

CHAPTER 452

REAL ESTATE PRACTICE

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Cross-reference: See definitions in s. 440.01.

452.01 Definitions. In this chapter:

(1e) "Adverse fact" means any of the following:

(a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

1. Significantly and adversely affecting the value of the property.
2. Significantly reducing the structural integrity of improvements to real estate.
3. Presenting a significant health risk to occupants of the property.

(b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations under a contract or agreement made concerning the transaction.

(1m) "Agency agreement" means a written agreement between a broker and a client under s. 452.135 (1).

(1s) "Board" means real estate board.

(2) "Broker" means any person not excluded by sub. (3), who:

(a) For another, and for commission, money or other thing of value, negotiates or offers or attempts to negotiate a sale, exchange, purchase or rental of an interest or estate in real estate;

(b) Is engaged wholly or in part in the business of selling real estate to the extent that a pattern of real estate sales is established, whether or not such real estate is owned by such person;

(d) For another and for commission, money or other thing of value, negotiates or offers or attempts to negotiate a sale, exchange, purchase or rental of any business, its goodwill, inventory, fixtures or an interest therein; or

(e) Is engaged wholly or in part in the business of selling business opportunities or goodwill of an existing business or is engaged wholly or in part in the business of buying and selling, exchanging or renting of any business, its goodwill, inventory, fixtures or an interest therein.

(f) For another, and for commission, money or other thing of value, negotiates or offers or attempts to negotiate a sale, exchange or purchase of a time share.

(g) Is engaged wholly or in part in the business of selling time shares to the extent that a pattern of sales is established, whether or not the time shares are owned by such person.

(3) "Broker" does not include any of the following:

(a) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under the judgment or order of any court.

(b) Public officers while performing their official duties.

(c) Any bank, trust company, savings bank, savings and loan association, insurance company, or any land mortgage or farm

loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law.

(d) Employes of persons enumerated in pars. (a) to (c) and (f) when engaged in the specific performance of their duties as such employes.

(e) Any custodian, janitor, employe or agent of the owner or manager of a residential building who exhibits a residential unit therein to prospective tenants, accepts applications for leases and furnishes such prospective tenants with information relative to the rental of such unit, terms and conditions of leases required by the owner or manager, and similar information.

(f) Any credit union which negotiates loans secured by real estate mortgages or any licensee under ch. 138 which negotiates loans secured by real estate mortgages or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan, secured or to be secured by mortgage or other transfer of or encumbrance on real estate.

(g) A person registered as a mortgage banker under s. 440.72 who does not engage in activities described under sub. (2).

(3e) "Brokerage service" means any service described under sub. (2) (a) to (g) provided by a broker to another person.

(3m) "Client" means a party to a transaction who has an agency agreement with a broker for brokerage services.

(3s) "Customer" means a party to a transaction who is provided brokerage services by a broker but who is not a client.

(4) "Disciplinary proceeding" means a proceeding against one or more licensees or registrants in which the board may revoke, suspend or limit a license or registration, reprimand a licensee or registrant, issue a private letter of warning to a licensee or registrant, or assess a forfeiture or require education or training under s. 452.14 (4m).

(4d) "Employ", when used in reference to a broker employing another broker, a salesperson or a time-share salesperson, includes engaging the services of another broker, a salesperson or a time-share salesperson who provides services to the broker as an independent contractor.

(4h) "Employe", when used in reference to an employe of a broker, includes another broker, a salesperson or a time-share salesperson who provides services to the broker as an independent contractor.

(4p) "Employer", when used in reference to a broker who is the employer of another broker, a salesperson or a time-share salesperson, includes a broker who engages the services of another broker, a salesperson or a time-share salesperson who provides services to the broker as an independent contractor.

(4t) "Employment", when used in reference to a broker's employment of another broker, a salesperson or a time-share

salesperson, includes the state of providing services to the broker by the other broker, the salesperson or the time-share salesperson as an independent contractor.

(5) "Licensee" means any person licensed or registered under this chapter, other than an inactive licensee registered under s. 452.12 (6).

(5g) "Material adverse fact" means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects or would affect the party's decision about the terms of such a contract or agreement.

(5m) "Negotiate" means to act as an intermediary between the parties to a transaction, including doing any of the following:

(a) Facilitating or participating in the parties' discussion of the terms of a contract or agreement concerning a transaction.

(b) Completing, when requested by a party, appropriate department-approved forms or other writings to document the party's proposal consistent with the party's intent.

(c) Presenting to a party the proposals of other parties to the transaction and informing the party receiving a proposal of the advantages and disadvantages of the proposal.

(5r) "Party" means a person seeking to sell, exchange, buy or rent an interest in real estate, a business or a business opportunity. "Party" includes a person who seeks to grant or accept an option to buy, sell or rent an interest in real estate, a business or a business opportunity.

(6) "Real estate practice" means engaging in conduct which requires a license under this chapter.

(7) "Salesperson" means any person other than a broker who is employed by a broker to perform any act authorized by this chapter to be performed by a broker.

(8) "Time share" has the meaning given in s. 707.02 (24).

(9) "Time-share salesperson" means a person, other than a person licensed under s. 452.09, who is employed by a licensed broker to sell or offer or attempt to negotiate an initial sale or purchase of a time share but who may not perform any other acts authorized by this chapter to be performed by a broker or salesperson.

(10) "Transaction" means the sale, exchange, purchase or rental of, or the granting or acceptance of an option to sell, exchange, purchase or rent, an interest in real estate, a business or a business opportunity.

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127.

See note to 452.20, citing *Chapman Co. v. Service Broadcasting Corp.* 52 W (2d) 32, 187 NW (2d) 794 (1971).

Sale of units of interest in limited partnership are personalty and not real estate, and no real estate broker's license is required. 60 Atty. Gen. 254 (1971).

452.025 Time-share salespersons. (1) (a) A person desiring to act as a time-share salesperson shall submit to the department an application for a certificate of registration.

