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FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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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 00-105

AN ORDER to repeal RL 17.02 (3) and 17.09; to renumber and amend RL 24.05 (5) and 24.12; to amend RL 17.02 (3) and (5), 17.03 (title), (2), (3) and (4), 17.04, 17.05 (1) and (2), 17.06, 17.08 (1), 17.12 (1), the Note following RL 24.03 (1), 24.04 (2) (a) and (b), 24.07 (8) (a) 2. (intro.) a. and c. and 24.13 (3) (b), (5) (title) and (5); and to create RL 17.02 (3g) and (3k), 25.05 (5) (a) 1., 2. and 3. and (b) and 24.12 (2) and the Note following RL 24.13 (5), relating to real estate education requirements.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

06-12-00 RECEIVED BY LEGISLATIVE COUNCIL.
07-11-00 REPORT SENT TO AGENCY.

RS:DLS:jal;rv

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

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CLEARINGHOUSE RULE 00-105

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 September 1998.]

2. Form, Style and Placement in Administrative Code

- a. In s. RL 17.02 (5), the first occurrence of the word "licensee" should be replaced by the word "license" in order to be consistent with current rule text.
- b. In s. RL 17.08 (1), the phrase "limited₁ to" should be replaced by the phrase "limited to₂".
- c. In s. RL 24.05 (5) (a) (intro.), the word "earlier" should be replaced by the word "earliest." [See also s. RL 24.07 (8) (a) 2. (intro.).]
- d. In s. RL 25.05 (5) (b), the word "section" should be replaced by the word "subsection."
- e. In s. RL 24.13 (5), the first sentence, after its amendment, should read: "A licensee may not negotiate a sale or lease of real estate directly with a party if the licensee knows that the party has an unexpired written contract in connection with the real estate . . ." Also, it appears that the final occurrence of the stricken word "owner" should be followed by the word "party."

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 00-)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to repeal RL 17.02 (3) and 17.09; to renumber and amend RL 24.05 (5) and 24.12; to amend RL 17.02 (3) and (5), 17.03 (title), (2), (3) and (4), 17.04, 17.05 (1) and (2), 17.06, 17.08 (1), 17.12 (1), the Note following RL 24.03 (1), 24.04 (2) (a) and (b), 24.07 (8) (a) 2. (intro.), a. and c., and 24.13 (3) (b), (5) (title) and (5); and to create RL 17.02 (3g) and (3k), 25.05 (5) (a) 1., 2., 3., (b), 24.12 (2), and the Note following RL 24.13 (5), relating to real estate education requirements.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2), 452.04, 452.05 and 452.07, Stats.

Statutes interpreted: ss. 452.025, 452.10, 452.12, 452.133, 452.135 and 452.14, Stats.

This proposed rule-making order was prepared with the assistance, review and recommendations of the Real Estate Board.

This rule proposal amends, creates and repeals certain definitions in Chapter RL 17.

The proposal ascertains that provisions in Chapter RL 17 that are applicable to time-share salespersons clearly indicate time-share salespersons, not just brokers and salespersons who are employed by a broker.

The proposal amends s. RL 24.04, relating to advertising requirements. The proposal clarifies an issue that has been unclear, that is, the fact that a licensee renting his or her own property is not required to disclose his, her or its name. When a licensee rents a property owned by the licensee, the licensee is not acting under a real estate license held by the licensee.

The proposal retains the general principle of confidentiality of offers to purchase; however, it amends s. RL 24.12 to require licensees to disclose to all persons seeking to acquire an interest subject to the right of first refusal the fact that there is a right of first refusal.

The proposal amends s. RL 24.13 (5), a current rule that requires licensees to negotiate, submit offers and submit leases to a seller through the seller's listing broker, and extends this same type

of requirement to a buyer's broker. All negotiations, offers and leases must be channeled through the buyer's broker. A few exceptions remain in the current rule.

TEXT OF RULE

SECTION 1. RL 17.02 (3) is amended to read:

RL 17.02 (3) "Broker-employer" means a sole proprietor or business entity that employs another ~~broker or salesperson~~ licensee to provide services to the broker.

