

CR 90-35

CERTIFICATE

STATE OF WISCONSIN

DEPARTMENT OF REGULATION AND LICENSING

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Marlene A Cummings, Secretary of the Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department, do hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 2th day of July, 1990.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin, this 25th day of July, 1990.



Marlene A. Cummings
Secretary
Department of Regulation
and Licensing

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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF REGULATION AND LICENSING
DEPARTMENT OF REGULATION	:	ADOPTING RULES
AND LICENSING	:	(CLEARINGHOUSE RULE 90-35)

ORDER

An order of the Department of Regulation and Licensing to renumber RL 24.02 (1), (2) and (3); to amend RL 24.07 (1); to repeal and recreate RL 24.07 (2); and to create RL 24.02 (1), (3) and (5), RL 24.07 (1) (a) to (c) and RL 24.07 (4) (d) of the administrative code relating to definitions, inspection of property, investigation of material facts, disclosure requirements and the use of third-party experts.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutory authority: ss. 227.11 (2) and 452.07 (1), Stats.
Statutes interpreted: s. 452.14, Stats.

In this proposed rule-making order the Department of Regulation and Licensing proposes to create RL 24.02 (1), (3) and (5), in order to provide definitions for three terms which are used in the chapter or necessary to understand other terms and provisions in it, "adverse facts," "buyer broker" and "competent third party." The term "buyer broker" is a relatively new term in the marketplace and reflects equally new practices of an increasing number of brokers who are offering to serve as agents of buyers. "Buyer broker" can be differentiated from the more common terms, "listing broker" and "selling broker." It is also necessary to define "competent third party," which is a new term used in the amended or recreated sections in this proposed order.

RL 24.07 is amended to acknowledge that a licensee may use the services of others when the licensee does not have specialized knowledge and expertise. This is especially true for an expanding list of disclosure issues, such as levels of radon, presence of asbestos or urea-formaldehyde foam insulation on the premises, adequacy of the well or the septic system, existence of underground storage tanks or soil contamination, location of the property in a flood plain or wetlands, and other similar issues which necessitate expert knowledge to conduct analyses and interpret reports. This rule indicates that a licensee is in compliance with the obligation which the licensee has in RL 24.07 to discover and disclose material facts in a transaction when the licensee engages the services of a competent third party, obtains written reports and delivers copies to interested parties in a timely manner.

RL 24.07 (1) is amended, RL 24.07 (1) (a) to (c) are created, and RL 24.07 (2) is repealed and recreated in order to more clearly state the disclosure requirements in the current rule, to provide for a standard of care, and explicitly state that a licensee may rely on inspections, investigations and reports conducted and prepared by competent third parties. As was required in the past, licensees must inspect properties and conduct investigations of material facts; they must confer with sellers about defects known to the seller, disclose known defects to interested parties in the transaction and reveal any inconsistencies between various information obtained or received. The removal of the term "visual inspection," which is in s. RL 24.07 (2) (a) of the current rules, does not eliminate the responsibility of the licensee to make a visual inspection. The proposed rules in s. RL 24.07 (1) (a) 1., require the licensee to conduct an inspection to detect observable adverse facts material to the transaction. "Observable" includes visual, audible and the other senses.

RL 24.07 (4) (d) is created as an exemption to a disclosure-of-agency requirement which was promulgated by the department in 1988. This exemption responds to suggestions offered by commercial and industrial brokers, who have informed the department that such disclosures are not needed in some transactions. These brokers have stated that clients in many of their transactions are more sophisticated and find the disclosure of agency an insult. Recognizing that the disclosure of agency is more essential in residential transactions and others wherein less informed clients might be involved, the department has developed exemption language in consultation with experienced brokers from this segment of the industry. This provision continues to require disclosure of agency for residential-type properties, whether improved property or vacant land, and for the sale of businesses or business opportunities of any kind (commercial, farm or any other type of business). Disclosure of agency will no longer be required for vacant land or for commercial or industrial buildings not sold in conjunction with a business or business opportunity.