(b) The application for registration as a time-share salesperson shall be in the form prescribed by the department and shall include all of the following:

1. The name and address of the applicant.

2. The prior occupations of the applicant.

3. Certification from the licensed broker employing the applicant that the applicant is competent to act as a time-share salesperson.

4. Any other information which the department reasonably requires to enable it to determine the competency of the person to transact business as a time-share salesperson in a manner which safeguards the interests of the public.

(c) Each application for registration as a time-share salesperson shall be accompanied by an initial fee specified in s. 440.05

(1) or the applicable renewal fee specified under s. 440.08 (2) (a), whichever is appropriate.

(2) A person shall not engage in the business or occupation of, or advertise or hold himself or herself out as, a time-share salesperson unless the person is registered under this section or licensed under s. 452.09.

(3) (a) A time-share salesperson registered under this section may act as a time-share salesperson only when employed by a licensed broker.

(b) 1. Except as provided in subd. 2., a time-share salesperson registered under this section shall not draft or complete a purchase agreement, offer to purchase, or other contract or document related to the sale of a time share.

2. A time-share salesperson registered under this section may complete a form purchase agreement or offer to purchase, if the form purchase agreement or offer to purchase has been approved by the department and includes only the following:

a. The name, address and telephone number of the purchaser.

b. The name of the time-share project.

c. Identification and price of the time share being purchased and the amount of the downpayment and where it will be held.

d. Financing alternatives.

e. Disclosures under subch. III of ch. 422 and the federal consumer credit protection act, 15 USC 1601 to 1693r.

f. The date of closing.

g. The signature of the time-share salesperson and the name of the employing broker.

h. The date of execution.

i. Information required under s. 707.46 to be included in a contract for the purchase of a time share.

(4) A time-share salesperson registered under this section may apply at any time to transfer employment to another licensed broker by submitting to the department an application in the form prescribed by the department and the transfer fee specified in s. 440.05 (7).

(5) (a) The renewal date for certificates of registration granted by the department under this section is specified under s. 440.08 (2) (a).

(b) An application to renew a certificate of registration granted under this section shall be submitted with the applicable renewal fee specified under s. 440.08 (2) (a) on or before the applicable renewal date specified under s. 440.08 (2) (a).

History: 1987 a. 399; 1989 a. 31; 1991 a. 39

452.03 Brokers and salespersons licensed. No person may engage in or follow the business or occupation of, or advertise or hold himself or herself out as, or act temporarily or otherwise as a broker or salesperson without a license. Licenses shall be granted only to persons who are competent to transact such businesses in a manner which safeguards the interests of the public, and only after satisfactory proof of the person's competence has been presented to the department.

History: 1981 c. 94, 391; 1989 a. 307.

Officer of corporation or partners or a partnership can act for the corporation or partnership in rental of real estate owned by such entity without being licensed as a real estate broker. 60 Atty. Gen. 1 (1971)

Actions of tenants union on behalf of members may require license as real estate broker. 60 Atty. Gen. 118 (1971)

Permitted limits of nonlicensed independent contractor agents discussed. 70 Atty. Gen. 23.

452.04 Duties of board. In addition to the other duties and responsibilities of the board under this chapter, the board shall:

(1) Advise the secretary on matters relating to real estate practice. The board may conduct public hearings on matters relating to the approval of forms used in real estate practice.

(2) Advise the secretary on rule making relating to licensees and relating to the board as provided by s. 452.07.

History: 1981 c. 94.

452.05 Duties and powers of department. (1) In addition to the other duties and responsibilities of the department under this chapter, the department shall:

(a) Grant and issue licenses to brokers and salespersons and registrations to time-share salespersons.

(b) Approve forms for use in real estate practice.

(c) After consultation with the council on real estate curriculum and examinations and subject to the procedure under s. 452.07, promulgate rules establishing criteria for the approval of educational programs and training sessions under s. 452.09 (2) and approve such programs and sessions in accordance with the established criteria.

(d) After consultation with the council on real estate curriculum and examinations, the board, brokers and salespersons licensed under this chapter and interested members of the public, establish the minimum number of hours of continuing education in each real estate related subject and establish criteria for the approval of continuing educational programs and courses required for renewal under s. 452.12 (5) (c) 1. The department may not require a broker or salesperson to successfully complete more than 12 classroom hours of continuing education in order to qualify for license renewal.

(e) After consultation with the council on real estate curriculum and examinations, prepare, develop and grade examinations under s. 452.12 (5) (c) 2.

(g) Approve continuing educational programs and courses in accordance with the criteria established under par. (d). In order to be approved, a continuing educational program or course must require brokers and salespersons who attend the program or course to pass an examination on the information presented at the program or course in order to successfully complete and receive continuing education credit for the program or course under s. 452.12 (5) (c) 1.

(1m) (a) In this subsection:

1. "Certified local register of historic property" means a register of historic property that is part of a historic preservation ordinance enacted by a city, village, town or county if the ordinance is certified by the state historical society under s. 44.44.

2. "Commercial real property" means real property that is classified as commercial under s. 70.32 (2) (a) 2. or (b) 2.

3. "Historic building" means a building that fulfills at least one of the following requirements:

a. Is listed on a certified local register of historic property, if that fact is specified in a statement recorded in the office of the register of deeds for the county in which the commercial real estate is located.

b. Is included in a district that is listed on a certified local register of historic property, if that fact is specified in a statement recorded in the office of the register of deeds for the county in which the commercial real estate is located, and has been determined by the city, village, town or county to contribute to the historic significance of the district.

(b) In preparing the form for the offer to purchase commercial real property under sub. (1) (b), the department shall include a statement that the seller represents to the buyer that the seller has no notice or knowledge that the commercial real property is a historic building.

(2) The department may prepare letters and bulletins and conduct clinics disseminating information to its licensees.