SECTION 2. RL 17.02 (3g) and (3k) are created to read:

RL 17.02 (3g) "Immediate family" means any of the following:

(a) Parents, stepparents, grandparents, foster parents, children, stepchildren, grandchildren, foster children, brothers and their spouses, sisters and their spouses, of a licensee or a licensee's spouse.

(b) The spouse of a licensee.

(c) Aunts and uncles, sons-in law or daughters-in-law of a licensee or a licensee's spouse.

(3k) "Licensee" has the meaning under s. 452.01 (5), Stats.

include definition or put in NOTE

SECTION 3. RL 17.02 (5) is amended to read:

RL 17.02 (5) "Unlicensed personal assistant" means a person not licensed under ch. 452, Stats., or a person who is licensed but not employed for the purpose of providing services for which a licensee is required under ch. 452, Stats., who on behalf of and under the direction of a licensee, provides the licensee with administrative, clerical or personal services for which a license under sh. 452, Stats., is not required.

X callie text

SECTION 4. RL 17.03 (title), (2), (3) and (4) are amended to read:

RL 17.03 (title) **Limitations on ~~broker and salesperson~~ employees of a broker.**

(2) A ~~broker or salesperson~~ licensee who is employed by a broker-employer may personally employ licensed persons only as unlicensed personal assistants within the meaning of s. RL 17.02 (5), subject to the provisions in s. RL 17.12.

(3) A ~~broker or salesperson~~ licensee may be employed by only one broker-employer at any time.

(4) A salesperson or time-share salesperson may engage in real estate practice only when employed by a broker.

SECTION 5. RL 17.04 is amended to read:

RL 17.04 **Notice of employment.** A ~~broker or salesperson~~ licensee who wishes to engage in real estate practice as an employe of a broker-employer shall notify the department of the name of the broker-employer on forms prescribed by the department. If this notice is provided at the time of application for original licensure, the department may not charge a fee in addition to the fee specified in s. 440.05 (1), Stats. If the notice is provided other than at the time of application for original licensure, the licensee shall pay the fee specified in s. 440.05 (7), Stats.

SECTION 6. RL 17.05 (1) and (2) are amended to read:

RL 17.05 (1) A ~~broker or salesperson~~ licensee who wishes to transfer employment from one broker-employer to another shall submit to the department a transfer application accompanied by the fee specified in s. 440.05 (7), Stats.

(2) A ~~broker or salesperson~~ licensee who transfers employment to another broker-employer may not engage in real estate practice for the new employer until the ~~broker or salesperson~~ licensee has delivered or mailed a completed transfer application and the required fee to the department.

SECTION 7. RL 17.06 is amended to read:

RL 17.06 **Termination of employment.** A ~~broker or salesperson~~ licensee who terminates employment with a broker-employer shall send written notice to the department within 10 days after the termination.

SECTION 8. RL 17.08 (1) is amended to read:

RL 17.08 (1) A broker-employer shall supervise the activities of any ~~broker or salesperson~~ licensee employed by the broker-employer. Supervision includes, but is not limited, to reviewing all listing contracts, offers to purchase, trust account records and other documents related to transactions. A broker-employer may delegate this responsibility to other brokers. Broker-employers shall provide all licensed employes with a written statement of procedures under which the office and employes shall operate with respect to handling leases, listing contracts, offers to purchase and other documents relating to transactions.

SECTION 9. RL 17.12 (1) is amended to read:

RL 17.12 (1) A ~~real estate salesperson or broker employe~~ licensed employe, prior to employing an unlicensed personal assistant, shall enter into a written agreement with his or her broker-employer, setting forth the duties of the unlicensed personal assistant, the manner in which the personal assistant will be compensated for his or her services and the responsibilities between the ~~salesperson or broker employe~~ licensed employe and broker-employer for supervision of the personal assistant's activities.

