



CLIFFORD OTTE

WISCONSIN STATE REPRESENTATIVE
27TH ASSEMBLY DISTRICT

April 2, 1997

To: The Members
Assembly Committee on Consumer Affairs

From: Representative Clifford Otte, Chair *C. O.*

MEMO

On April 2, 1997, the following clearinghouse rule was referred to the Assembly Committee on Consumer Affairs:

Clearinghouse Rule 97-001, relating to educational requirements for real estate salesperson's and broker's licenses.

The deadline for committee action on this rule is **May 2, 1997**. Please find herewith a copy of the rule. If you are interested in requesting a hearing and/or submitting comments, please do by **April 14, 1997**.



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Clearinghouse Rule 97-001, relating to educational requirements for real estate salesperson's and broker's licenses.

The deadline for committee action on this rule is **May 2, 1997**. Please find herewith a copy of the rule. If you are interested in requesting a hearing and/or submitting comments, please do by **April 14, 1997**.

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION : LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 97-001)**

**TO: Ben Brancel
Speaker of the Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53702**

PLEASE TAKE NOTICE that the DEPARTMENT OF REGULATION AND LICENSING is submitting in final draft form proposed rules relating to educational requirements for real estate salesperson's and broker's licenses.

If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

Administrative Rules in Final Draft Form

Department of Regulation and Licensing

Rule: Chapter RL 25

Relating to: Educational Requirements for Real Estate Salespersons and Brokers

Clearinghouse Rule: No. 97-001

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 97-001
DEPARTMENT OF REGULATION : (s. 227.19 (3), Stats.)
AND LICENSING :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

The proposed reduction in hours of education was requested by the Wisconsin Realtors Association.

SECTIONS 1 and 4 add a content item to the list of contents which must be covered in the 72-hour salesperson's course and the 36-hour broker's course. That content item is lead-based paint. New state and federal laws relating to lead-based paint were enacted during the past few years.

SECTION 2 repeals s. RL 25.02 (3) and SECTION 3 creates s. RL 25.025 which reduces from 20 hours to 3 hours the education which an out-of-state applicant for a broker's license must complete at a Wisconsin-approved school. This provision, both in the current rules and in this proposal, applies to an applicant who has held an active real estate broker's license in another licensing jurisdiction within the 2-year period prior to filing an application for an original broker's license in Wisconsin. SECTION 3 also lists the contents of the 3 hours and the amount of classroom time which must be devoted to each subject.

SECTION 5 repeals s. RL 25.03 (4) and SECTION 6 creates s. RL 25.035 which reduces from 23 hours to 13 hours the education which an out-of-state applicant for a salesperson's license must complete at a Wisconsin-approved school. This provision, both in the current rules and in this proposal, applies to an applicant who has held an active real estate salesperson's license in another licensing jurisdiction within the 2-year

period prior to filing an application for an original salesperson's license in Wisconsin. SECTION 6 also lists the contents of the 13 hours and the amount of classroom time which must be devoted to each subject.

SECTION 7 removes a sentence which contains an expiration date for the department's approval of continuing education programs and courses. This change is made because the approval of courses need not terminate on any date. Many licensees complete continuing education after the license renewal deadline, which is December 31 of each even-numbered year, and schools continue to offer the courses while there is a sufficient number of licensees interested in taking them. After that, licensees may take portions of the salesperson's prelicense course, as stated in s. RL 12.04 (1) (a) and (b). This section also removes an unnecessary word in the last sentence of the current rule.

SECTION 8 repeals a requirement that schools approved for presenting real estate continuing education programs or courses send a list of those who passed or failed the program or course to the department within 30 days after completion of the program or course. The department has determined that other provisions in the rules which require schools to give licensees a certificate of attendance for each program or course successfully completed and to keep attendance records for at least 5 years are adequate for resolving questions about whether a licensee had completed the required continuing education.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on February 27, 1997. Rick Staff, Madison, representing the Wisconsin Realtors Association, Inc., appeared and registered in support of the proposed rules. There were no other appearances nor were any written comments received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

In response to Comment 1. The department did consult with both the Council on Real Estate Curriculum and Examinations, and the Real Estate Board.

The remaining recommendations suggested in the Clearinghouse Report were accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION : LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 97-001)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to repeal RL 25.02 (3), 25.03 (4) and 25.066 (6) (h); to amend RL 25.066 (1); and to create RL 25.02 (2) (h) 5 cm, 25.025, 25.03 (3) (q) 2m and 25.035 relating to educational requirements for real estate salesperson's and broker's licenses.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2), 452.05, 452.06 and 452.07, Stats.