History: 1981 c. 94, 391; 1985 a. 305 ss. 1t, 7; 1987 a. 399; 1989 a. 307, 341; 1991 a. 39; 1993 a. 141.

Corporation cannot be licensed as real estate salesperson 71 Atty. Gen. 38.

452.06 Councils and committees. (1) The secretary shall create a council on forms under s. 15.04 (1) (c) which shall meet on a regular basis, be chaired by a member of the board and

report to the board and the secretary. Any proposed change in a form relating to real estate practice shall be referred to the council on forms for review before the form is approved.

(2) The council on real estate curriculum and examinations shall do all of the following:

(a) Advise the secretary on the promulgation of rules under s. 452.05 (1) (c) and on establishing continuing education requirements under s. 452.05 (1) (d).

(b) Periodically, but not less than annually, review subjects covered on examinations for licensure under this chapter and the qualifications for instructors of and performance evaluations for educational and continuing educational programs, training sessions and courses approved under this chapter.

(3) If the secretary creates any councils or committees under s. 15.04 (1) (c) to provide advice to the department or board on matters relating to real estate practice other than the council under sub. (1), such councils or committees shall be chaired by a member of the board, if available, and shall report to the board and the secretary.

(4) The secretary shall provide staff and other support required for the operation of councils and committees created under this section or under s. 15.04 (1) (c) to provide advice to the department or board, as appropriate, on matters relating to real estate practice.

History: 1981 c. 94; 1989 a. 341; 1991 a. 39.

452.07 Rules; review of rules. (1) The department shall promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice.

(2) Before submitting any proposed rules relating to real estate practice to the legislative council staff under s. 227.15, the department shall submit the proposed rules to the board for comment. The board shall have 30 days to submit comments on the proposed rules to the secretary.

(3) When promulgating emergency rules under s. 227.24, the department shall provide a copy of the rules to the board prior to publication of the rules in the official state newspaper.

(4) The chairperson of the board, or his or her designee from the board, may cochair with the secretary, or the secretary's designee, any public hearing held by the department on proposed rules relating to licensees or the board.

(5) The department shall submit to the board a copy of the report required under s. 227.19 (2) on any proposed final rules relating to licensees or the board. The board may prepare a dissenting report stating its recommendations on the proposed final rules. Any dissenting report shall be prepared within 10 days from the date of receipt of the department's report, be attached to the department's report and be sent to the presiding officer of each house of the legislature and distributed under s. 227.19 (2). The department shall cause a statement to appear in the Wisconsin administrative register to the effect that a dissenting report of the board has been submitted to the presiding officer of each house of the legislature.

(6) The department shall provide staff to assist the board in the review of administrative rules and preparation of comments or dissenting reports.

(7) The board may petition the department under s. 227.12 for the adoption, amendment or repeal of rules relating to licensees or the board. This subsection does not limit the rights of other persons to petition the department under s. 227.12.

History: 1981 c. 94; 1985 a. 182 s. 57; 1987 a. 403 s. 256.

452.08 Board receipt of proposed legislation. The secretary shall submit to the board in writing any legislation proposed by the department relating to licensees or the board prior to introduction in the legislature.

History: 1981 c. 94.

452.09 Application for license, contents. (1) FORM OF APPLICATION Any person desiring to act as a broker or salesper-

son shall submit to the department an application for a license. The application shall be in such form as the department prescribes and shall include the following:

- (a) The kind of license desired.
- (b) The name and address of the applicant; if the applicant is a partnership, the name and address of each member; and if the applicant is a corporation, the name and address of each of its officers.
- (c) The place or places, including the town, village or city, street number and county, where the business is to be conducted, and the manner in which the place of business is designated.
- (d) The business or occupation engaged in by the applicant, or if a partnership, by each member, or if a corporation, by each officer, for a period of at least 2 years immediately preceding the date of the application.

(e) Any other information which the department may reasonably require to enable it to determine the competency of each applicant, including each member of the partnership, or each officer of the corporation, to transact the business of a broker or salesperson in a manner which safeguards the interests of the public.

(2) EDUCATIONAL REQUIREMENTS FOR APPLICANTS FOR LICENSES. (a) Each applicant for a salesperson's license shall submit to the department evidence satisfactory to the department of successful completion of 72 classroom hours of educational programs approved for this purpose under s. 452.05 (1) (c). The department may waive the requirement under this paragraph upon proof that the applicant has received 10 academic credits in real estate or real estate related law courses from an accredited institution of higher education.

(c) Except as provided in par. (d), each applicant for a broker's license shall do all of the following:

1. Satisfy or obtain a waiver of the requirement under par. (a) or submit proof of licensure as a salesperson under this chapter.
2. Submit to the department evidence satisfactory to the department of successful completion of 36 classroom hours of educational programs in business management approved for this purpose under s. 452.05 (1) (c). No classroom hours applied to satisfy the requirement under subd. 1. may be applied to satisfy the requirement under this subdivision.

(d) The department may waive the requirements under par. (c) upon proof that the applicant has received 20 academic credits in real estate or real estate related law courses from an accredited institution of higher education or that the applicant is licensed to practice law in this state.

(3) COMPETENCY OF APPLICANT. (a) In determining competency, the department shall require proof that the applicant for a broker's or salesperson's license has a fair knowledge of the English language, a fair understanding of the general purposes and general legal effect of deeds, mortgages, land contracts of sale, leases, bills of sale, chattel mortgages, conditional sales contracts, the provisions of the bulk sales law and a general and fair understanding of the obligations between principal and agent, as well as of this chapter. An applicant receiving a failing grade, as established by rules of the department, on any examination given under this section shall be denied a license, but any applicant may review his or her examination results in a manner established by rules of the department.

(b) The department shall determine competency under par. (a) by means of only an oral examination for any applicant who is unable to write because of a physical handicap.

(c) Examinations shall reliably measure an applicant's ability to competently engage in real estate practice.