SECTION 10. The Note following s. RL 24.03 (1) is amended to read:

Note: The primary references for federal and state fair housing laws are the 1988 amendments to the Federal Housing Act (Title VII of the Civil Rights Act of 1968) and ~~1991 Wis. Act 295 Chapter 106, Subchapter II, Stats.~~

SECTION 11. RL 24.04 (2) (a) and (b) are amended to read:

RL 24.04 (2) (a) ~~A~~ Except for advertisements for the rental of real estate owned by the broker, a broker shall in all advertising disclose the broker's name exactly as printed on the broker's license or disclose a trade name previously filed with the department, as required by s. RL 23.03, and in either case clearly indicate that the broker is a business concern and not a private party.

(b) ~~A broker or salesperson~~ Except for advertisements for the rental of real estate owned by the licensee, a licensee employed by a broker shall advertise under the supervision of and in the name of the employing broker.

SECTION 12. RL 24.05 (5) is renumbered RL 25.05 (5) (a) (intro.) and amended to read:

earliest
RL 24.05 **Disclosure of licensure.** (5) (a) (intro.) A licensee acting as a principal in a real estate or business opportunity transaction shall disclose his, her, or its license status prior to entering into a binding purchase agreement, option, exchange agreement, lease or other contract creating an interest in the real estate or business opportunity, and intent to act in the transaction as a principal at the earliest of all of the following:

SECTION 13. RL 25.05 (5) (a) 1., 2., 3. and (b) are created to read:

RL 25.05 (5) (a) 1. The first contact with the other party or an agent representing the other party where information regarding the other party or the transaction is being exchanged.

2. A showing of the property.

3. Any other negotiation with the seller or the listing broker.

(b) The disclosure under this section shall be made to the other party in a transaction or to an agent representing the other party. *Sub - (a) put in separate sub-section?*

SECTION 14. RL 24.07 (8) (a) 2. (intro.), a. and c. are amended to read:

RL 24.07 (8) (a) 2. (intro.) Licensees acting as agents of potential buyers of real estate used or intended to be used principally for one to 4 family residential purposes, who are negotiating directly with the seller or who are aware that the owner of the real estate has granted

another licensee the exclusive right to sell, shall notify the seller or the listing broker, as applicable, of the licensee's buyer agency relationship at the ^{earliest} ~~earlier~~ of all of the following:

a. The first contact with the seller or the listing broker where information regarding the seller or transaction is being exchanged.

c. Any other negotiation with the seller or the listing broker.

SECTION 15. RL 24.12 is renumbered RL 24.12 (1) and amended to read:

RL 24.12 Confidentiality of offers. (1) ~~A~~ Except as provided in sub. (2), a licensee acting as a principal or an agent in a real estate or business opportunity transaction shall not disclose any of the terms of one prospective buyer's offer to purchase, exchange agreement or option contract proposal to any other prospective buyer or to any person with the intent that this information be disclosed to any other prospective buyer. Licensees shall encourage all prospective buyers to submit their best offers. A licensee may, but is not required to, disclose information known by the licensee regarding the existence of other offers on the property, the fact that a seller has accepted an offer, that the offer is subject to contingencies and that the offer is subject to a clause requiring removal of certain contingencies upon the occurrence of an event such as receipt, acceptance or conditional acceptance of another offer.

SECTION 16. RL 24.12 (2) is created to read:

RL 24.12 (2) ^(a) As used in this subsection, "right of first refusal" means the right of a person to have the first opportunity to purchase or lease real property. "Right of first refusal" does not mean a so-called "bump clause" which is a contingency provision in a purchase agreement that requires the prospective buyer to remove certain contingencies in the buyer's purchase agreement or to relinquish the buyer's primary status to a secondary offer. ^(b) If a licensee is providing brokerage services in a transaction and the licensee has knowledge that the property is subject to a right of first refusal, the licensee shall disclose the right of first refusal, in writing and in a timely manner, to all persons seeking to acquire an interest subject to the right of first refusal. After disclosure of the right of first refusal to a party seeking to acquire an interest in the property, the licensee may deliver a copy of that party's subsequent offer to purchase, exchange agreement, option contract or lease proposal to the party holding the right of first refusal.

