

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1387/P1dn
CTS:lmk:pg

March 3, 2005

Representative Wieckert:

This is a preliminary draft based on the proposed language in your instructions. I have made a number of changes to conform to our drafting conventions and to enhance readability. I have also omitted the revised disclosures from this draft, as I would first like to make sure I understand your intent regarding the substantive portions of the draft.

Please note the following questions and comments:

1. The instructions include the phrase "in order to assist the party to accomplish the party's expressed goals in a transaction" in the definition of brokerage services and the duty to provide information to a client. This phrase appears to refer to a state of mind on the broker's part, and may unintentionally limit the reach of provisions in which it is included. I have therefore omitted it from this draft. Is this okay?
2. Because the existence of an agency agreement between a broker and a party is implicit in the proposed definition of "client," I have eliminated a number of references to a "broker who has an agency agreement with a client" and similar phrases. Okay?
3. As I understand the instructions regarding proposed s. 452.132, a broker may negotiate only on behalf of a client, not a party. In the definition of "negotiate," therefore, I have changed references to "party" to "client." Okay?
4. The definition of "salesperson" in this draft includes the phrase "a person licensed under this chapter." The phrase seems unnecessary. Should it be deleted?
5. I have created a definition of "subagency agreement" in an effort to clarify the meaning of a subagency relationship. Is this okay?
6. In order to ensure that ch. 542 consistently applies to exchanges, options, and time shares and incorporates the proposed language regarding transactions involving "a business, or its goodwill, inventory, or fixtures, whether or not the business includes real estate," I have added these concepts to the definition of "transaction" in proposed s. 452.01 (10). For the same reason, I have also altered proposed s. 452.01 (2) (a) (defining "broker") and s. 452.01 (5r) (defining "party") to incorporate "transaction." Okay?

7. Portions of the instructions refer to providing “information and advice,” while other other portions refer to “advice or opinions.” Is this distinction intentional, and if so, what is the difference?
8. The instructions define the scope of certain provisions by reference to the “knowledge, skills, and training required for licensure as a broker or salesperson.” This phrase, which also appears once in current ch. 452, seems vague. Do you mean the competencies under current s. 452.09 (3) (a)?
9. Regarding a broker’s vicarious liability (proposed s. 452.12 (3) in this draft), I’m not sure I understand what it means for a broker, salesperson, or time–share salesperson to be “licensed or registered under” a broker? How does it differ from employment?
10. Have I correctly interpreted the instructions regarding s. 452.132?
11. It appears from the instructions that a broker’s duties to provide advice and opinions to a client (proposed s. 452.133 (2) (am)) applies only when the client requests advice and opinions. If so, what is the purpose of a waiver provision regarding this duty?
12. It was unclear whether you intended to repeal current s. 452.133 (3), so this draft leaves that subsection intact. Is this correct?
13. The instructions indicate that a broker must provide the disclosure to customers prior to negotiating for a customer. As I understand the instructions, however, a broker may negotiate only on behalf of a client, not a customer. When should a broker be required to present the customer disclosure?
14. Under current s. 452.13, DRL has explicit authority to promulgate rules pertaining to trust accounts. I have assumed that these are the rules referred to in the instructions regarding proposed s. 452.133 (1). Is this okay?
15. I’m not sure I understand your instructions regarding changes in current law on dual agency. It appears that your intent is to change current law in order to permit salespersons working with different clients of the same broker to engage in conduct that current law prohibits as to both brokers and salespersons. I am not sure what conduct you have in mind. The instructions refer to a problem caused by current “regulations.” Is this a reference to a dual agency rule promulgated by DRL?
16. Is it your intent to strike the phrase “principles of agency” from s. 452.139 (1)? Because the instructions were not clear on this point, I have included the phrase in this draft.

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