



mk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

lu: 2/22/05

soon

D-note

GenCat

1 AN ACT ...; relating to: duties of real estate brokers and salespersons. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 452.01 (1m) of the statutes is amended to read:

3 452.01 (1m) "Agency agreement" means a written agreement between a broker
4 and a client under s. 452.135 (1) that authorizes the broker to provide brokerage
5 services to the client and that discloses the terms and conditions under which the
6 broker will provide those services. ✓

7 History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102.

8 SECTION 2. 452.01 (2) (a) of the statutes is amended to read:

9 452.01 (2) (a) For another a party, and for commission, money, or other thing
10 of value, negotiates or offers or attempts to negotiate a sale, exchange, purchase, or
rental of an interest or estate in real estate transaction. ✓

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102.

explain

SECTION 3. 452.01 (2) (am) of the statutes is created to read:

452.01 (2) (am) For a party, and for commission, money, or other thing of value, provides information and advice on matters that are material to a party's transaction and that are within the scope of the knowledge, skills, and training required for licensure as a broker or salesperson under this chapter.

SECTION 4. 452.01 (2) (b) of the statutes is amended to read:

452.01 (2) (b) Is engaged wholly or in part in the business of selling or exchanging interests or estates in real estate; time shares; or businesses or their goodwill, inventory, or fixtures, to the extent that a pattern of real-estate sales or exchanges is established, whether or not such real estate is owned by such person. Five sales or exchanges in one year or 10 sales or exchanges in 5 years is presumptive evidence of a pattern of sales or exchanges.

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102.

SECTION 5. 452.01 (2) (bm) of the statutes is created to read:

452.01 (2) (bm) For a party, and for commission, money, or other thing of value, shows a party real estate or a time share.

SECTION 6. 452.01 (2) (d) of the statutes is repealed.

SECTION 7. 452.01 (2) (e) of the statutes is repealed.

SECTION 8. 452.01 (2) (f) of the statutes is repealed.

SECTION 9. 452.01 (2) (g) of the statutes is repealed.

SECTION 10. 452.01 (2) (h) of the statutes is amended to read:

452.01 (2) (h) For another a party, and for a commission, money, or other thing of value, promotes the sale, exchange, purchase, option, rental, or leasing of real estate or business opportunities a transaction. This paragraph does not apply to a

1 person who only publishes or disseminates verbatim information provided by
2 another person.

3 History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102.

SECTION 11. 452.01 (3e) of the statutes is amended to read:

4 452.01 (3e) "Brokerage service" means any service described under sub. (2) (a)
5 to ~~(h)~~ provided by a broker to another person a party.

6 History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102.

SECTION 12. 452.01 (3m) of the statutes is amended to read:

7 452.01 (3m) "Client" means a party to a transaction who has entered into an
8 agency agreement with a broker ~~for brokerage services~~.

9 History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102.

SECTION 13. 452.01 (5m) (intro) of the statutes is amended to read:

10 452.01 (5m) (intro) "Negotiate" means to ~~act as an intermediary between the~~
11 ~~parties to a transaction~~ provide to a client assistance within the scope of the
12 knowledge, skills, and training required for licensure as a broker or salesperson
13 under this chapter, in developing a proposal or agreement relating to a transaction,
14 including doing any of the following:

15 History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102.

SECTION 14. 452.01 (5m) (c) of the statutes is amended to read:

16 452.01 (5m) (c) Presenting to a party client the proposals of other parties to the
17 transaction and ~~informing the party receiving a proposal of the advantages and~~
18 ~~disadvantages~~ giving the client a general explanation of the provisions of the
19 proposal.

20 History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102.

SECTION 15. 452.01 (5m) (d) of the statutes is repealed.

21 SECTION 16. 452.01 (5m) (e) of the statutes is created to read:

1 452.01 (5m) (e) Acting as an intermediary to facilitate or participate in
2 communications between a client and another party related to the client's interests
3 in a transaction.

4 **SECTION 17.** 452.01 (5p) of the statutes is created to read:

5 452.01 (5p) "Negotiate" does not include providing to a client advice or opinions
6 that relate to real estate or showing real estate or a time share to a client.

7 **SECTION 18.** 452.01 (5r) of the statutes is amended to read:

8 452.01 (5r) "Party" means a person seeking to sell, exchange, buy or rent an
9 ~~interest in real estate, a business or a business opportunity.~~ "Party" includes a
10 ~~person who seeks to grant or accept an option to buy, sell or rent an interest in real~~
11 ~~estate, a business or a business opportunity~~ engage in a transaction.

12 History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102.

12 **SECTION 19.** 452.01 (7) of the statutes is amended to read:

13 452.01 (7) "Salesperson" means any person licensed under this chapter ~~other~~
14 ~~than a broker~~ who is employed by a broker to perform any act authorized by this
15 chapter to be performed by a broker.