SECTION 17. RL 24.13 (3) (b), (5) (title) and (5) are amended to read:

RL 24.13 (3) (b) A listing broker or the listing broker's employe may not submit his or her own offer to purchase a property which the broker has listed if the broker or broker's employe has knowledge of the terms of any pending offer, except that a broker may arrange for a guaranteed sale at the time of listing.

(5) (title) **Negotiation through listing broker.** ^A Licensees ~~shall~~ may not negotiate a sale or lease of real estate directly with an owner a party if the licensee knows that such owner has an unexpired written contract in connection with such property which grants to

the party

the real estate

another licensee an exclusive right to sell, lease or negotiate. All negotiations shall be conducted with the listing broker holding the exclusive right to sell, and not with the owner party, except with the consent of the listing broker or where the absence of the listing broker, or other similar circumstances, reasonably compels direct negotiation with the owner. A listing broker has no duty to investigate whether a buyer has granted a buyer's agent an exclusive right to negotiate.

SECTION 18. A Note following RL 24.13 (5) is created to read:

Note: The Department of Regulation and Licensing's approved form, WB-38, does not grant the buyer's agent an exclusive right to negotiate.

(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.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

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6/2/2000

SEP 28 2000

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

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 00-105**

TO: Senator Judy Robson, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the DEPARTMENT OF REGULATION AND LICENSING is submitting in final draft form rules relating to real estate education requirements.

Please stamp or sign a copy of this letter to acknowledge receipt. 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 AND LICENSING

IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 00-105
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:

This rule-making order was prepared with the assistance, review and recommendations of the Real Estate Board. The proposal ascertains that provisions in Chapter RL 17 that are applicable to time-share salespersons clearly indicate time-share salespersons, not just brokers and salespersons who are employed by a broker.

The proposal amends s. RL 24.04, relating to advertising requirements. The proposal clarifies an issue that has been unclear, that is, the fact that a licensee renting his or her own property is not required to disclose his, her or its name. When a licensee rents a property owned by the licensee, the licensee is not acting under a real estate license held by the licensee.

The proposal retains the general principle of confidentiality of offers to purchase; however, it amends s. RL 24.12 to require licensees to disclose to all persons seeking to acquire an interest subject to the right of first refusal the fact that there is a right of first refusal.

The proposal amends s. RL 24.13 (5), a current rule that requires licensees to negotiate, submit offers and submit leases to a seller through the seller's listing broker, and extends this same type of requirement to a buyer's broker. All negotiations, offers and leases must be channeled through the buyer's broker. A few exceptions remain in the current rule.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on July 27, 2000.

Richard Staff, Vice President of Legal Services, of the Wisconsin Realtors Association was the only member of the public who spoke at the hearing. He stated that the Wisconsin Realtors Association supported the proposed changes.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

All of the recommendations suggested in the Clearinghouse Report were accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

See the comments of a member of the department's Small Business Review Advisory Committee and the department's response on pages 6 and 7 of the rule-making order, under this same heading.

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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 00-105)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to repeal RL 17.02 (3) and 17.09; to renumber and amend RL 24.05 (5) and 24.12; to amend RL 17.02 (3) and (5), 17.03 (title), (2), (3) and (4), 17.04, 17.05 (1) and (2), 17.06, 17.08 (1), 17.12 (1), the Note following RL 24.03 (1), 24.04 (2) (a) and (b), 24.07 (8) (a) 2. (intro.), a. and c., and 24.13 (3) (b), (5) (title) and (5); and to create RL 17.02 (3g) and (3k), 25.05 (5) (a) 1., 2., 3., (b), 24.12 (2), and the Note following RL 24.13 (5), relating to real estate education requirements.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2), 452.04, 452.05 and 452.07, Stats.

Statutes interpreted: ss. 452.025, 452.10, 452.12, 452.133, 452.135 and 452.14, Stats.