(d) The department may not grant a broker's license to an applicant who does not hold a salesperson's license unless the applicant passes the salesperson's examination and the broker's examination.

(e) An applicant is not eligible for examination unless the applicant has satisfied the applicable requirements under sub. (2).

(5) APPRENTICESHIPS. Any person who is a resident of this state and 18 years of age or over may, upon application filed in accordance with sub. (1), be indentured to a licensed resident broker in accordance with rules promulgated by the department. These rules shall be promulgated so as to protect the public and may limit the real estate sales and brokerage activity of the apprentice. The department may require a preliminary examination covering general knowledge and prescribe the character and extent of his or her work during apprenticeship. The department may issue a temporary salesperson's permit to the individual for a period not to exceed one year upon payment of the fee under s. 440.05 (6). The temporary permit is not renewable.

History: 1981 c. 94, 391; 1983 a. 273; 1985 a. 305; 1989 a. 341.

452.10 Applications, verification, fees, exceptions.

(1) An application shall be verified by the applicant. If made by a partnership it shall be verified by at least 2 members. If made by a corporation it shall be verified by the president and secretary.

(2) (a) Each new application for a broker's or salesperson's license shall be for the remainder of the biennial license period.

(b) Unless an application is withdrawn in writing before the department has made any investigation, no part of the fee shall be returned.

(3) The fees for examinations and licenses granted or renewed under this chapter are specified under ss. 440.05 and 440.08.

(4) (a) Any licensed salesperson or broker may transfer to the employment of a licensed broker by first paying the transfer fee specified in s. 440.05 (7) and filing a transfer form with the department.

(b) No salesperson, time-share salesperson or broker may be employed by a broker whose license has been suspended or revoked during the period of suspension or revocation. The salesperson, time-share salesperson or broker may apply for transfer to some other licensed broker by complying with this chapter, provided the salesperson, time-share salesperson or broker is not a party to the activities causing the suspension or revocation of the license of the broker.

(6) In the case of applications for renewals of licenses the department may dispense with such matters contained in s. 452.09 (1) as it deems unnecessary in view of prior applications.

History: 1981 c. 94, 314, 391; 1983 a. 27, 273; 1985 a. 305; 1987 a. 264, 399; 1989 a. 307; 1991 a. 39.

Real estate examining board cannot prescribe the name to be used on an application for real estate broker's license. 66 Atty. Gen. 21.

452.11 Nonresident applicants and licensees. **(1)** A nonresident may become a broker, salesperson or time-share salesperson by conforming to all the provisions of this chapter.

(3) Every nonresident applicant, and every resident licensee who becomes a nonresident, shall file with the department an irrevocable consent that actions may be commenced against the applicant or licensee in the proper court of any county of the state in which a cause of action arises or in which the plaintiff resides, by the service of any process or pleading authorized by the laws of this state on the department or any duly authorized employee. The consent shall stipulate and agree that such service is valid and binding as due service upon the applicant or licensee in all courts in this state. The consent shall be duly acknowledged and, if made by a corporation, shall be authenticated by the corporate seal.

(4) Any process or pleading under this section shall be served in duplicate upon the department or its duly authorized employee. One copy shall be filed with the department and the other immediately forwarded by certified mail to the nonresident licensee against whom the process or pleading is directed at the last address provided to the department by the nonresident licensee. No default in any such proceeding or action may be taken unless it appears by affidavit of the secretary or any duly authorized

employe that a copy of the process or pleading was mailed to the nonresident licensee as required in this subsection. No judgment by default may be taken in any action or proceeding within 20 days after the date of mailing the process or pleading to the nonresident licensee.

History: 1981 c. 94; 1983 a. 27; 1987 a. 399; 1991 a. 207.

Sub. (1) violates privileges and immunities clause of U. S. Constitution. 77 Atty Gen. 109.

452.12 Licenses. (1) EXPIRATION. A license granted by the department entitles the holder to act as a broker or salesperson, as the case may be, until the applicable renewal date specified under s. 440.08 (2) (a).

(2) CORPORATIONS; PARTNERSHIPS. (a) A license may be issued to a corporation if the corporation has at least one officer licensed as a broker. The license issued to the corporation entitles each officer of the corporation who is a licensed broker to act as a broker on behalf of the corporation.

(b) A license may be issued to a partnership if the partnership has at least one member who is a licensed broker. The license issued to the partnership entitles each member of the partnership who is a licensed broker to act as a broker on behalf of the partnership.

(c) Application for a corporate or partnership license shall be made on forms prescribed by the department, listing the names and addresses of all officers and partners, and shall be accompanied by the fee specified in s. 440.05 (1). If there is a change in any of the officers or partners, the change shall be reported to the department, on the same form, within 30 days after the effective date of the change.

(3) BROKER'S LIABILITY FOR ACTS OF EMPLOYEES. (a) Each broker is responsible for the acts of any broker, salesperson or time-share salesperson employed by the broker.

(b) If a broker maintains any branch offices in this state, each branch office must be under the direct full-time supervision of a broker. The broker maintaining the branch office shall be responsible for the acts and conduct of all brokers, salespersons and time-share salespersons employed at the branch office.

(4) REGISTER OF BROKERS AND SALESPERSONS. The department shall maintain the register required by s. 440.035 (4). The names of all brokers and salespersons whose licenses have been revoked at any time within 2 years prior to the issuance thereof shall be included in the register. The register shall be available for purchase at cost.

(5) RENEWAL. (a) Renewal applications for all licenses shall be submitted with the applicable renewal fee specified under s. 440.08 (2) (a) on or before the applicable renewal date specified under s. 440.08 (2) (a).

(b) If an application for renewal is not filed with the department on or before the renewal date, the applicant may not engage in any of the activities covered by the license until the license is renewed or a new license is issued.

