

## CHAPTER 452

## REAL ESTATE EXAMINING BOARD

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**452.01 Definitions.** As used in this chapter:

(1) "Examining board" means the real estate examining board.

(2) "Real estate broker" means any person not excluded by sub. (6), who:

(a) For another, and for commission, money or other thing of value, sells, exchanges, buys or rents, 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; or

(c) 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.

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

(e) Is engaged wholly or in part in the business of selling business opportunities or good will 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 good will, inventory, fixtures or an interest therein.

(3) "Real estate salesman" means one who is employed by a real estate broker to perform any act authorized by this chapter to be performed by a real estate broker.

(6) "Real estate broker" does not include:

(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 and loan association, 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; or

(d) Employees of persons enumerated in pars. (a), (b), (c) and (f) when engaged in the specific performance of their duties as such employees.

(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.

See note to 452.13, citing *Chapman Co. v. Service Broadcasting Corp* 52 W (2d) 32, 187 NW (2d) 794.

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

**452.02 Cemeteries, cemetery brokers and salesmen.** (1) Any cemetery association or corporation which pays any commission or other compensation to any person, including its officers, members or stockholders, for soliciting the sale of its lots or grave spaces on a commercially operated basis shall register under this

chapter. The cemetery association or corporation shall register biennially and pay the fee specified in s. 440.05 (8). The registration shall be in writing and shall include the names of the officers of the cemetery association or corporation. Any cemetery association or corporation required to register under this subsection which knowingly fails to register shall be fined not more than \$100.

(2) Every such registered cemetery association or corporation shall designate a resident real estate broker licensed under this chapter as its broker and any resident licensed broker may be so designated. A real estate broker designated as a cemetery broker under this section who engages in no real estate brokerage activity except as a cemetery broker shall not be subject to the requirements of ss. 452.05 (1m) and 452.08 (5) (c) for the issuance or renewal of the brokerage license.

(3) Every person engaging in or following the business or occupation of a cemetery salesman shall be registered upon the written request of any broker designated under sub. (2) and the payment of the fee specified in s. 440.05 (1). The broker shall in writing certify to the examining board that such salesman is trustworthy and competent to act as a cemetery salesman. Such person shall be registered by the examining board as a salesman and agent of the broker requesting same and of the cemetery association or corporation designating the broker.

(4) Within 10 days after the certification of any cemetery salesman under sub. (3) such salesman shall verify and furnish to the examining board, in such form as the examining board prescribes, the following information:

- (a) Name and address;
- (b) Educational qualifications;
- (c) Prior occupations;

(d) Such further information as the examining board may reasonably require to enable it to determine the trustworthiness and competency of such salesman to transact the business of a cemetery salesman in such manner as to safeguard the interest of the public.

(5) Every broker requesting the registration of any cemetery salesman shall be responsible for the acts of any and all such salesmen while acting as cemetery salesmen. The cemetery association or corporation designating such broker shall be equally responsible for the acts of such salesmen while acting as salesmen for such cemetery association or corporation.

(6) A person who is not registered shall not engage in or follow the business or occupation of, or advertise or hold himself out as or act

temporarily or otherwise as a cemetery salesman.

(7) No cemetery organized, maintained and operated by towns, villages, cities, churches, fraternal and benevolent societies or by incorporated colleges of religious orders shall be required to register hereunder or be subject to this chapter.

History: 1975 c. 257, 421; 1977 c. 29

#### 452.03 Brokers and salesmen licensed.

No person shall engage in or follow the business or occupation of, or advertise or hold himself out as or act temporarily or otherwise as a real estate broker or salesman without a license. Licenses shall be granted only to persons who are trustworthy and competent to transact such businesses in such manner as to safeguard the interests of the public, and only after satisfactory proof thereof has been presented to the examining board. If a cemetery salesman engages in the sale of real estate other than cemetery lots or grave spaces, he shall first obtain a real estate salesman's license.

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.

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

State and federal regulation of condominiums. Minahan, 58 MLR 55.

452.04 Duties of board. (1) The examining board shall grant licenses to real estate brokers and salesmen which shall be issued by the department. The examining board shall administer this chapter.

(1m) The examining board shall promulgate rules establishing criteria for the approval of educational programs and training sessions under ss. 452.05 (1m) and (2m) and 452.08 (5) (c) and shall approve such programs and sessions in accordance with the criteria so established. To be eligible for approval, educational programs and training sessions shall deal with the real estate aspects of appraising, finance and marketing, real property management, real estate counseling, real property law or other real estate related subjects.