This proposed rule-making order was prepared with the assistance, review and recommendations of the Real Estate Board.

This rule proposal amends, creates and repeals certain definitions in Chapter RL 17.

The proposal ascertains that provisions in Chapter RL 17 that are applicable to time-share salespersons clearly indicate time-share salespersons, not just brokers and salespersons who are employed by a broker.

The proposal amends s. RL 24.04, relating to advertising requirements. The proposal clarifies an issue that has been unclear, that is, the fact that a licensee renting his or her own property is not required to disclose his, her or its name. When a licensee rents a property owned by the licensee, the licensee is not acting under a real estate license held by the licensee.

The proposal retains the general principle of confidentiality of offers to purchase; however, it amends s. RL 24.12 to require licensees to disclose to all persons seeking to acquire an interest subject to the right of first refusal the fact that there is a right of first refusal.

The proposal amends s. RL 24.13 (5), a current rule that requires licensees to negotiate, submit offers and submit leases to a seller through the seller's listing broker, and extends this same type

of requirement to a buyer's broker. All negotiations, offers and leases must be channeled through the buyer's broker. A few exceptions remain in the current rule.

TEXT OF RULE

SECTION 1. RL 17.02 (3) is amended to read:

RL 17.02 (3) "Broker-employer" means a sole proprietor or business entity that employs another ~~broker or salesperson~~ licensee to provide services to the broker.

SECTION 2. RL 17.02 (3g) and (3k) are created to read:

RL 17.02 (3g) "Immediate family" means any of the following:

(a) Parents, stepparents, grandparents, foster parents, children, stepchildren, grandchildren, foster children, brothers and their spouses, sisters and their spouses, of a licensee or a licensee's spouse.

(b) The spouse of a licensee.

(c) Aunts and uncles, sons-in law or daughters-in-law of a licensee or a licensee's spouse.

(3k) "Licensee" has the meaning under s. 452.01 (5), Stats.

SECTION 3. RL 17.02 (5) is amended to read:

RL 17.02 (5) "Unlicensed personal assistant" means a person not licensed under ch. 452, Stats., or a person who is licensed but not employed for the purpose of providing services for which a ~~licensee~~ license is required under ch. 452, Stats., who on behalf of and under the direction of a licensee, provides the licensee with administrative, clerical or personal services for which a license under sh. 452, Stats., is not required.

SECTION 4. RL 17.03 (title), (2), (3) and (4) are amended to read:

RL 17.03 (title) **Limitations on ~~broker and salesperson~~ employes of a broker.**

(2) A ~~broker or salesperson~~ licensee who is employed by a broker-employer may personally employ licensed persons only as unlicensed personal assistants within the meaning of s. RL 17.02 (5), subject to the provisions in s. RL 17.12.

(3) A ~~broker or salesperson~~ licensee may be employed by only one broker-employer at any time.

(4) A salesperson or time-share salesperson may engage in real estate practice only when employed by a broker.

SECTION 5. RL 17.04 is amended to read:

RL 17.04 Notice of employment. A ~~broker or salesperson~~ licensee who wishes to engage in real estate practice as an employe of a broker-employer shall notify the department of the name of the broker-employer on forms prescribed by the department. If this notice is provided at the time of application for original licensure, the department may not charge a fee in addition to the fee specified in s. 440.05 (1), Stats. If the notice is provided other than at the time of application for original licensure, the licensee shall pay the fee specified in s. 440.05 (7), Stats.

SECTION 6. RL 17.05 (1) and (2) are amended to read:

RL 17.05 (1) A ~~broker or salesperson~~ licensee who wishes to transfer employment from one broker-employer to another shall submit to the department a transfer application accompanied by the fee specified in s. 440.05 (7), Stats.

(2) A ~~broker or salesperson~~ licensee who transfers employment to another broker-employer may not engage in real estate practice for the new employer until the ~~broker or salesperson~~ licensee has delivered or mailed a completed transfer application and the required fee to the department.

