



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1387/P2

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ln: 4/27/05

Due: Thurs. Pm, if possible
4/28/05

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 AN ACT *to repeal* 452.01 (2) (d), 452.01 (2) (e), 452.01 (2) (f), 452.01 (2) (g), 452.01
2 (4d), 452.01 (4h), 452.01 (4p), 452.01 (4t), 452.01 (5m) (d), 452.133 (1) (e) and
3 452.133 (1) (g); *to renumber* 452.12 (4); *to renumber and amend* 452.025 (4),
4 452.10 (4) and 452.133 (2) (a); *to consolidate, renumber and amend* 452.137
5 (1) and 452.137 (2); *to amend* 452.01 (1m), 452.01 (2) (a), 452.01 (2) (b), 452.01
6 (2) (h), 452.01 (3e), 452.01 (3m), 452.01 (5m) (intro), 452.01 (5m) (b), 452.01 (5m)
7 (c), 452.01 (5r), 452.01 (7), 452.01 (9), 452.01 (10), 452.025 (1) (b) 3., 452.025 (3)
8 (a), 452.025 (3) (b) 2. g., 452.12 (3), 452.12 (4) (title), 452.133 (1) (intro.), 452.133
9 (1) (a), 452.133 (1) (b), 452.133 (1) (c), 452.133 (1) (d), 452.133 (1) (f), 452.133 (2)
10 (intro.), 452.133 (2) (b), 452.133 (2) (c), 452.138, 452.139 (1), 452.139 (2) (c),
11 452.14 (3) (f) and 452.14 (3) (g); and *to create* 452.01 (1p), 452.01 (2) (am),
12 452.01 (2) (bm), 452.01 (5m) (e), 452.01 (5p), 452.01 (7g), 452.01 (7r), 452.025
13 (4) (b), 452.035, 452.12 (4) (b), 452.132, 452.133 (1m), 452.133 (2) (a) 2., 452.133

1 (2) (am), 452.133 (2) (d), 452.133 (4) and 452.133 (5) of the statutes; **relating**
2 **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:

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

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

8 **SECTION 2.** 452.01 (1p) of the statutes is created to read:

9 452.01 (1p) "Authorizing broker" means any of the following:

- 10 (a) The broker identified in the register under s. 452.12 (4) (b) as the broker on
11 whose behalf a salesperson or broker is authorized to provide brokerage services.
12 (b) The broker on whose behalf a time-share salesperson is registered under
13 s. 452.025 to provide brokerage services.

14 **SECTION 3.** 452.01 (2) (a) of the statutes is amended to read:

15 452.01 (2) (a) For another ^{party} ~~a client or customer~~ and for commission, money, or
16 other thing of value, negotiates or offers or attempts to negotiate a sale, ^{keep} exchange
17 purchase, or rental of an interest or estate in real estate transaction.

18 **SECTION 4.** 452.01 (2) (am) of the statutes is created to read:

19 452.01 (2) (am) For a ^{party} ~~client or customer~~ and for commission, money, or other
20 thing of value, provides information and advice on matters that are material to the

1 client's or customer's ^{party} transaction and that are within the scope of the knowledge,
2 skills, and training required under s. 452.09 (2) (a) and (3) (a).

3 SECTION 5. 452.01 (2) (b) of the statutes is amended to read:

4 452.01 (2) (b) Is engaged wholly or in part in the business of selling or
5 exchanging interests or estates in real estate, time shares; or businesses or their
6 goodwill, inventory, or fixtures to the extent that a pattern of real estate sales or
7 exchanges is established, whether or not such real estate is owned by such person.
8 Five sales or exchanges in one year or 10 sales or exchanges in 5 years is presumptive
9 evidence of a pattern of sales or exchanges.

10 SECTION 6. 452.01 (2) (bm) of the statutes is created to read:

11 452.01 (2) (bm) For a client or customer ^{party}, and for commission, money, or other
12 thing of value, shows a client or customer real estate or a time share.