(2) The examining board may prepare letters and bulletins, and conduct clinics disseminating information to its licensees. The department shall publish such letters and bulletins.

(3) The examining board may expend moneys for research and educational projects for its licensees and the protection of the public, including the publication or revision of real estate study manuals.

History: 1975 c. 257.

**452.05 Application for license, contents.**

**(1) FORM OF APPLICATION.** Any person desiring to act as a real estate broker or salesman shall submit to the examining board an application for a license. Said application shall be in such form as the examining board prescribes and shall set forth:

(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; 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 theretofore 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) Such further information as the examining board may reasonably require to enable it to determine the trustworthiness and competency of each applicant, including each member of the partnership, or each officer of the corporation, to transact the business of a real estate broker or salesman in such manner as to safeguard the interests of the public.

**(1m) ADDITIONAL REQUIREMENTS FOR BROKER'S LICENSE.** Each applicant for an original real estate broker's license shall submit to the examining board proof of attendance at 60 classroom hours of educational programs approved by the examining board. The examining board shall waive the educational requirement upon proof that the applicant has received 20 academic credits in real estate or law at an accredited institution of higher education and the requirement of minimum licensure as a salesman upon proof that the applicant is licensed to practice law in the state.

**(2) COMPETENCY OF APPLICANT.** (a) In determining competency, the examining board shall require proof that the applicant for a real estate broker's or salesman'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 board, 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 board.

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

**(2m) SALESMEN'S EDUCATIONAL PROGRAMS.** Within the 24-month period commencing with the first day of September following the granting of the licensee's original real estate salesman's license each licensed real estate salesman shall submit to the examining board proof of attendance at 30 classroom hours of educational programs approved by the examining board. The examining board may give credit toward the completion of this requirement for approved educational programs attended by the licensee before the commencement of the 24-month period. A person's license shall not be renewed if the licensee does not meet the educational requirement within the 24-month period.

**(3) APPRENTICESHIPS.** Any person who is a resident of this state and a citizen of the United States, 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 examining board. These rules shall be drawn so as to protect the public and may limit the real estate sales and brokerage activity of the apprentice. The examining board further may require a preliminary examination covering general knowledge and prescribe the character and extent of his or her work during apprenticeship. The examining board may issue a temporary salesman's permit to the individual for a period not to exceed one year upon payment of the fee under s. 440.05 (6). This temporary permit shall not be renewable.

**History:** 1973 c. 12, 203; 1975 c. 224, 257, 421; 1977 c. 29.

Real estate examining board cannot prescribe the name to be used on an application for real estate broker's license. 66 Atty. Gen. 7.

**452.06 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. Application for license as real estate broker or salesman shall be accompanied by the affidavit of 2 persons who are citizens and residents in the county in which the applicant resides or has a place of business, certifying that the applicant is trustworthy.

**(2) (a)** Each new application for a real estate broker's license or for a real estate

salesman's license or cemetery registration shall be for the remainder of the biennial license period. Each new applicant shall receive a free copy of the current study manual.

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

(3) The fees for examinations and licenses granted or renewed under this chapter are specified in s. 440.05, except that a licensed real estate broker may apply for a license as a real estate salesman upon payment of a \$5 fee.

(4) (a) Any licensed real estate salesman may at any time apply upon forms prescribed by the examining board and provided by the department for transfer to the employment of another licensed broker. The fee for transfer by a real estate salesman is specified in s. 440.05 (7), payable at the time the application is filed.

(b) Suspension or revocation of a license issued to a broker shall automatically suspend the license of every salesman employed by the broker at the time of the suspension or revocation of the broker's license. The salesman may apply for transfer to some other licensed broker by complying with this chapter, provided the salesman is not a party to the activities causing the suspension or revocation of the license of his broker.

(5) Sections 452.09, 452.10, 452.12, 452.15, 452.16, 452.17, 452.18, 452.19 and 452.20, as they apply to real estate salesmen, apply with equal effect to cemetery salesmen.

(6) In the case of applications for renewals of licenses the examining board may dispense with such matters contained in s. 452.05 (1) as it deems unnecessary in view of prior applications.

History: 1977 c. 29, 52, 418.

**452.07 License, of whom not required.** No cemetery salesman's license shall be required of any person soliciting the sale of lots or grave spaces in a cemetery organized, maintained and operated by towns, villages and cities, by churches, by fraternal and benevolent societies, or by incorporated colleges of religious orders.