SECTION 7. RL 17.06 is amended to read:

RL 17.06 Termination of employment. A ~~broker or salesperson~~ licensee who terminates employment with a broker-employer shall send written notice to the department within 10 days after the termination.

SECTION 8. RL 17.08 (1) is amended to read:

RL 17.08 (1) A broker-employer shall supervise the activities of any ~~broker or salesperson~~ licensee employed by the broker-employer. Supervision includes, but is not limited to, reviewing all listing contracts, offers to purchase, trust account records and other documents related to transactions. A broker-employer may delegate this responsibility to other brokers. Broker-employers shall provide all licensed employes with a written statement of procedures under which the office and employes shall operate with respect to handling leases, listing contracts, offers to purchase and other documents relating to transactions.

SECTION 9. RL 17.12 (1) is amended to read:

RL 17.12 (1) A ~~real estate salesperson or broker-employe~~ licensed employe, prior to employing an unlicensed personal assistant, shall enter into a written agreement with his or her broker-employer, setting forth the duties of the unlicensed personal assistant, the manner in which the personal assistant will be compensated for his or her services and the responsibilities between the ~~salesperson or broker-employe~~ licensed employe and broker-employer for supervision of the personal assistant's activities.

SECTION 10. The Note following s. RL 24.03 (1) is amended to read:

Note: The primary references for federal and state fair housing laws are the 1988 amendments to the Federal Housing Act (Title VII of the Civil Rights Act of 1968) and ~~1991 Wis. Act 295~~ Chapter 106, Subchapter II, Stats.

SECTION 11. RL 24.04 (2) (a) and (b) are amended to read:

RL 24.04 (2) (a) ~~A~~ Except for advertisements for the rental of real estate owned by the broker, a broker shall in all advertising disclose the broker's name exactly as printed on the broker's license or disclose a trade name previously filed with the department, as required by s. RL 23.03, and in either case clearly indicate that the broker is a business concern and not a private party.

(b) ~~A broker or salesperson~~ Except for advertisements for the rental of real estate owned by the licensee, a licensee employed by a broker shall advertise under the supervision of and in the name of the employing broker.

SECTION 12. RL 24.05 (5) is renumbered RL 25.05 (5) (a) (intro.) and amended to read:

RL 24.05 **Disclosure of licensure.** (5) (a) (intro.) A licensee acting as a principal in a real estate or business opportunity transaction shall disclose his, her, or its license status ~~prior to entering into a binding purchase agreement, option, exchange agreement, lease or other contract creating an interest in the real estate or business opportunity, and intent to act in the transaction~~ as a principal at the earliest of all of the following:

SECTION 13. RL 25.05 (5) (a) 1., 2., 3. and (b) are created to read:

RL 25.05 (5) (a) 1. The first contact with the other party or an agent representing the other party where information regarding the other party or the transaction is being exchanged.

2. A showing of the property.

3. Any other negotiation with the seller or the listing broker.

(b) The disclosure under this subsection shall be made to the other party in a transaction or to an agent representing the other party.

SECTION 14. RL 24.07 (8) (a) 2. (intro.), a. and c. are amended to read:

RL 24.07 (8) (a) 2. (intro.) Licensees acting as agents of potential buyers of real estate used or intended to be used principally for one to 4 family residential purposes, who are negotiating directly with the seller or who are aware that the owner of the real estate has granted

another licensee the exclusive right to sell, shall notify the seller or the listing broker, as applicable, of the licensee's buyer agency relationship at the earlier of all of the following:

a. The first contact with the seller or the listing broker where information regarding the seller or transaction is being exchanged.

c. Any other negotiation with the seller or the listing broker.