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

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

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

16 SECTION 10. 452.01 (2) (g) of the statutes is repealed.

17 SECTION 11. 452.01 (2) (h) of the statutes is amended to read:

18 452.01 (2) (h) For another a client or customer ^{plain comma}, and for a commission, money,
19 or other thing of value, ^{plain text} promotes the sale, exchange, purchase, option, rental or
20 leasing of real estate or business opportunities a transaction. This paragraph does
21 not apply to a person who only publishes or disseminates verbatim information
22 provided by another person.

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

24 452.01 (3e) "Brokerage service" means any service described under sub. (2) (a)
25 to (h) provided by a broker to another person a client or customer.

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1 SECTION 13. 452.01 (3m) of the statutes is amended to read:

2 452.01 (3m) "Client" means a party to a transaction who has entered into an
3 agency agreement with a broker ^{plain text} for brokerage services.

4 SECTION 14. 452.01 (4d) of the statutes is repealed.

5 SECTION 15. 452.01 (4h) of the statutes is repealed.

6 SECTION 16. 452.01 (4p) of the statutes is repealed.

7 SECTION 17. 452.01 (4t) of the statutes is repealed.

8 SECTION 18. 452.01 (5m) (intro) of the statutes is amended to read:

9 452.01 (5m) (intro) "Negotiate" means to act as an intermediary between the
10 parties to a transaction provide to a client or customer ^{party} assistance within the scope
11 of the knowledge, skills, and training required under s. 452.09 (2) (a) and (3) (a) in
12 developing a proposal or agreement relating to a transaction, including doing any of
13 the following:

14 SECTION 19. 452.01 (5m) (b) of the statutes is amended to read:

15 452.01 (5m) (b) Completing, when requested by a party client or customer,
16 appropriate department-approved forms or other writings to document the party's
17 client's or customer's proposal consistent with the party's client's or customer's
18 intent.

19 SECTION 20. 452.01 (5m) (c) of the statutes is amended to read:

20 452.01 (5m) (c) Presenting to a party client or customer the proposals of other
21 parties to the transaction and ~~informing the party receiving a proposal of the~~
22 ~~advantages and disadvantages~~ giving the client or customer a general explanation
23 of the provisions of the proposal. ^{party}

24 SECTION 21. 452.01 (5m) (d) of the statutes is repealed.

25 SECTION 22. 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 or customer and another party related to the
3 client's or customer's interests in a transaction.

4 SECTION 23. 452.01 (5p) of the statutes is created to read:

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

8 SECTION 24. 452.01 (5r) of the statutes is amended to read:

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

13 SECTION 25. 452.01 (7) of the statutes is amended to read:

14 452.01 (7) "Salesperson" means any person other than a broker or time-share
15 salesperson who is employed by a broker to perform any act authorized by this
16 chapter to be performed by a broker authorized by a broker to provide brokerage
17 services on the broker's behalf.

18 SECTION 26. 452.01 (7g) of the statutes is created to read:

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

23 SECTION 27. 452.01 (7r) of the statutes is created to read:

24 452.01 (7r) "Subagent" means a broker who has entered into a subagency
25 agreement with another broker.

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party information or

delivering to a party an on-site presentation of the features and condition of real estate

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other than

SECTION 28. 452.01 (9) of the statutes is amended to read:

452.01 (9) "Time-share salesperson" means a person, other than a person licensed under s. 452.09, who is employed by a licensed registered under s. 452.025 and authorized by an authorizing broker to sell or offer or attempt to negotiate an initial sale or purchase of a time share but who may not perform any other acts authorized by this chapter to be performed by a broker or salesperson.

SECTION 29. 452.01 (10) of the statutes is amended to read:

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

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SECTION 30. 452.025 (1) (b) 3. of the statutes is amended to read:

452.025 (1) (b) 3. Certification from the licensed authorizing broker employing the applicant that the applicant is competent to act as a time-share salesperson.

SECTION 31. 452.025 (3) (a) of the statutes is amended to read:

452.025 (3) (a) A time-share salesperson registered under this section may act as a time-share salesperson only when employed by a licensed to the extent authorized by the authorizing broker.

SECTION 32. 452.025 (3) (b) 2. g. of the statutes is amended to read:

452.025 (3) (b) 2. g. The signature of the time-share salesperson and the name of the employing authorizing broker.