(c) 1. At the time of renewal, each broker or salesperson shall submit proof of attendance at and successful completion of continuing education programs or courses approved under s. 452.05 (1) (g) for the minimum number of hours and in those subjects required under s. 452.05 (1) (d), except as provided in subd. 2.

2. Not later than June 30 of each even-numbered year, the department shall conduct an examination on those subjects required for continuing education under s. 452.05 (1) (d). Any broker or salesperson who passes the examination under this subdivision is not required to comply with subd. 1.

(6) INACTIVE LICENSEES. (a) Any licensee, except a time-share salesperson registered under s. 452.025, may apply for registration as an inactive licensee on or before the license renewal date.

(b) Unless an applicant's license has been revoked or suspended under s. 452.14 (3), the department may register the appli-

cant under par. (a) as an inactive licensee upon payment of a \$15 fee.

(c) Inactive licensees may not engage in real estate practice.

(d) Upon application, the department shall reinstate an inactive licensee's original license in accordance with the requirements for late renewal under s. 440.08 (3).

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 264, 399; 1989 a. 307, 341; 1991 a. 39.

452.13 Trust accounts. (1) DEFINITIONS. In this section:

(a) "Client funds" means all downpayments, earnest money deposits or other money related to a conveyance of real estate that is received by a broker, salesperson or time-share salesperson on behalf of the broker's, salesperson's or time-share salesperson's principal or any other person. "Client funds" does not include promissory notes.

(b) "Depository institution" means a bank, savings bank, savings and loan association or credit union that is authorized by federal or state law to do business in this state and that is insured by the federal deposit insurance corporation or by the national credit union share insurance fund.

(2) INTEREST-BEARING COMMON TRUST ACCOUNT. (a) A broker who holds client funds shall establish an interest-bearing common trust account in a depository institution. The interest-bearing common trust account shall earn interest at a rate not less than that applicable to individual accounts of the same type, size and duration and for which withdrawals or transfers can be made without delay, subject to any notice period that the depository institution is required to observe by law or regulation.

(b) Any broker who maintains an interest-bearing common trust account shall do all of the following:

1. Register with the department of regulation and licensing the name and address of the depository institution and the number of the interest-bearing common trust account.

2. Notify the department of regulation and licensing when any of the information required under subd. 1. is changed.

3. Furnish the department of regulation and licensing with a letter authorizing the department of regulation and licensing and the department of administration to examine and audit the interest-bearing common trust account whenever the department of regulation and licensing or the department of administration considers it necessary.

(bm) The department of regulation and licensing shall forward to the department of administration the information and documents furnished under par. (b).

(c) A broker shall deposit all client funds in the interest-bearing common trust account.

(d) The department of administration is the beneficial owner of the interest accruing to the interest-bearing common trust account, minus any service charges or fees.

(e) For each interest-bearing common trust account, the broker shall direct the depository institution to do all of the following:

1. Annually, before February 1, remit to the department of administration the total interest or dividends, minus service charges or fees, earned on the average daily balance in the interest-bearing common trust account during the 12 months ending on the previous December 31. A depository institution is not required to remit any amount if the total interest or dividends for that period is less than \$10 before any deduction for service charges or fees.

2. When the interest remittance is sent, furnish to the department of administration and to the broker maintaining the interest-bearing common trust account a statement that includes the name of the broker for whose account the remittance is made, the rate of interest applied, the amount of service charges or fees deducted, if any, and the account balance for the period that the statement covers.

(f) A depository institution:

1. May not assess a service charge or fee that is due on an interest-bearing common trust account against any broker or, except as provided in subd. 3., against any other account, regardless of whether the same broker maintains the other account.

2. May not assess a service charge or fee for an interest-bearing common trust account against the department of administration.

3. May deduct a service charge or fee from the interest earned by an interest-bearing common trust account, and if a balance remains, may deduct the remaining charge or fee from the interest earned on any other interest-bearing common trust account maintained in that depository institution, before remitting interest to the department of administration.

4. May not deduct a service charge or fee from the principal of an interest-bearing common trust account.

(3) DEPOSIT PROVISIONS. A broker who deposits client funds in an interest-bearing common trust account in compliance with this section may not be held liable to the owner or beneficial owner of the client funds for damages due to compliance with this section. A broker, salesperson or time-share salesperson who deposits client funds in an interest-bearing common trust account in compliance with this section is not required to disclose alternative depository arrangements that could be made by the parties or to disclose that a deposit will be made under this section.

(4) TRUST ACCOUNT OPTIONAL. This section does not require a broker to hold client funds or require a person to transfer client funds to a broker.

(5) RULES. In consultation with the department of regulation and licensing, the department of administration shall promulgate rules necessary to administer this section.

History: 1981 c. 94, 391; 1985 a. 305; 1987 a. 399; 1989 a. 307; 1991 a. 221; 1993 a. 33.

Security deposits by a tenant usually create a debtor-creditor relationship. A broker retaining such deposits should deposit them in his trust account. 60 Atty. Gen. 1.

Federal National Mortgage Association is exempt from the requirements of this section, but private mortgage bankers or mortgage brokers licensed as real estate brokers under ch. 452, and servicing mortgages for FNMA must deposit loan, insurance and tax escrow moneys in authorized trust account in a bank located in Wisconsin and subject to audit by the board. 60 Atty. Gen. 514.

452.133 Duties of brokers. (1) DUTIES TO ALL PARTIES TO A TRANSACTION. In providing brokerage services to a party to a transaction, a broker shall do all of the following:

(a) Provide brokerage services to all parties to the transaction honestly, fairly and in good faith.

(b) Diligently exercise reasonable skill and care in providing brokerage services to all parties.

(c) Disclose to each party all material adverse facts that the broker knows and that the party does not know or cannot discover through reasonably vigilant observation, unless the disclosure of a material adverse fact is prohibited by law.

