.

**History:** Cr. Register, April, 1972, No. 196, eff. 5-1-72.

**REB 3.05 Appeal.** (1) **PETITION FOR REHEARING.** The board shall not grant a rehearing except upon formal application being filed with the board and favorable recommendation thereon by the investigator or executive secretary or board member who was present at the original hearing. Application for rehearing shall be made within 20 days after any determination or order of the board is made. Only one rehearing shall be granted. The application for rehearing shall set forth specifically and in adequate detail the particular and specific respects in which it is deemed that the determination made by the board is unlawful, unreasonable, improper, or unfair. Mere conclusions of law or general allegations without specific reference to the record in the proceeding will be rejected.

(2) **COURT REVIEW.** The respondent's right to appeal the decision of the board shall be governed by section 452.17, Wis. Stats.

**History:** Cr. Register, April, 1972, No. 196, eff. 5-1-72.