

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1387/1dn
CTS:lmk:jf

May 6, 2005

Representative Wieckert:

This is a redraft of LRB-1387/P3. Please review it carefully to ensure it is consistent with your intent, and note the following questions and comments.

1. Like the previous version, this draft defines “real estate” as including a timeshare, or a business or its goodwill, inventory, or fixtures, whether or not the business includes real property. The purpose is to ensure that these items, included in the original drafting instructions in a proposed amendment to the definition of “broker” are included consistently and unambiguously throughout ch. 452. It also obviates the need to repeat this language in other places in ch. 452. The application of this term is limited by s. 452.01 (intro) to ch. 452.
2. The instructions for this draft indicate that a subagent’s client is the broker who has engaged the subagent. However, “client” is a defined term in the draft as well as current law. Brokers owe specified duties to “clients.” I don’t think it is your intent that a subagent should owe the same duties to the broker who engaged the subagent. Therefore, this draft does not provide that a broker is a subagent’s client.
3. The instructions for this draft also indicate that the definition of “subagent” should indicate that a subagent provides brokerage services “on behalf of the other broker, under the authority of and within the scope of an agency agreement between the other broker and the other broker’s client in the transaction.” In this draft, “subagent” is defined as “a broker who is authorized by another broker to provide brokerage services in a transaction to the other broker’s client, except that “subagent” does not include a broker who is an employee of another broker.” I did not include the suggested language because this draft uses “on behalf of” in describing the relationship between a broker and the broker’s employee. See proposed s. 452.01 (4d). “On behalf of” and “under the authority of” would, I think, wrongly suggest that the broker is responsible for brokerage services provided by a subagent. See proposed s. 452.12 (3).
4. I have not included “within the scope of an agency agreement between the other broker and the other broker’s client” in the definition of “subagent.” This appears to be a substantive restriction on the practice of a subagent, rather than a definition of a subagent. I have therefore created provision (proposed s. 452.133 (4) (a) 1.) that prohibits a subagent from providing brokerage services to the other broker’s client that are beyond the scope of the agency agreement between the other broker and the other broker’s client.

5. The drafting instructions proposed that “negotiate” include the following: “Acting as an intermediary to facilitate or participate in communications between the parties related to the parties’ interests in a transaction. Providing information and advice to the party on real estate matters or showing a party real estate does not, in and of itself constitute acting as an intermediary to facilitate or participate in communications between the parties.”

Based on the proposed language, proposed s. 452.01 (5p) as well as proposed s. 452.01 (2) (bm) in this draft refer simply to “showing a party real estate,” instead of “presenting an on-site presentation,” etc. As requested, this draft also moves the “acting as an intermediary” language to proposed 452.01 (5m) (a).

However, for the sake of clarity and readability, proposed s. 452.01 (5m) (a) does not incorporate the second sentence of the language in the drafting instructions (“Providing information and advice...”). If I understand the drafting instructions correctly, I do not believe the language in this draft results in a substantive change. If neither providing information and advice nor showing a party real estate constitutes acting as an intermediary, then neither activity can amount to negotiating. On the other hand, if you mean that providing information and advice *and* showing a party real estate amounts to acting as an intermediary, and therefore constitutes negotiation, then the draft must be revised.

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