SECTION 33. 452.025 (4) of the statutes is renumbered 452.025 (4) (a) and amended to read:

1 452.025 (4) (a) A time-share salesperson registered under this section may
2 apply at any time to transfer employment registration to another licensed
3 authorizing broker by submitting to the department an application in the form
4 prescribed by the department and the transfer fee specified in s. 440.05 (7).

5 **SECTION 34.** 452.025 (4) (b) of the statutes is created to read:

6 452.025 (4) (b) A time-share salesperson may not provide brokerage services
7 on behalf of an authorizing broker while the authorizing broker's license is
8 suspended or revoked. Notwithstanding par. (a), a time-share salesperson may not
9 apply for transfer to another authorizing broker if the time-share salesperson is a
10 party to the activities causing the suspension or revocation of the license of the
11 authorizing broker.

12 **SECTION 35.** 452.035 of the statutes is created to read:

13 **452.035 Registration of salespersons and certain brokers.** (1) A
14 salesperson may not provide brokerage services unless all of the following apply:

15 (a) The salesperson is authorized to provide the brokerage services on behalf
16 of an authorizing broker.

17 (b) The salesperson has registered with the department. A salesperson shall
18 submit, on a form approved by the department, the name and address of the
19 authorizing broker.

20 (2) A broker may not provide brokerage services on behalf of another broker
21 unless the broker has registered with the department. A broker who wishes to
22 provide brokerage services for another broker shall submit, on a form approved by
23 the department, the name and address of the authorizing broker.

24 (3) A salesperson or broker may not register to provide brokerage services on
25 behalf of more than one broker.

1 SECTION 36. 452.10 (4) of the statutes is renumbered 452.035 (4) and amended
2 to read:

3 452.035 (4) (a) Any licensed salesperson or broker may transfer to the
4 employment of a licensed another authorizing broker by first paying the transfer fee
5 specified in s. 440.05 (7) and filing a transfer form with the department.

6 (b) No salesperson, ~~time-share salesperson~~ or broker may be employed by a
7 provide brokerage services on behalf of an authorizing broker whose while the
8 authorizing broker's license has been is suspended or revoked during the period of
9 suspension or revocation. ~~The. Notwithstanding par. (a), a salesperson, time-share~~
10 salesperson or broker may not apply for transfer to ~~some other licensed another~~
11 authorizing broker by ~~complying with this chapter, provided if~~ the salesperson,
12 ~~time-share salesperson~~ or broker is ~~not~~ a party to the activities causing the
13 suspension or revocation of the license of the authorizing broker.

14 SECTION 37. 452.12 (3) of the statutes is amended to read:

15 452.12 (3) BROKER'S VICARIOUS LIABILITY FOR ACTS OF EMPLOYEES. Each broker
16 shall supervise, and is responsible for, the acts of, brokerage services provided on
17 behalf of the broker by any broker, salesperson, or time-share salesperson employed
18 by authorized by the broker to provide brokerage services on behalf of the broker.

19 SECTION 38. 452.12 (4) (title) of the statutes is amended to read:

20 452.12 (4) (title) REGISTER REGISTERS OF BROKERS AND SALESPERSONS.

21 SECTION 39. 452.12 (4) of the statutes is renumbered 452.12 (4) (a).

22 SECTION 40. 452.12 (4) (b) of the statutes is created to read:

23 452.12 (4) (b) The department shall maintain a register of all salespersons and
24 brokers authorized to provide brokerage services on behalf of a broker. For each

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1 salesperson and broker, the register shall identify the name of the broker for which
2 the salesperson or broker is authorized to provide brokerage services.

3 SECTION 41. 452.132 of the statutes is created to read:

4 ^B Negotiation; disclosure 452.132 Brokerage services; customers. (1) Subject to sub. (2), a broker

5 may provide brokerage services to a customer.

6 (2) A broker may not ^{No!!} negotiate on behalf of a customer who is not a client of
7 another broker with whom the broker has entered into a ^{engage in negotiation in a transaction} subagency agreement,

8 unless all of the following apply:

9 ^B (a) Another party to the transaction is the broker's client or is the client of
10 another broker ^{is a subagent} with whom the broker has entered into a subagency agreement.