Statutes interpreted: ss. 452.05, 452.09 and 452.11, Stats.

SECTIONS 1 and 4 add a content item to the list of contents which must be covered in the 72-hour salesperson's course and the 36-hour broker's course. That content item is lead-based paint.

SECTION 2 repeals s. RL 25.02 (3) and SECTION 3 creates s. RL 25.025 which reduces from 20 hours to 3 hours the education which an out-of-state applicant for a broker's license must complete at a Wisconsin-approved school. This provision, both in the current rules and in this proposal, applies to an applicant who has held an active real estate broker's license in another licensing jurisdiction within the 2-year period prior to filing an application for an original broker's license in Wisconsin. SECTION 3 also lists the contents of the 3 hours and the amount of classroom time which must be devoted to each subject.

SECTION 5 repeals s. RL 25.03 (4) and SECTION 6 creates s. RL 25.035 which reduces from 23 hours to 13 hours the education which an out-of-state applicant for a salesperson's license must complete at a Wisconsin-approved school. This provision, both in the current rules and in this proposal, applies to an applicant who has held an active real estate salesperson's license in another licensing jurisdiction within the 2-year period prior to filing an application for an original salesperson's license in Wisconsin. SECTION 6 also lists the contents of the 13 hours and the amount of classroom time which must be devoted to each subject.

SECTION 7 removes a sentence which contains an expiration date for the department's approval of continuing education programs and courses. This change is made because the approval of

courses need not terminate on any date. Many licensees complete continuing education after the license renewal deadline, which is December 31 of each even-numbered year, and schools continue to offer the courses while there is a sufficient number of licensees interested in taking them. After that, licensees may take portions of the salesperson's prelicense course, as stated in s. RL 12.04 (1) (a) and (b). This section also removes an unnecessary word in the last sentence of the current rule.

SECTION 8 repeals a requirement that schools approved for presenting real estate continuing education programs or courses send a list of those who passed or failed the program or course to the department within 30 days after completion of the program or course. The department has determined that other provisions in the rules which require schools to give licensees a certificate of attendance for each program or course successfully completed and to keep attendance records for at least 5 years are adequate for resolving questions about whether a licensee had completed the required continuing education.

TEXT OF RULE

SECTION 1. RL 25.02 (2) (h) 5. cm. is created to read:

RL 25.02 (2) (h) 5. cm. Lead-based paint.

SECTION 2. RL 25.02 (3) is repealed.

SECTION 3. RL 25.025 is created to read:

RL 25.025 SATISFACTION OF BROKER'S 36-HOUR PROGRAM BY OUT-OF-STATE APPLICANTS. (1) An applicant who has held an active real estate broker's license in another licensing jurisdiction within the 2 year period prior to filing an application for an original real estate broker's license may satisfy the requirements of s. RL 25.02 (2) if the applicant submits evidence of all of the following:

(a) Attendance at 3 hours of education under sub. (2) at a school approved by the department under s. RL 25.05 or RL 25.06.

(b) Attendance at 33 hours of education on some or all contents of s. RL 25.02 (2), completed at any school.

(2) The content of the 3-hour course shall include all of the following:

(a) Broker-only contracts and contract issues. Minimum of .5 hours.

1. Reynolds v. Dinger, 14 Wis. 2d, 193.

2. State bar forms - s. RL 16.03 (1).

3. Uniform commercial code forms - s. RL 16.03 (1).
4. Forms used in other states.
5. Developing forms and contingency manual.
6. Supervising salespersons' use of approved forms.

(b) Miscellaneous Wisconsin laws. Minimum of .5 hours.

1. Change of name, address or trade name - ch. RL 23.
2. Trust accounts - s. 452.13, Stats., and ch. RL 18.
 - a. Procedure to open trust account.
 - b. Authorization to sign trust account checks.
 - c. Bookkeeping system.
3. Policy manual - s. RL 17.08.

(c) Review, update or more in-depth coverage of any of the contents of the 13-hour course in s. RL 25.035 (2).

SECTION 4. RL 25.03 (3) (q) 2m is created to read:

RL 25.03 (3) (q) 2m. Lead-based paint.

SECTION 5. RL 25.03 (4) is repealed.

SECTION 6. RL 25.035 is created to read:

RL 25.035 SATISFACTION OF SALESPERSON'S 72-HOUR PROGRAM BY OUT-OF-STATE APPLICANTS. (1) An applicant who has held an active real estate salesperson's license in another licensing jurisdiction within the 2-year period prior to filing an application for an original real estate salesperson's license may satisfy the requirements of s. RL 25.03 (3) if the applicant submits evidence of attendance at no less than 13 hours of education in sub. (2) at a school approved by the department under s. RL 25.05 or RL 25.06. Some or all contents in s. RL 25.03 (3) may be completed at any school.