(d) Keep confidential any information given to the broker in confidence, or any information obtained by the broker that he or she knows a reasonable party would want to be kept confidential, unless the information must be disclosed under par. (c) or s. 452.23 or is otherwise required by law to be disclosed or the party whose interests may be adversely affected by the disclosure specifically authorizes the disclosure of particular confidential information. A broker shall continue to keep the information confidential after the transaction is complete and after the broker is no longer providing brokerage services to the party.

(e) Provide accurate information about market conditions that affect a transaction, to any party who requests the information, within a reasonable time of the party's request, unless disclosure of the information is prohibited by law.

(f) Account for all property coming into the possession of a broker that belongs to any party within a reasonable time of receiving the property.

(g) When negotiating on behalf of a party, present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

(2) DUTIES TO A CLIENT. In addition to his or her duties under sub. (1), a broker providing brokerage services to his or her client shall do all of the following:

(a) Loyally represent the client's interests by placing the client's interests ahead of the interests of any other party, unless loyalty to a client violates the broker's duties under sub. (1) or s. 452.137 (2).

(b) Disclose to the client all information known by the broker that is material to the transaction and that is not known by the client or discoverable by the client through reasonably vigilant observation, except for confidential information under sub. (1) (d) and other information the disclosure of which is prohibited by law.

(c) Fulfill any obligation required by the agency agreement, and any order of the client that is within the scope of the agency agreement, that are not inconsistent with another duty that the broker has under this chapter or any other law.

(3) PROHIBITED CONDUCT. In providing brokerage services, a broker may not do any of the following:

(a) Accept any fee or compensation related to the transaction from any person other than the broker's client, unless the broker has the written consent of all parties to the transaction.

(b) Act in a transaction on the broker's own behalf, on behalf of the broker's immediate family or firm, or on behalf of any organization or business entity in which the broker has an interest, unless the broker has the written consent of all parties to the transaction.

(c) Except as provided in s. 452.19, refer, recommend or suggest to a party to the transaction the services of an individual or entity from which the broker may receive compensation for a referral or in which the broker has an interest, unless the broker has disclosed the fact that he or she may receive compensation or has disclosed his or her interest in the individual or entity providing the services.

History: 1993 a. 127.

The New Real Estate Agency Law: Redefining the Role of Real Estate Brokers. Horton: Wis. Law. Oct. 1994.

452.135 Confirmation and disclosure of relationship. (1) No broker may provide brokerage services without an agency agreement that authorizes the broker to provide those brokerage services. The agency agreement shall contain a statement of the terms and conditions of the brokerage services that the broker will provide, including a statement required under s. 452.138, if applicable.

(2) No broker may provide brokerage services to a party to a transaction unless the broker has provided to the party a written agency disclosure form containing all of the following:

(a) A statement of which party is the broker's client or, if the broker is providing brokerage services to more than one client under s. 452.137, a statement of which parties are the broker's clients.

(b) A statement of the broker's duties to his or her client under s. 452.133 (2).

(c) A statement of the broker's duties to a party under s. 452.133 (1).

(d) A statement regarding confidentiality that shall be in the following form:

NOTICE TO CLIENTS AND CUSTOMERS

A BROKER IS REQUIRED TO MAINTAIN THE CONFIDENTIALITY OF ALL INFORMATION GIVEN TO THE BROKER IN CONFIDENCE AND OF ALL INFORMATION OBTAINED BY THE BROKER THAT HE OR SHE KNOWS A REASONABLE PARTY WOULD WANT TO BE KEPT CONFIDENTIAL, UNLESS THE INFORMATION IS REQUIRED TO

BE DISCLOSED BY LAW. THE FOLLOWING INFORMATION IS REQUIRED TO BE DISCLOSED BY LAW:

1. MATERIAL ADVERSE FACTS, AS DEFINED IN SECTION 452.01 (5g) OF THE WISCONSIN STATUTES.

2. ANY FACTS KNOWN BY THE BROKER THAT CONTRADICT ANY INFORMATION INCLUDED IN A WRITTEN INSPECTION REPORT ON THE PROPERTY OR REAL ESTATE THAT IS THE SUBJECT OF THE TRANSACTION.

TO ENSURE THAT THE BROKER IS AWARE OF WHAT SPECIFIC INFORMATION YOU CONSIDER CONFIDENTIAL, YOU MAY LIST THAT INFORMATION IN THE SPACE BELOW THAT IS MARKED "CONFIDENTIAL INFORMATION". AT A LATER TIME, YOU MAY ALSO PROVIDE THE BROKER WITH OTHER WRITTEN NOTIFICATION OF WHAT INFORMATION YOU CONSIDER TO BE CONFIDENTIAL.

CONFIDENTIAL INFORMATION:

(e) Any additional information that the broker determines is necessary to clarify the broker's relationship to his or her client or customer.

History: 1993 a 127

452.137 Brokers providing services to more than one client in a transaction. (1) No broker may provide brokerage services to more than one client in a transaction without an agency agreement under s. 452.135 (1) with each client and a written consent to multiple representation. The consent to multiple representation shall contain a statement of the broker's duties under s. 452.133 (1) to a party to the transaction who is not a client, a statement of the broker's duties to the client under s. 452.133 (2), and a statement that the clients understand the broker's duties and consent to the broker providing brokerage services to more than one client. The consent to multiple representation may contain additional disclosures by the broker or additional agreements between the broker and the clients that do not violate any duty of a broker under this chapter.

(2) A broker who represents more than one client in a transaction owes the duties specified in s. 452.133 (2) to each client.

(3) If a broker is providing brokerage services to more than one client in a transaction, no client may be considered to know any information that the broker knows unless the broker informs the client of that information or the client has other actual knowledge of that information.

History: 1993 a 127

452.138 Brokers providing services in more than one transaction. A broker may provide brokerage services simultaneously to more than one party in different transactions unless the broker agrees with a client that the broker is to provide brokerage services only to that client. If the broker and a client agree that the broker is to provide brokerage services only to that client, the agency agreement under s. 452.135 (1) shall contain a statement of that agreement.