16 History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102.

16 **SECTION 20.** 452.01 (7g) of the statutes is created to read:

17 452.01 (7g) "Subagency agreement" means a written agreement between a
18 broker and a subagent that authorizes the subagent to provide brokerage services
19 in a transaction on behalf of the broker within the scope of the agency agreement
20 between the broker and the broker's client.

21 **SECTION 21.** 452.01 (7r) of the statutes is created to read:

22 452.01 (7r) "Subagent" means a broker who has entered into a subagency
23 agreement with another broker.

24 **SECTION 22.** 452.01 (10) of the statutes is amended to read:

1 452.01 (10) “Transaction” means actions, including negotiations, intended to
2 result in the sale, exchange, purchase, or rental of, or the granting or acceptance of
3 an option to sell, exchange, purchase, or rent, an interest in real estate, a timeshare,
4 or a business or a business opportunity its goodwill, inventory, or fixtures, whether
5 or not the business includes real estate.

6 History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102.

6 **SECTION 23.** 452.12 (3) of the statutes is amended to read:

7 452.12 (3) **BROKER'S LIABILITY FOR ACTS OF EMPLOYEES.** Each broker shall
8 supervise, and is responsible for, the acts of, brokerage services provided on behalf
9 of the broker by any broker, salesperson, or time-share salesperson employed by
10 licensed or registered under the broker.

11 History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 264, 399; 1989 a. 307, 341; 1991 a. 39; 1995 a. 27, 400; 1997 a. 27, 191, 237; 2001 a. 16.

11 **SECTION 24.** 452.132 of the statutes is created to read:

12 **452.132 Brokerage services; customers.** A broker may provide brokerage
13 services to a customer, except that a broker may not negotiate on behalf of a customer. ✓

14 **SECTION 25.** 452.133 (1) (intro.) of the statutes is amended to read:

15 452.133 (1) **BROKER'S DUTIES TO ALL PARTIES TO A TRANSACTION.** (intro.) In
16 providing brokerage services to a party to a transaction, a broker shall do all of the
17 following owes all of the following duties to the party:

18 History: 1993 a. 127; 1995 a. 400.

18 **SECTION 26.** 452.133 (1) (a) of the statutes is amended to read:

19 452.133 (1) (a) Provide The duty to provide brokerage services to all parties to
20 the transaction honestly, and fairly and in good faith.

21 History: 1993 a. 127; 1995 a. 400.

21 **SECTION 27.** 452.133 (1) (b) of the statutes is amended to read:

22 452.133 (1) (b) Diligently exercise The duty to provide brokerage services with
23 reasonable skill and care in providing brokerage services to all parties.

History: 1993 a. 127; 1995 a. 400.

1 **SECTION 28.** 452.133 (1) (c) of the statutes is amended to read:

2 452.133 (1) (c) ~~Disclose to each party~~ The duty to disclose all material adverse
3 facts that the broker knows and that the party does not know or cannot discover
4 through reasonably vigilant observation, unless the disclosure of a material adverse
5 fact is prohibited by law.

6 History: 1993 a. 127; 1995 a. 400.

6 **SECTION 29.** 452.133 (1) (d) of the statutes is amended to read:

7 452.133 (1) (d) ~~Keep~~ The duty to keep confidential any information given to the
8 broker in confidence, or any information obtained by the broker that he or she knows
9 a reasonable party would want to be kept confidential, unless the information must
10 be disclosed under par. (c) or s. 452.23 or is otherwise required by law to be disclosed
11 or the party whose interests may be adversely affected by the disclosure specifically
12 authorizes the disclosure of particular ~~confidential~~ information. A broker shall
13 continue to keep the information confidential after the transaction is complete and
14 after the broker is no longer providing brokerage services to the party.

15 History: 1993 a. 127; 1995 a. 400.

15 **SECTION 30.** 452.133 (1) (e) of the statutes is amended to read:

16 452.133 (1) (e) ~~Provide~~ The duty to provide, when requested by a party,
17 accurate information about market conditions that affect a the party's transaction,
18 ~~to any party who requests the information,~~ within a reasonable time of after the
19 party's request, unless disclosure of the information is prohibited by law.

20 History: 1993 a. 127; 1995 a. 400.

20 **SECTION 31.** 452.133 (1) (f) of the statutes is amended to read:

21 452.133 (1) (f) ~~Account for all~~ The duty to safeguard trust funds and other
22 property ~~coming into the possession of a~~ held by the broker that belongs to any party

1 ~~within a reasonable time of receiving the property as required by rules promulgated~~
2 ~~by the department under s. 452.13 (5).~~

3 History: 1993 a. 127; 1995 a. 400.

3 SECTION 32. 452.133 (1) (g) of the statutes is repealed.

4 SECTION 33. 452.133 (1) (h) of the statutes is created to read:

5 452.133 (1) (h) The duty not to place the broker's own interests ahead of the
6 interests of a party to a transaction.