**452.08 Licenses. (1) EXPIRATION.** A license granted by the examining board entitles the holder:

(a) To act as a real estate broker or salesman, as the case may be, up to and including December 31 of even-numbered years following issuance of the license.

(2) CORPORATIONS; PARTNERSHIPS. If the licensee is a corporation, the license issued to it

entitles the president thereof or such other officer as is designated by the corporation to act as a broker. For each other officer who desires to act as a broker in behalf of the corporation, an additional license shall be obtained. The fee for the corporate or partnership license shall be that specified in s. 440.05 (8). No license as a real estate salesman shall be issued to any officer of a corporation or member of a partnership to which a license was issued as a broker. If the licensee is a partnership, the license issued to it entitles one member to act as a broker, and for each other member who desires to act as a broker an additional license shall be obtained.

(3) BROKER'S LIABILITY FOR ACTS OF EMPLOYEES. (a) Each broker shall be responsible for the acts of any and all of his salesmen while acting as his agents.

(b) If a real estate broker maintains any branch offices within this state, each branch office must be under the direct full-time supervision of a licensed real estate broker who is also a licensed salesman of employer licensee and who resides in the county in which the branch office is located or within 50 miles of the branch office. The employer-broker shall be responsible for the acts and conduct of all licensed employes of the branch office, including the broker who is supervisor of the branch office. The biennial fee for a branch office is specified in s. 440.05 (8).

(4) ROSTER OF BROKERS. The examining board shall prepare and the department shall publish in convenient form the register compiled under s. 440.035 (4). The names of all brokers and salesmen whose licenses have been revoked at any time within 2 years prior to the issue thereof shall also be included in the publication. The publication shall be available for purchase at cost.

(5) RENEWAL. (a) Renewal applications for all licenses shall be submitted with the required fee on or before August 31 of the even-numbered years following licensure.

(b) If an application for renewal is not filed with the department on or before December 31 of even-numbered years following licensure, the applicant shall be prohibited from engaging in any of the activities covered by the license until the license is renewed or a new license issued. The examining board shall accept renewal applications at any time during the year after the license expired upon payment of the renewal fee and penalty. The examining board shall not thereafter grant a license until the applicant passes the required written examination and pays the fee specified in s. 440.05 (1).

(c) Every licensee shall submit proof to the examining board of attendance at a minimum of 10 classroom hours of approved training sessions every 2 years. The 2-year period shall be measured as of August 31 of each year. A licensee who is also licensed to practice law in this state shall be granted credit for attendance at continuing legal education programs which the examining board determines to be related to real estate matters. If upon application for renewal the licensee has not submitted proof of having met this requirement in the preceding 2 years, the examining board may withhold issuance of the renewal license until such proof is submitted.

**History:** 1975 c 257, 421; 1977 c 29, 203, 231, 418, 447.

**NOTE:** Par. (5) (c), as created by ch. 257, laws of 1975, is effective May 21, 1978.

**452.09 Trust accounts.** All down payments, earnest money deposits or other trust funds received by a broker or salesman on behalf of his principal or any other person, shall be deposited in a common trust account, maintained by said broker for such purpose in a bank designated by the broker, pending the consummation or termination of the transaction, except as such moneys may be paid to one of the parties pursuant to such contract or option. The name of said bank shall at all times be registered with the examining board, along with a letter authorizing the examining board to examine and audit said trust account when said examining board deems it necessary.

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.

**452.10 Investigations, revocation of license. (1)** Subject to the rules promulgated under s. 440.03 (1), the examining board may on its own motion make investigations and conduct hearings in regard to the action of any real estate broker, salesman or cemetery salesman, or any person who it has reason to believe is acting or has acted in either such capacity within this state, and may make findings, after a hearing held on 10 days' notice, whether such person has acted as a broker, salesman or cemetery salesman. The findings shall be subject to review under s. 452.17. In such review any additional material evidence presented may be considered.

**(1a)** In lieu of the procedure set forth in sub. (1), if the examining board has reason to believe that a person is acting as a broker or

salesman without a license and that the continuation of such activity might cause injury to the public interest, the examining board or its staff counsel at the direction of the examining board may petition the circuit court for a temporary restraining order, an injunction or a writ of ne exeat as provided in ch. 813. Section 452.18 shall not apply to this subsection.