(2) The content of the 13-hour course shall include all of the following:

- (a) Contracts. Minimum of 3.5 hours.

1. The law of conveyances.
a. Conveyance defined - s. 706.01, Stats.
b. Requirements for a void conveyance - ss. 706.02,
706.03, Stats.

2. Chapter RL 16.

3. Review of forms approved by the department.

- a. Listing contracts.
- b. Offers to purchase.
- c. Counteroffer and multiple counteroffer.
- d. Amendment/notice.
- e. Buyer agency agreement.
- f. Grant of option.
- g. Bill of sale.
- h. Exchange agreement.
- i. Cancellation and mutual release.
- j. Other approved forms.

(b) Agency. Minimum of 2 hours.

- 1. Duties owed to parties and clients. - s. 452.133, Stats.
- 2. Requirement for an agency agreement and disclosure of
agency - s. 452.135, Stats.
- 3. Multiple representation - s. 452.137, Stats.
- 4. Revisions to common law duties and responsibilities -
s. 452.139, Stats.

(c) Business conduct. Minimum of 1 hour.

1. Direct contact with the public.
 - a. Competence in area of service - s. RL 24.03.
 - b. Tie-ins - s. RL 24.075.
 - c. Agreements in writing - s. RL 24.08.
 - d. Misleading market values - s. RL 24.09.
 - e. Net listings - s. RL 24.10.
2. Advertising - s. RL 24.04.
3. Completing and presenting offers - ss. RL 24.12, 24.13.
 - a. Confidentiality.
 - b. Drafting and submitting offers.
 - c. Prompt delivery to buyer.
 - d. Fair presentation of offers.
 - e. Prompt notification.
4. Self-dealing - s. RL 24.05.
 - a. Dual compensation.
 - b. Disclosure of interest.
 - c. Referral services.
 - d. Disclosure of profits.
 - e. Disclosure of licensure.

(d) Consumer protection. Minimum of 2 hours.

1. Property inspections - s. RL 24.07 (1) (a).
2. Inquiry by listing broker - s. RL 24.07 (1) (b).
3. Disclosure of material adverse facts - s. RL 24.07 (2).

s. RL 24.07 (3).

4. Disclosure of material suggesting adverse material facts -

5. Disclosure of side agreements - s. RL 24.07 (4).

6. Reliance upon third parties - s. RL 24.07 (5).

7. Investigations and inspections - s. 452.23, Stats.

8. Civil liability for misrepresentation.

9. Seller's disclosure duties - ch. 709, Stats.

(e) Fair housing. Minimum of .5 hours. Wisconsin law - s. RL 24.03 (1), ss. 66.432, 101.22, Stats.

(f) Environmental factors. Minimum of 1 hour.

1. Underground storage tanks - ss. ILHR 10.74 to 10.805.

2. Floodplains - s. 87.30, Stats., ss. NR 116.01, 116.06.

3. Wetland - s. 23.32, Stats.

4. Farmland preservation - ss. 91.01 to 91.21, Stats.

5. Rental unit energy efficiency standards - ss. ILHR 67.03, 67.08.

(g) Trust accounts and escrows. Minimum of 1.5 hours.

1. Trust accounts - s. 452.13, Stats., ch. RL 18.

a. Definition of trust account.

b. Interest-bearing and non-interest-bearing accounts.

c. Definition of trust funds.

d. When a trust account is required.

e. Deposit of trust funds.

2. Escrow agreement procedures.

- a. Escrows requiring separate escrow agreements.
- b. Pre-closing earnest money escrows.
- c. Post-closing escrows.
- d. Escrows not requiring separate escrow agreement.
- e. Drafting escrow agreements.

(h) Miscellaneous issues. Minimum of 1.5 hours.

- 1. Condominiums - ss. 703.08, 703.21, 703.33, Stats.
- 2. Homestead - ss. 706.01 (7), 766.065, Stats.
- 3. Taxes - ss. 74.15, 74.47 (1) and (2), Stats.
- 4. Taxation and transfer fee - ss. 77.22, 77.27, Stats.
- 5. Residential rental practices - ss. ATCP 134.02, 134.06, 134.09.
- 6. Platting and subdivisions - ss. 236.01 to 236.03 and 236.31 to
236.35, Stats.
- 7. Documents and records - ch. RL 15.
- 8. Licensure and supervision of employes - ch. RL 17.
- 9. Commercial bulk sales - ss. 406.101 to 406.108, Stats.
- 10. Property provision for aliens and corporations - ss. 710.01,
710.02, Stats.
- 11. Property rights of married persons - ss. 766.31, 766.51,
766.60, 766.63, Stats.
- 12. Mortgage banking - s. 224.71, Stats., s. RL 40.03 (4) (b).