History: 1993 a 127

452.139 Changes in common law duties and liabilities of brokers and parties. (1) **FIDUCIARY DUTIES OF BROKER.** The duties of a broker specified in this chapter or in rules promulgated under this chapter shall supersede any fiduciary duties of a broker to a party based on common law principles of agency to the extent that those common law fiduciary duties are inconsistent with the duties specified in this chapter or in rules promulgated under this chapter.

(2) **MISREPRESENTATION BY BROKER.** (a) A client is not liable for a misrepresentation made by a broker in connection with the broker providing brokerage services, unless the client knows or should have known of the misrepresentation or the broker is repeating a misrepresentation made to him or her by the client.

(b) A broker who is providing brokerage services to a client and who retains another broker to provide brokerage services to that client is not liable for a misrepresentation made by the other broker, unless the broker knew or should have known of the other broker's misrepresentation or the other broker is repeating a misrepresentation made to him or her by the broker.

(c) Nothing in this subsection limits the liability of a broker under s. 452.12 (3) (a) for misrepresentations made by an employee who is a broker. Nothing in this subsection limits the liability of a client for a misrepresentation that the client makes in connection with brokerage services.

History: 1993 a 127

452.14 Investigation and discipline of licensees.

(1) The department shall, upon motion of the board or upon its own determination, conduct investigations and, as appropriate, may hold hearings and make findings, if the department receives credible information that a broker, salesperson or time-share salesperson has violated this chapter or any rule promulgated under this chapter.

(2) The department shall present the findings of any investigation of a licensee or registrant to the board for its consideration. The department shall upon motion of the board, and may, upon its own determination, commence disciplinary proceedings on any matter under investigation concerning a licensee or registrant. No investigation of a licensee or registrant may be closed without motion of the board.

(3) Disciplinary proceedings shall be conducted by the board according to rules adopted under s. 440.03 (1). The board may revoke, suspend or limit any broker's, salesperson's or time-share salesperson's license or registration, or reprimand the holder of the license or registration, if it finds that the holder of the license or registration has:

(a) Made a material misstatement in the application for a license or registration, or in any information furnished to the board or department;

(b) Made any substantial misrepresentation with reference to a transaction injurious to a seller or purchaser in which the broker, salesperson or time-share salesperson acts as agent;

(c) Made any false promises of a character such as to influence, persuade or induce the seller or purchaser to his or her injury or damage;

(d) Pursued a continued and flagrant course of misrepresentation or made false promises through agents or salespersons or advertising;

(f) Accepted from any person except the broker's, salesperson's or time-share salesperson's employer, if the broker, salesperson or time-share salesperson is employed as a salesperson or time-share salesperson by a broker, a commission or valuable consideration as a salesperson or time-share salesperson for the performance of any act specified in this chapter or as compensation for referring a person to another broker, salesperson or time-share salesperson or to any other person in connection with a real estate transaction;

(g) Represented or attempted to represent a broker other than the employer, without the express knowledge and consent of the employer;

(h) Failed, within a reasonable time, to account for or remit any moneys coming into the broker's, salesperson's or time-share salesperson's possession which belong to another person;

(i) Demonstrated incompetency to act as a broker, salesperson or time-share salesperson in a manner which safeguards the interests of the public;

(j) Paid or offered to pay a commission or valuable consideration to any person for acts or services in violation of this chapter;

(jm) Intentionally encouraged or discouraged any person from purchasing or renting real estate in a particular area on the basis of race. If the board finds that any broker, salesperson or time-share salesperson has violated this paragraph, the board shall, in

addition to any temporary penalty imposed under this subsection, apply the penalty provided in s. 452.17 (4);

(k) Been guilty of any other conduct, whether of the same or a different character from that specified herein, which constitutes improper, fraudulent or dishonest dealing;

(L) Violated any provision of this chapter;

(m) Failed to use forms approved under s. 452.05 (1) (b); or

(n) Treated any person unequally solely because of sex, race, color, handicap, national origin, ancestry, marital status or lawful source of income.

(4) If a broker is a company it shall be sufficient cause for reprimand or for the limitation, suspension or revocation of a broker's license that any officer, director or trustee of the company, or any member of a partnership, or anyone who has a financial interest in or is in any way connected with the operation of a brokerage business, has been guilty of any act or omission which would be cause for refusing a broker's license to such person as an individual.

(4m) In addition to or in lieu of a reprimand, the issuance of a private letter of warning or a revocation, limitation or suspension of a license or certificate of registration under sub. (3), the board may do any of the following:

(a) Assess against a person who is licensed or registered under this chapter a forfeiture of not more than \$1,000 for each violation enumerated under sub. (3).

(b) Require a licensee to successfully complete education or training, in addition to any education or training required for licensure or registration or for renewal of a license or certificate under this chapter, as a condition of continued licensure or registration or reinstatement of a license or certificate.

(5) The department may seek judicial review under ch. 227 of any final decision of the board. The department shall be represented in such review proceedings by an attorney within the department. Upon request of the board, the attorney general may represent the board. If the attorney general does not represent the board, the board may retain special counsel which shall be paid for out of the appropriation under s. 20.165 (1) (g).

History: 1981 c. 94, 391; 1983 a. 27 s. 2202 (44); 1983 a. 354; 1985 a. 305; 1987 a. 399; 1989 a. 307, 341, 359; 1991 a. 32, 163; 1993 a. 127.

Real estate brokers may engage in guaranteed sales plans if there is full disclosure and broker does not engage in fraud, misrepresentation or improper dealing. 61 Atty. Gen. 3.

Provisions in Executive Order 67 (1973), with respect to duty of real estate broker to advise prospective purchasers of floodplain zoning status of property, do not constitute new standard but suggest course of action real estate examining board might take. Action to be taken would depend on facts in each case. 63 Atty. Gen. 236.