**(2)** Subject to the rules promulgated under s. 440.03 (1), the examining board may also on its own motion, or upon complaint in writing, duly signed and verified by the complainant, and upon not less than 10 days' notice to the broker or salesman, suspend any broker's or salesman's license or registration if it has reason to believe, and may limit or revoke such license or registration or reprimand the holder thereof as provided hereafter, if it finds that the holder of the license or registration has:

(a) Made a material misstatement in the application for such license or in any information furnished to the examining board;

(b) Made any substantial misrepresentation with reference to a transaction injurious to a seller or purchaser wherein he acts as agent;

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

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

(e) Acted for more than one party in a transaction without the knowledge of all parties for whom he acts;

(f) Accepted a commission or valuable consideration as a salesman for the performance of any act specified in this chapter from any person except his employer;

(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 his possession which belong to another person;

(i) Demonstrated untrustworthiness or incompetency to act as a broker, salesman or cemetery salesman in such manner as to safeguard 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;

(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; or

(l) Violated any provision of this chapter.

**(3)** 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 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.

**History:** Sup. Ct. Order, 67 W (2d) 776; 1977 c. 418.

The legislature has not authorized the board to revoke a license for racial discrimination nor to adopt a rule prohibiting it. *Ford v. Wisconsin Real Estate Examining Bd.* 48 W (2d) 91, 179 NW (2d) 786.

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 flood plain 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.

**452.12 Fee-splitting.** No licensed broker or registered cemetery salesman shall pay a commission or any part thereof for performing any act specified in this chapter to any person who is not licensed or registered under this chapter or who is not regularly engaged in the real estate brokerage or cemetery sales business in another state.

**452.13 Limitation on actions for commissions.** No person engaged in the business or acting in the capacity of a real estate broker or salesman within this state shall 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 was a duly licensed broker or salesman at the time the alleged cause of action arose.

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.

**452.14 Nonresident brokers. (1)** A nonresident of this state may become a real estate broker or salesman by conforming to all the provisions of this chapter, except that a nonresident real estate broker shall maintain an active place of business in the state in which he holds a license, and said nonresident real estate brokers shall not employ real estate salesmen in this state.

**(2)** The examining board may recognize in lieu of the affidavit required to accompany an application for license, the license issued to a

nonresident broker or salesman in such other state, upon payment of a license fee and the filing of a certified copy of the license issued by such other state.

**(3)** Every nonresident applicant shall file an irrevocable consent that actions may be commenced against him 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 examining board, any member thereof or any duly authorized employe. The consent shall stipulate and agree that such service is valid and binding as due service upon said applicant 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)** Duplicate copies of any process or pleading shall be served upon the examining board or its duly authorized employe. One copy shall be filed with the examining board and the other immediately forwarded by registered mail to the main office of the applicant against whom the process or pleading is directed. No default in any such proceeding or action shall be taken unless it appears by affidavit of the executive secretary of the examining board or any duly authorized employe that a copy of the process or pleading was mailed to the defendant as herein required. No judgment by default shall be taken in any action or proceeding within 20 days after the date of mailing the process or pleading to the nonresident defendant.

**452.15 Depositions; witnesses. (1)** The examining board may take depositions in the manner prescribed by law for taking depositions in actions in circuit court.

**(2)** Each witness who appears before the examining board pursuant to its subpoena, order or request shall be paid the fees and mileage provided by law for witnesses in courts of record. The fees and mileage of witnesses shall be paid by the party demanding their attendance.

**452.16 Ineligibility.** No license or registration shall be issued to any person whose license or registration has been revoked until the expiration of a period not to exceed 2 years from the date the revocation became finally effective, the period to be determined in each case by the examining board.

**452.17 Court review.** Orders of the examining board shall be subject to review as provided in ch. 227.

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

**(3)** Any person who is not registered who engages in or follows the business or occupation of, or advertises or holds himself out as or acts temporarily or otherwise as a cemetery salesman in this state or who otherwise violates any provision of this chapter, 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.

**452.19 Compensation presumed.** In any prosecution for violation of this chapter proof that a person acted as a broker or agent or salesman is prima facie proof that compensation therefor was received or promised.

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

**(2)** The certificate of the secretary or assistant secretary of the examining board to the effect that a specified individual, partnership or corporation is not or was not on a specified date the holder of a real estate broker's or salesman'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 nonexistence, is prima facie evidence of the facts therein stated for all purposes in any action or proceedings.

**History:** 1977 c. 418.