

1989 Assembly Bill 764

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1989 WISCONSIN ACT 341

AN ACT *to repeal* 452.09 (2) (b) and 452.09 (4); *to amend* 440.05 (3) (p) 1 and 2, 452.01 (4), 452.05 (1) (c), 452.06 (title), 452.06 (1), 452.06 (3), 452.14 (1), 452.15, 452.16 (1) and 452.17 (1); *to repeal and recreate* 452.06 (2) and 452.09 (2) (title) and (a); and *to create* 15.407 (4), 227.01 (13) (zj), 452.01 (4d), (4h), (4p) and (4t), 452.05 (1) (d) to (g), 452.06 (4), 452.09 (2) (c) and (d), 452.09 (3) (d) and (e), 452.12 (5) (c), 452.14 (4m) and 452.23 of the statutes, **relating to:** various changes in the regulation of the real estate profession by the department of regulation and licensing and the real estate board, creating a council on real estate curriculum and examinations and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 15.407 (4) of the statutes is created to read:

15.407 (4) COUNCIL ON REAL ESTATE CURRICULUM AND EXAMINATIONS. There is created in the department of regulation and licensing a council on real estate curriculum and examinations consisting of 7 members appointed for 4-year terms. Five members shall be real estate brokers or salespersons licensed under ch. 452 and 2 members shall be public members. Of the real estate broker or salesperson members, one member shall be a member of the real estate board appointed by the real estate board, at least 2 members shall be licensed real estate brokers with at least 5 years of experience as real estate brokers, and at least one member shall be a licensed real estate salesperson with at least 2 years of experience as a real estate salesperson. Of the 2 public members, at least one member shall have at least 2 years of experience in planning or presenting real estate educational programs. No member of the council may serve more than 2 consecutive terms.

SECTION 2. 227.01 (13) (zj) of the statutes is created to read:

227.01 (13) (zj) Establishes continuing educational requirements for real estate brokers and salespersons under s. 452.05 (1) (d).

SECTION 3. 440.05 (3) (p) 1. and 2. of the statutes are amended to read:

440.05 (3) (p) 1. Real estate broker, \$45 ~~\$47~~.

2. Real estate salesperson, \$45 ~~\$47~~.

SECTION 4. 452.01 (4) of the statutes is amended to read:

452.01 (4) “Disciplinary proceeding” means a proceeding against one or more licensees or registrants in which the board may ~~determine to~~ revoke, suspend or limit a license or registration, ~~or to~~ 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).

SECTION 5. 452.01 (4d), (4h), (4p) and (4t) of the statutes are created to read:

452.01 (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.

SECTION 6. 452.05 (1) (c) of the statutes is amended to read:

452.05 (1) (c) ~~Subject~~ 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 (4) and approve such programs and sessions in accordance with the established criteria. ~~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.~~

SECTION 7. 452.05 (1) (d) to (g) of the statutes are created to read:

452.05 (1) (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.

(f) After consultation with the council on real estate curriculum and examinations, the university of Wisconsin system, other appropriate state governmental agencies and interested members of the public, publish a manual covering the information on which applicants for licenses under this chapter are examined and other matters relating to real estate practice. The department shall revise and publish a revised edition of the manual every 2 years.

(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.

SECTION 8. 452.06 (title) of the statutes is amended to read:

452.06 (title) Councils and committees.

SECTION 9. 452.06 (1) of the statutes is amended to read:

452.06 (1) The secretary shall create a ~~permanent advisory committee~~ 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 ~~committee~~ council on forms for review before the form is approved.

SECTION 10. 452.06 (2) of the statutes is repealed and recreated to read:

452.06 (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), on establishing continuing education requirements under s. 452.05 (1) (d) and on preparing and revising the manual under s. 452.05 (1) (f).

(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.

SECTION 11. 452.06 (3) of the statutes is amended to read:

452.06 (3) If the secretary creates any ~~advisory 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 ~~committees~~ council under sub. (1) ~~or (2)~~, such councils or committees shall be chaired by a member of the board, if available, and shall report to the board and the secretary.

SECTION 12. 452.06 (4) of the statutes is created to read:

452.06 (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.