SECTION 15. RL 24.12 is renumbered RL 24.12 (1) and amended to read:

RL 24.12 Confidentiality of offers. (1) ~~A~~ Except as provided in sub. (2), a licensee acting as a principal or an agent in a real estate or business opportunity transaction shall not disclose any of the terms of one prospective buyer's offer to purchase, exchange agreement or option contract proposal to any other prospective buyer or to any person with the intent that this information be disclosed to any other prospective buyer. Licensees shall encourage all prospective buyers to submit their best offers. A licensee may, but is not required to, disclose information known by the licensee regarding the existence of other offers on the property, the fact that a seller has accepted an offer, that the offer is subject to contingencies and that the offer is subject to a clause requiring removal of certain contingencies upon the occurrence of an event such as receipt, acceptance or conditional acceptance of another offer.

SECTION 16. RL 24.12 (2) is created to read:

RL 24.12 (2) As used in this subsection, "right of first refusal" means the right of a person to have the first opportunity to purchase or lease real property. "Right of first refusal" does not mean a so-called "bump clause" which is a contingency provision in a purchase agreement that requires the prospective buyer to remove certain contingencies in the buyer's purchase agreement or to relinquish the buyer's primary status to a secondary offer. If a licensee is providing brokerage services in a transaction and the licensee has knowledge that the property is subject to a right of first refusal, the licensee shall disclose the right of first refusal, in writing and in a timely manner, to all persons seeking to acquire an interest subject to the right of first refusal. After disclosure of the right of first refusal to a party seeking to acquire an interest in the property, the licensee may deliver a copy of that party's subsequent offer to purchase, exchange agreement, option contract or lease proposal to the party holding the right of first refusal.

SECTION 17. RL 24.13 (3) (b), (5) (title) and (5) are amended to read:

RL 24.13 (3) (b) A listing broker or the listing broker's employe may not submit his or her own offer to purchase a property which the broker has listed if the broker or broker's employe has knowledge of the terms of any pending offer, except that a broker may arrange for a guaranteed sale at the time of listing.

(5) (title) **Negotiation through listing broker.** ~~Licensees shall~~ A licensee may not negotiate a sale or lease of real estate directly with an owner a party if the licensee knows that ~~such owner~~ the party has an unexpired written contract in connection with ~~such property~~ the

real estate which grants to another licensee an exclusive right to sell, lease or negotiate. All negotiations shall be conducted with the listing broker holding the exclusive right to sell, and not with the owner party, except with the consent of the listing broker or where the absence of the listing broker, or other similar circumstances, reasonably compels direct negotiation with the owner party. A listing broker has no duty to investigate whether a buyer has granted a buyer's agent an exclusive right to negotiate.

SECTION 18. A Note following RL 24.13 (5) is created to read:

Note: The Department of Regulation and Licensing's approved form, WB-38, does not grant the buyer's agent an exclusive right to negotiate.

(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

A member of the department's Small Business Review Advisory Committee had the following comments: (1) "Exception should extend to rental or sale of real estate owned by a licensee. If a licensee owns real estate but is not active in the profession, they should have the right to sell property they own without involved a broker (and broker fee)."

The department offers the following responses: The current rule states at RL 24.04 (2) (c): "A licensee may advertise the occasional sale of real estate by the licensee or the solicitation of real estate for purchase by the licensee without complying with pars. (a) and (b), provided that the licensee clearly identifies himself, herself or itself as a real estate licensee in the advertisement."

The Wisconsin statutes distinguish between a pattern of sales and an occasional sale. If a person is involved in a pattern of sales of his, her or its own property, the person either needs a real estate broker's licensee or has to contact with a broker. Licensed salespersons are only permitted to negotiate the sale of real estate when employed by a broker. However, no one is required to have a real estate broker's license or hire a broker in order to lease or rent his, her or its own property.

(2) "Licensees should be required to disclose other pending offers on the sale of a property. Competition is good for purchasers."

The purpose of this is to avoid a bidding war between prospective buyers, fueled by the real estate agent who will make a larger commission based on a higher sales price. The rules direct licensees to tell prospective buyers that they should offer their highest and best price. When a seller receives one or more offers, the seller can counter one or all of the offers and buyers can counter the counter. Thus, the seller and prospective buyers are able to continue to negotiate the price. The rule appears to provide fair treatment to all parties.

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

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9/22/2000