7 SECTION 34. 452.133 (1) (i) of the statutes is created to read:

8 452.133 (1) (i) The duty not to provide advice or opinions to parties to a
9 transaction if providing such advice or opinions is contrary to the interests of any
10 other party to the transaction.

11 SECTION 35. 452.133 (2) (intro.) of the statutes is amended to read:

12 452.133 (2) BROKER'S DUTIES TO A CLIENT. (intro.) In addition to ~~his or her~~ the
13 duties under ^{plain} sub. (1) ^{plain} pars. (1) (a) to (f) and (h), a broker providing brokerage services
14 to his or her client shall do all of the following the broker's client owes all of the
15 following duties to the client:

UPS: PLS change component

16 History: 1993 a. 127; 1995 a. 400.

16 SECTION 36. 452.133 (2) (a) of the statutes is ^{renumbered 452.133(2)(a) (intro.)} amended to read:

17 452.133 (2) (a) ^(intro.) Loyally The duty to loyally represent the client's interests by ~~placing~~
18 and not to do any of the following:

19 1. placing ^e Placing the client's broker's interests ahead of the client's interests
20 of any other party, unless loyalty to a client violates the broker's duties under sub.
21 (1) or s. 452.137 (2). *plain*

22 History: 1993 a. 127; 1995 a. 400.

22 SECTION 37. 452.133 (2) (a) 2. of the statutes is created to read:

1 452.133 (2) (a) 2. Disclos^e~~ing~~ to other parties in the transaction information or
2 advice the disclosure of which is contrary to the client's interests, unless disclosure
3 is required by law. ✓

4 **SECTION 38.** 452.133 (2) (am) of the statutes is created to read: ✓

5 452.133 (2) (am) The duty to provide, when requested by the client, advice and
6 opinions to the client on matters that are material to a party's transaction and that
7 are within the scope of the knowledge, skills, and training required for licensure as
8 a broker or salesperson under this chapter. These matters include, but are not
9 limited to, the real estate market and contractual, legal, and regulatory issues. ✓

10 **SECTION 39.** 452.133 (2) (b) of the statutes is amended to read: ✓

11 452.133 (2) (b) ~~Disclose~~ The duty to disclose to the client all information known
12 by the broker that is material to the transaction and that is not known by the client
13 or discoverable by the client through reasonably vigilant observation, except for
14 confidential information under sub. (1) (d) and other information the disclosure of
15 which is prohibited by law.

16 History: 1993 a. 127; 1995 a. 400. ✓

16 **SECTION 40.** 452.133 (2) (c) of the statutes is amended to read:

17 452.133 (2) (c) ~~Fulfill~~ The duty to fulfill any obligation required by the agency
18 agreement, and any order of the client that is within the scope of the agency
19 agreement, that ~~are~~ is not inconsistent with another duty that the broker has under
20 this chapter or any other law. ✓

21 History: 1993 a. 127; 1995 a. 400. ✓

21 **SECTION 41.** 452.133 (2) (d) of the statutes is created to read:

22 452.133 (2) (d) The duty to negotiate on behalf of the client. ✓

23 **SECTION 42.** 452.133 (4) of the statutes is created to read: ✓

1 452.133 (4) SUBAGENT'S DUTIES. In addition to the duties specified in sub. (1),
2 a subagent may not, unless required by law, provide advice or opinions to parties in
3 the transaction if providing such advice or opinions is contrary to the interests of a
4 client of the broker with whom the subagent has entered into a subagency agreement.

5 **SECTION 43.** 452.133 (5) of the statutes is created to read:

6 452.133 (5) WAIVER OF DUTIES. The duties imposed by subs. (1), (2) (a), (b), and
7 (c), and (4) may not be waived. A client may waive, in part or in full, the broker's
8 duties under sub. 2 (am) and (d), except that a waiver under this subsection is not
9 effective unless the broker provides to the client a written disclosure containing all
10 of the following:

11 (a) If the client intends to waive the broker's duty under sub. (2) (am), a copy
12 of the text of that subsection, and a statement that, as a consequence of the client's
13 waiver, that broker will have no legal duty to perform the duty imposed by sub. (2)
14 (am).

15 (b) If the client intends to waive the broker's duty under sub. (2) (d), a copy of
16 the text of that subsection, and a statement that, as a consequence of the client's
17 waiver, that broker will have no legal duty to perform the duty imposed by sub. (2)
18 (d).

19 (c) An statement that as a consequence of the client's waiver, the client may
20 require the assistance of an attorney or another service provider to assist the client
21 to fulfill the client's transactional goals and contractual duties in the transaction.