SECTION 13. 452.09 (2) (title) and (a) of the statutes are repealed and recreated to read:

452.09 (2) (title) 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.

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SECTION 14. 452.09 (2) (b) of the statutes is repealed.

SECTION 15. 452.09 (2) (c) and (d) of the statutes are created to read:

452.09 (2) (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.

SECTION 16. 452.09 (3) (d) and (e) of the statutes are created to read:

452.09 (3) (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).

SECTION 17. 452.09 (4) of the statutes is repealed.

SECTION 18. 452.12 (5) (c) of the statutes is created to read:

452.12 (5) (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.

SECTION 19. 452.14 (1) of the statutes is amended to read:

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

SECTION 20. 452.14 (4m) of the statutes is created to read:

452.14 (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:

1. 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).

2. 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.

SECTION 21. 452.15 of the statutes is amended to read:

452.15 Ineligibility. No license or certificate of registration may be issued under this chapter to any person whose license or ~~registration certificate under this chapter~~ has been revoked until the expiration of a period ~~not to exceed 2 years from the date the revocation became finally effective~~ 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. ~~The period shall be determined in each case by the board.~~

SECTION 22. 452.16 (1) of the statutes is amended to read:

452.16 (1) The department ~~may shall, upon motion of the board or upon its own determination,~~ conduct investigations, and, as appropriate, may hold hearings and make findings as to whether, if the department receives credible information that a person has acted as a broker, salesperson, time-share salesperson, cemetery association or cemetery salesperson without a license or certificate required under this chapter. The findings shall be subject to review under ch. 227. ~~During such review any additional material evidence presented may be considered. In lieu of holding a hearing, when~~ If there is reason to believe that a person is acting as a broker or salesperson ~~without a license or as a time-share salesperson without a certificate of registration~~ and that the continuation of such activity might cause injury to the public interest, the department may petition the circuit court for a temporary restraining order, an injunction or a writ of ne exeat as provided in ch. 813.

SECTION 23. 452.17 (1) of the statutes is amended to read:

452.17 (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

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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.

SECTION 24. 452.23 of the statutes is created to read:

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 investigation 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.

SECTION 25. Nonstatutory provisions. (1) COUNCIL ON REAL ESTATE CURRICULUM AND EXAMINATIONS; INITIAL APPOINTMENTS. Notwithstanding section 15.407 (4) of the statutes, as created by this act, the initial members of the council on real estate curriculum and examinations shall be appointed by the first day of the 4th month beginning after the effective date of this subsection for the following terms:

(a) Two broker members with 5 years of experience as brokers, for terms expiring on July 1, 1991.

(b) One salesperson member with 2 years of experience as a salesperson and one public member with 2 years of experience in planning or presenting real estate educational programs, for terms expiring on July 1, 1992.

(c) The broker or salesperson member who is a member of the real estate board, for a term expiring on July 1, 1993.

(d) One broker or salesperson member and one public member, for terms expiring on July 1, 1994.

(2) COUNCIL ON FORMS; INITIAL MEMBERSHIP. The members of the permanent advisory committee on forms under section 452.06 (1), 1987 stats., shall serve as the initial members of the council on forms under section 452.06 (1) of the statutes, as affected by this act.

SECTION 26. Appropriation changes; regulation and licensing. The dollar amounts in the schedule under section 20.005 (3) of the statutes for the appropriation to the department of regulation and licensing under section 20.165 (1) (g) of the statutes, as affected by the acts of 1989, are increased by \$215,700 for fiscal year 1990-91 to increase the authorized FTE positions for the department by 2.0 PR positions for the purpose of performing the administrative responsibilities of the department under this act.

SECTION 27. Initial applicability. (1) The treatment of section 452.09 (2) (title), (a), (c) and (d), (3) (d) and (e) and (4) of the statutes first applies to actions of the department of regulation and licensing on applications for broker's and salesperson's licenses under chapter 452 of the statutes that are submitted to the department on the effective date of this subsection.

(2) The treatment of section 452.09 (2) (b) of the statutes first applies to broker's and salesperson's licenses issued by the department of regulation and licensing under chapter 452 of the statutes on the effective date of this subsection.