Neither s. 440.20, 452.10 (2), 1977 stats., nor rules of department of regulation and licensing require board to hold hearing where citizen files verified complaint with board requesting institution of disciplinary proceedings against a licensee. 68 Atty. Gen. 30.

452.15 Ineligibility. No license or certificate of registration may be issued under this chapter to any person whose license or certificate under this chapter has been revoked until the expiration of a period determined in each case by the board or, in the case of revocation under s. 452.17 (4) (a) 2., a period determined in each case by the board of not less than 5 years from the date the revocation became finally effective.

History: 1981 c. 94; 1983 a. 354; 1989 a. 341.

452.17 Penalties. (1) Any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as a broker or salesperson in this state without a license under this chapter shall be prosecuted by the district attorney in the county where the violation occurs or by the attorney general and may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(2) Any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as, a time-share salesperson in this state without being registered with the department shall be prosecuted by the district attorney in the county where the violation

occurs and may be fined not less than \$25 nor more than \$200 or imprisoned not less than 10 days nor more than 6 months or both.

(3) Any person who otherwise violates any provision of this chapter may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(4) (a) If the board finds that any broker, salesperson or time-share salesperson has violated s. 452.14 (3) (jm), the board:

1. Shall, for the first offense, suspend the license or registration of the broker, salesperson or time-share salesperson for not less than 90 days.

2. Shall, for the 2nd offense, revoke the license or registration of the broker, salesperson or time-share salesperson.

(b) This penalty may be imposed in addition to any penalty imposed under this chapter or s. 66.432 or 101.22.

History: 1981 c. 94; 1983 a. 354; 1987 a. 399; 1989 a. 95, 307, 341.

452.18 Court review. Orders of the board and department shall be subject to review as provided in ch. 227.

History: 1981 c. 94.

452.19 Fee-splitting. No licensed broker may pay a fee or a commission or any part thereof for performing any act specified in this chapter or as compensation for a referral or as a finder's fee to any person who is not licensed or registered under this chapter or who is not regularly and lawfully engaged in the real estate brokerage business in another state, a territory or possession of the United States or a foreign country.

History: 1981 c. 94; 1983 a. 464; 1985 a. 128; 1989 a. 307.

452.20 Limitation on actions for commissions. No person engaged in the business or acting in the capacity of a broker, salesperson or time-share salesperson within this state may bring or maintain an action in the courts of this state for the collection of a commission or compensation for the performance of any act mentioned in this chapter without alleging and proving that he or she was a duly licensed broker, salesperson or registered time-share salesperson at the time the alleged cause of action arose.

History: 1981 c. 94; 1987 a. 399; 1989 a. 56.

A foreign corporation which contracts to sell a radio station without being licensed in this state cannot sue for its commission. The licensing requirement is not an unlawful burden on interstate commerce. Chapman Co v Service Broadcasting Corp 52 W (2d) 32, 187 NW (2d) 794.

This section not applicable since broker as owners' agent was not attempting to negotiate the lease when conferring with his alleged principal in Wisconsin and therefore was not acting in the capacity of a broker in Wisconsin. Negotiation of lease occurred when broker met and conferred with prospective lessee either in Illinois or Tennessee. Paulson v Shapiro, 490 F (2d) 1.

452.21 Compensation presumed. In any prosecution for violation of this chapter, proof that a person acted as a broker, agent, salesperson or time-share salesperson is prima facie proof that compensation therefor was received or promised.

History: 1981 c. 94; 1987 a. 399.

452.22 Certifications as evidence. (1) Copies of all documents, orders, resolutions and certificates made, executed or granted by the department or board, and of all papers filed with the department when certified by the secretary or his or her designee, under the official seal, shall be received in evidence in all cases the same as the originals.

(2) The certificate of the secretary or his or her designee to the effect that a specified individual, partnership or corporation is not or was not on a specified date the holder of a broker's, salesperson's or time-share salesperson's license or registration, or that a specified license or registration was not in effect on a date specified, or as to the issuance, limitation, suspension or revocation of any license or registration or the reprimand of any holder thereof, the filing or withdrawal of any application or its existence or non-existence, is prima facie evidence of the facts therein stated for all purposes in any action or proceedings.

History: 1981 c. 94; 1987 a. 399.

452.23 Disclosures, investigations and inspections by brokers and salespersons. (1) A broker or salesperson

may not disclose to any person in connection with the sale, exchange, purchase or rental of real property information, the disclosure of which constitutes unlawful discrimination in housing under s. 101.22 or unlawful discrimination based on handicap under 42 USC 3604, 3605, 3606 or 3617.

(2) A broker or salesperson is not required to disclose any of the following to any person in connection with the sale, exchange, purchase or rental of real property:

(a) That the property was the site of a specific act or occurrence, if the act or occurrence had no effect on the physical condition of the property or any structures located on the property.

(b) Except as provided in sub. (3), information relating to the physical condition of the property or any other information relating to the real estate transaction, if a written report that discloses the information has been prepared by a qualified 3rd party and provided to the person. In this paragraph, "qualified 3rd party" means a federal, state or local governmental agency, or any person whom the broker, salesperson or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or inves-

tigation that has been conducted by the 3rd party in order to prepare the written report.

(c) The location of any adult family home, as defined in s. 50.01 (1), community-based residential facility, as defined in s. 50.01 (1g), or nursing home, as defined in s. 50.01 (3), in relation to the location of the property.

(3) A broker or salesperson shall disclose to the parties to a real estate transaction any facts known by the broker or salesperson that contradict any information included in a written report described under sub. (2) (b).

(4) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a broker or salesperson 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 this chapter.

History: 1989 a. 341

An independent inspection by a qualified third party operates to relieve a broker from liability for disclosures related to the physical condition of the property. *Conell v. Coldwell Banker*, 181 W (2d) 894, 512 NW (2d) 239 (Ct. App. 1994)