

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1387/4dn  
CTS:wlj:rs

August 18, 2005

Representative Wieckert:

This is a redraft of LRB-1387/3. Please review it carefully to ensure it is consistent with your intent, and note the following:

1. Throughout the draft, I have used the term "employee," rather than "salesperson" or "licensee employed by a broker." This draft, like the previous version, defines "employee" as a broker, salesperson, or time-share salesperson who provides brokerage services to a broker's clients on behalf of the broker and under the broker's supervision. Is this okay?

2. Regarding s. 452.01 (2) (am), I have included the phrase "based on criteria provided by the other person" per the drafting instructions, but I am uncertain as to the purpose of this language. If a broker provides advice or opinions based on criteria provided by someone else, is such a broker providing a regulated brokerage service? Do you intend to require a broker to base the broker's advice on criteria provided by a customer or client? If so, the language should not be contained in a definition, but in a substantive provision elsewhere in the draft.

Also, par. (am) retains the phrase "required under s. 452.09 (2) (a) and (3) (a)." The drafting instructions had substituted the phrase "required for licensure under this chapter," but I assumed this was unintentional. Is this correct? If you wish to use "required for licensure under this chapter," it should also be used in proposed ss. 452.01 (5m) (intro.) and 452.133 (2) (am).

3. Regarding proposed s. 452.01 (2) (b), for consistency, I have changed "business opportunities" to "businesses, including businesses' goodwill, inventory, or fixtures." Is this okay?

4. I have changed the term "multiple representation relationship," contained in the drafting instructions, to "multiple representation transaction." If I understand the instructions correctly, this is a more accurate description of the situation you contemplate. Is this okay?

5. This draft does not create the term "designated agency." Instead, I have created a substantive provision based on definition included in the drafting instructions. Does proposed s. 452.133 (2m) (a) accurately describe this arrangement?

6. With respect to proposed s. 452.133 (2m) (b), is designated agency the only instance in which a broker's employee in a multiple representation transaction may 1) place the interests of a client ahead of the interests of another client in negotiations; or 2) provide to the client on whose behalf the employee is negotiating information, opinions, or advice that favor the interests of that client over the interests of another client of the broker? If so, subsection (2m) should be simplified.

7. In proposed s. 452.133 (4) (a), should "parties" be changed to "persons in the transaction"?

8. I have rewritten proposed s. 452.135 (1) for clarity and to conform to LRB drafting conventions. Have I correctly interpreted the instructions with respect to agency disclosures by a subagent?

9. I have added subsection citations in the last sentence of each of the disclosure forms. For accuracy, I have also changed the word "you" in the last sentence of each form to "a customer" and "a client." Okay?

10. I have removed the references to "you" and "your" from the first part of the client disclosure form. The first sentence of the form indicates that a broker owes certain duties to all persons in a transaction, and it seemed inconsistent to phrase these duties in terms of "you" and "yours." Is this okay?

11. Regarding the "check-off" for opting out of designated agency, I wonder if the client disclosure form is the best location. Putting the check-off in the disclosure form would seem to require that the client return the form to the broker after deciding whether to opt out. Is this your intent?

12. Is the check-off and accompanying text in the client disclosure form sufficient to meet a broker's obligation under proposed s. 452.133 (2m) (a) to give written notice of a client's right to decline designated agency? If so, it seems unnecessary for the draft to both require the language about designated agency in the disclosure form and require a broker to give written notice of the right to decline designated agency. Do you agree?

13. This draft repeals the current definition of "agency agreement," because the proposed repeal and recreation of s. 452.135 (1) eliminates the current formal requirements for such an agreement. If you believe a definition of "agency agreement" is necessary, please contact me.

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