SECTION 7. RL 25.066 (1) is amended to read:

RL 25.066 (1) A school seeking initial approval from the department of the continuing education program or a course shall submit its application on a form provided by the department. ~~Approval of continuing education programs and courses shall terminate on December 31 following the last day of the licensing biennium.~~ A school shall submit applications for approval

of continuing education programs and courses to the department before conducting any continuing education program or course which the department has prescribed for a subsequent licensing biennium.

SECTION 8. RL 25.066 (6) (h) is repealed.

(END OF TEXT OF RULE)

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

Dated _____

Agency _____

Marlene A. Cummings, Secretary
Department of Regulation and Licensing

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

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3/19/97

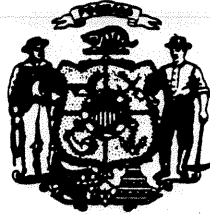
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 97-001

AN ORDER to repeal RL 25.02 (3), 25.03 (4) and 25.066 (6) (h); to amend RL 25.066 (1); and to create RL 25.02 (2) (h) 5. cm., 25.025, 25.03 (3) (q) 2m. and 25.035, relating to educational requirements for real estate salesperson's and broker's licenses.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

01-03-97 RECEIVED BY LEGISLATIVE COUNCIL.

02-03-97 REPORT SENT TO AGENCY.

RS:DD;jt;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

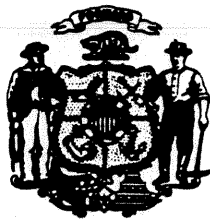
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 97-001

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

The rule does not indicate whether the department complied with s. 452.05 (1) (c), Stats., requiring consultation with the Council on Real Estate Curriculum and Examinations, or with s. 452.07 (2), Stats., requiring submittal of the proposed rule to the Real Estate Examining Board for comment.

2. Form, Style and Placement in Administrative Code

a. While the format of ss. RL 25.025 (2) and 25.035 (2) is parallel in most respects to current ss. RL 25.02 (2) and 25.03 (3) and, therefore, some questionable style and format of the proposed subsections are ignored for purposes of these comments, the introductory clauses of the proposed subsections should at least provide: "The content of the [3-hour] [13-hour] course shall include all of the following:".

b. In SECTION 7, the title of s. RL 25.066 should not be included.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. RL 25.02 (1) (a) 1., the reference to "14" is unclear. (Is it the beginning of an incomplete case citation?)

b. In s. RL 25.025 (2) (b) 2. (intro.), "RL" should not precede 452.13.

c. In s. RL 25.035 (2) (f) 1., “, Stats.” should be deleted.

d. In s. RL 25.035 (2) (f) 4., reference can be made to “ss. 91.17 to 91.21, Stats.” In s. RL 25.035 (2) (h) 6., reference can be made to “ss. 236.01 to 236.03” and “236.31 to 236.335, Stats.” Note that sub. (9) also contains some consecutively numbered statutory provisions which can be cited in a similar manner.

e. In s. RL 25.035 (2) (h) 12., the citation to s. 227.71, Stats., is incorrect.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The department’s analysis fails to indicate why the second sentence of s. RL 25.066 (1) is deleted by SECTION 7.

b. Section RL 25.025 (1) can be better stated. As drafted, the first sentence, read alone, implies that the 36-hour requirement can be satisfied merely by three hours of education as specified. It is suggested that sub. (1) be subdivided, with an introductory clause, as follows:

(1) An applicant who has held an active real estate broker’s license in another licensing jurisdiction within the 2-year period prior to filing an application for an original real estate broker’s license may satisfy the requirements of s. RL 25.02 (2) if the applicant submits evidence of all of the following:

(a) Attendance at 3 hours of education under sub. (2) at a school approved by the department under s. RL 25.05 or RL 25.06.

(b) Attendance at 33 hours of education on the remaining content of s. RL 25.02 (2), completed at any school.

Is it clear in s. RL 25.025 (1) how the remaining 33 hours of the required education program is to be divided among the “remaining content” of s. RL 25.02 (2)?

c. Comment b. also applies to s. RL 25.035 (1).