

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1387/P2dn
CTS:lmk:ch

April 12, 2005

Representative Wieckert:

This is a redraft of LRB-1387/P1 based on instructions from Rick Staff. Please review it carefully to ensure it is consistent with your intent, and note the following questions and comments:

1. In order to eliminate references to “employment” and “employees” from ch. 452, this version includes a requirement that salespersons and brokers who provide brokerage services on behalf of another broker register with the department the name of the broker on whose behalf the salesperson or broker will be providing brokerage services. The registration provision is based on current RL 17.03. In this draft, a subagent must register with the department under proposed s. 452.035 (2) as a broker who is providing brokerage services on behalf of another broker. This draft also prohibits a subagent from registering to provide brokerage services on behalf of more than one broker. Is this your intent? Should the draft be changed so that a subagent is distinguished from a broker who is registered to provide brokerage services on behalf of another broker?
2. Regarding the duties a broker owes to all parties in a transaction under proposed s. 452.133 (1), some of these duties relate to the provision of brokerage services. By definition, a party who receives brokerage services in a transaction is either a broker’s client or a broker’s customer. In this draft, a broker owes the duties to provide brokerage services honestly and fairly (proposed s. 452.133 (1) (a)) and to provide brokerage services with reasonable skill and care (proposed s. 452.133 (1) (b)) to all parties to a transaction, not just the customer or client for whom the broker is providing brokerage services. Is this your intent?
3. Similarly, in this draft a broker’s duty to preserve confidentiality (proposed s. 452.133 (1) (d)) applies to information the broker receives from or about a party who is not the broker’s customer or client. Is this correct? Should a broker’s duty to preserve confidentiality apply only to information received from a person to whom a broker is providing brokerage services?
4. Please note that I have moved the duty to provide accurate information about market conditions (proposed s. 452.133 (1) (e)) to the duties owed to a customer under subsection (1m). It appears that a broker can only fulfill this duty with respect to a customer or client, because the provision of such information amounts to a brokerage service under proposed s. 452.01 (2) (am). Is this okay?

5. The draft provides that a client may waive certain duties owed by brokers. Should a customer be permitted to waive any of the duties owed by the broker under proposed s. 452.133 (1m)? Note that in this version, the broker's duties to a customer is limited to the duty to provide information about market conditions under proposed s. 452.133 (1m) (a).
6. Should proposed s. 452.137 (1m), which involves brokers providing brokerage services to more than one client in a transaction, also apply to brokers providing brokerage services to more than one customer in a transaction, or to some combination of clients and customers?

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