TEXT OF RULE

SECTION 1. RL 24.02 (1), (2) and (3) are renumbered (2), (4) and (6).

SECTION 2. RL 24.02 (1), (3) and (5) are created to read:

RL 24.02 (1) "Adverse facts" includes, but is not limited to: urea-formaldehyde foam insulation, radon, exposed asbestos, underground storage tanks, disposal of toxic chemicals on the property, leaking basement, structural defects, location in a flood plain or wetland, and planned or commenced public improvements which may result in special assessment or otherwise materially affect the property.

(3) "Buyer broker" means a licensee having an agency relationship with a buyer in relation to a particular transaction.

(5) "Competent third party" means a federal, state or local governmental agency, or a person who conducts an inspection or investigation and who the licensee reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation conducted.

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SECTION 3. RL 24.07 (1) is amended to read:

RL 24.07 DISCLOSURE. (1) DISCLOSURE OF MATERIAL FACTS. Licensees shall not exaggerate, misrepresent or conceal material facts in the practice of real estate. Licensees have an affirmative obligation to discover those material factors facts that a reasonably competent and diligent inspection or investigation would ~~disclose~~ reveal and to disclose any adverse ~~factore~~ facts material to the transaction in writing and in a timely manner to the buyer, or the seller or other interested parties. This provision is not limited to the condition of the property, but includes other material facts about a transaction which are ~~material~~ discoverable, as follows:

SECTION 4. RL 24.07 (1) (a) to (c) are created to read:

RL 24.07 (1) (a) Inspections of property. When listing or negotiating the sale of property, brokers and their employees shall conduct a reasonably competent and diligent inspection of the property, which includes the following:

1. 'Listing broker'. When listing a property, a licensee shall conduct a reasonably competent and diligent inspection of the property to detect observable, adverse facts material to the transaction, and make inquiries of the seller on the condition of the structure, mechanical systems and other relevant aspects of the property.

2. 'Other licensees'. When negotiating the sale of a property, and before or during the showing of the property, licensees shall, if given access, conduct a reasonably competent and diligent inspection of the property to detect observable, adverse facts material to the transaction.

3. 'Inconsistencies'. If the licensee's inspection reveals facts inconsistent with or contradictory to the seller's statements or the inspection report of a third party, these facts shall be disclosed to all interested parties.

(b) Investigation of material facts. A licensee who receives information from an inspection, the seller, or otherwise, suggesting the possibility of adverse facts material to a transaction, shall conduct a reasonably competent and diligent investigation to determine the existence of adverse facts material to the transaction.

(c) Standard of care. In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a broker shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson under chapter 452, Stats.

SECTION 5. RL 24.07 (2) is repealed and recreated to read:

RL 24.07 (2) RELIANCE UPON THIRD PARTY INSPECTIONS AND INVESTIGATIONS. If a licensee or a party in a transaction engages the services of a competent third party to conduct a property inspection or investigation of material

facts, the licensee may rely on the results of the inspection or investigation providing the licensee obtains a written report of the inspection or investigation and delivers a copy of the report to all interested parties in a timely manner.

SECTION 6. RL 24.07 (4) (d) is created to read:

RL 24.07 (4) (d) Exemption for certain commercial transactions. A licensee is not required to provide a written disclosure-of-agency in any transaction involving property used or intended to be used principally for commercial or industrial use, provided that the transaction does not include the sale of a business, its goodwill, inventory or fixtures.

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22(2)(intro), Stats.

Dated

7/25/90

Agency

Marlene A. Cummings

Marlene A. Cummings
Secretary, Department of
Regulation and Licensing

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CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

DATE: July 26, 1990

TO: Gary Poulson
Assistant Revisor of Statutes

FROM: Pamela Haack, Administrative Assistant
Department of Regulation and Licensing

SUBJECT: Final Rulemaking Order

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Agency: DEPARTMENT OF REGULATION AND LICENSING

Clearinghouse Rule: 90-35

Attached is a copy and a certified copy of a final order adopting rules.

Would you please publish these rules in the code.

Thank you.