22 **SECTION 44.** 452.137 (1) and 452.137 (2) of the statutes are consolidated,
23 renumbered 452.137 (1m) and amended to read:

24 452.137 (1m) ~~No A broker may provide brokerage services to who has an~~
25 agency agreement with more than one client in a transaction without an agency

1 ~~agreement under s. 452.135 (1) with each client and a written consent to multiple~~
2 ~~representation. The consent to multiple representation shall contain a statement of~~
3 ~~the broker's duties under s. 452.133 (1) to a party to the transaction who is not a~~
4 ~~client, a statement of the broker's duties to the client under s. 452.133 (2), and a~~
5 ~~statement that the clients understand the broker's duties and consent to the broker~~
6 ~~providing brokerage services to more than one client. The consent to multiple~~
7 ~~representation may contain additional disclosures by the broker or additional~~
8 ~~agreements between the broker and the clients that do not violate any duty of a~~
9 ~~broker under this chapter. (2) A broker who represents more than one client in a~~
10 ~~transaction owes to each client the duties specified in s. 452.133 (2) to each client (1)~~
11 ~~(a) to (f), (h), and (2), except that if a salesperson employed by a broker is negotiating~~
12 ~~on behalf of more than one of the broker's clients in a transaction, the salesperson~~
13 ~~but may not place the interests of any client ahead of the interests of another client~~
14 ~~in the transaction during the negotiations.~~ ✓

History: 1993 a. 127; 1997 a. 263. ✓

15 **SECTION 45.** 452.138 of the statutes is amended to read:

16 **452.138 Brokers providing services in more than one transaction.** A
17 broker may provide brokerage services simultaneously to more than one party in
18 different transactions unless the broker agrees with a client that the broker is to
19 provide brokerage services only to that client. ✓ If the broker and a client agree that
20 the broker is to provide brokerage services only to that client, the agency agreement
21 ~~under s. 452.135 (1) shall contain a statement of that agreement.~~ ✓

History: 1993 a. 127. ✓

22 **SECTION 46.** 452.139 (1) of the statutes is amended to read:

23 **452.139 (1) FIDUCIARY COMMON LAW FIDUCIARY DUTIES OF BROKER.** The duties of
24 a broker specified in this chapter or in rules promulgated under this chapter shall

1 ~~supersede any fiduciary duties of a broker to a party based on~~ duties or obligations
2 under common law principles of agency to the extent that those common law
3 ~~fiduciary~~ duties or obligations are inconsistent with the duties specified in this
4 chapter or in rules promulgated under this chapter.

History: 1993 a. 127; 2001 a. 16.

5 **SECTION 47. Initial applicability.**

6 (1) The treatment of section 452.133 of the statutes first applies to agency
7 agreements entered into, modified, or renewed on the effective date of this
8 subsection.

9 (2) The treatment of section 452.12 (3) of the statutes first applies to brokerage
10 services provided on the effective date of this subsection.

11 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1387/P1dn

CTS:.....

Imk

(date)

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? ✓ LPS. check Δ
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 "brokerage services") and s. 452.01 (5r) (defining "party") to incorporate "transaction." Okay? ✓

7. Portions of the instructions refer to providing "information and advice," while 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. ✓

Christopher T. Sundberg
Legislative Attorney
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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 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.

Christopher T. Sundberg
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Tues 3/8

LRB 1387 redraft instructions
(Rick Staff — WRA)

1. B may reg. on behalf of a non-client (i.e., customer), as long as B has agency or subagency relationship with party to transaction.
2. Change knowledge, skills, and training (prop. 452.01 (5a) (intro)) required under s. 452.09 (2) (a) and (3) (a)
3. Vicarious liability: RS will provide further instruct to explain difference between persons "employed" and those "licensed or registered" under a B. (prop. 452.12 (3)) * "employ" is defined term.
4. Duties to all parties: del. p. 452.133 (i) (ii) and (i): these duties not owed to all parties. (Initial instruct. had these provisions as duties owed when B has no agency or subagency agt.
— Does this square with instruct re negotiation?

RS will provide further instructions about these provisions — they involve a "pre-agency" concept not yet defined.

5. Prop. 452.133 (4): add prohib on B placing interests ahead of interests of those of a client of the subagent's principal.

5. Prop. 452.139 (1): should apply to all common law duties/obligations, not just D/O under agency law.

6. Disclosure to non-client: should be required no later than the commencement of negotiations.
(St. 11 not ready to write disclosures)

7. "Info/advice" vs. "advice/opinions" — Advice/Opinions applies to client duties, not to customers or parties.

8. Waiver of advice/opinions: B must provide A/O only upon request, but

leave waiver provision in (relates
to a "limited service" business model)