11 ^B (b) The broker has provided to the customer a copy of the ^{statement} disclosure required
12 under s. 452.135. ⁽²⁾ ^{each party participating in the negotiation}

13 SECTION 42. 452.133 (1) (intro.) of the statutes is amended to read:

14 452.133 (1) BROKER'S DUTIES TO ALL PARTIES TO A TRANSACTION. (intro.) In A
15 broker who is providing brokerage services to a ^{plain} party to client or customer in a
16 transaction, a broker shall do all of the following owes all of the following duties to
17 the other parties to the transaction:

18 ^{party} SECTION 43. 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 ^{plain} and in good faith.

21 SECTION 44. 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.

24 SECTION 45. 452.133 (1) (c) of the statutes is amended to read:

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

5 SECTION 46. 452.133 (1) (d) of the statutes is amended to read:

6 452.133 (1) (d) ~~Keep~~ The duty to keep confidential any information given to the
7 broker in confidence, or any information obtained by the broker that he or she knows
8 a reasonable party would want to be kept confidential, unless the information must
9 be disclosed ~~under par. (e) or s. 452.23 or is otherwise required by law to be disclosed~~
10 or the party whose interests may be adversely affected by the disclosure specifically
11 authorizes the disclosure of particular confidential information. A broker shall
12 continue to keep the information confidential after the transaction is complete and
13 after the broker is no longer providing brokerage services to ~~the~~ a party in the
14 transaction.

15 SECTION 47. 452.133 (1) (e) of the statutes is repealed.

16 SECTION 48. 452.133 (1) (f) of the statutes is amended to read:

17 452.133 (1) (f) Account for all The duty to safeguard trust funds and other
18 property coming into the possession of a held by the broker that belongs to any party
19 within a reasonable time of receiving the property as required by rules promulgated
20 by the department under s. 452.13 (5).

21 SECTION 49. 452.133 (1) (g) of the statutes is repealed.

22 SECTION 50. 452.133 (1m) of the statutes is created to read:

23 452.133 (1m) BROKER'S DUTIES TO CUSTOMERS. (a) A broker providing brokerage
24 services to a customer owes the customer the duties that a broker owes to a party
25 under sub. (1) and the duty to provide, when requested by a customer, accurate

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plain text

1 information about market conditions that affect the customer's transaction, within
2 a reasonable time after the customer's request, unless disclosure of the information
3 is prohibited by law.

4 (b) If a broker is providing brokerage services to a customer in a transaction
5 in which no party is the broker's client and no party is the client of another broker
6 with whom the broker has entered into a subagency agreement, then all of the
7 following apply:

8 1. The broker owes all parties the duty not to place the broker's interests ahead
9 of the interests of any party to the transaction.

10 2. The broker may not provide advice or opinions to any party, if providing such
11 advice or opinions is contrary to the interests of the customer or any party.

12 SECTION 51. 452.133 (2) (intro.) of the statutes is amended to read:

13 452.133 (2) BROKER'S DUTIES TO A CLIENT. (intro.) In addition to his or her duties
14 under sub. (1), a A broker providing brokerage services to his or her client shall do
15 owes the client the duties that the broker owes to a party under sub. (1) and to a
16 customer under sub. (1m) (a) and all of the following duties:

17 SECTION 52. 452.133 (2) (a) of the statutes is renumbered 452.133 (2) (a) (intro.)
18 amended to read:

19 452.133 (2) (a) (intro.) Loyally The duty to loyally represent the client's
20 interests by placing and not to do any of the following:

21 1. Place the client's broker's interests ahead of the client's interests of any other
22 party, unless loyalty to a client violates the broker's duties under sub. (1) or s. 452.137
23 (2).

24 SECTION 53. 452.133 (2) (a) 2. of the statutes is created to read:

1 452.133 (2) (a) 2. Disclose 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 54. 452.133 (2) (am) of the statutes is created to read: *information and*

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 the client's transaction and that
 7 are within the scope of the knowledge, skills, and training required under s. 452.09
 8 (2) (a) and (3) (a). These matters include the real estate market and contractual,
 9 legal, and regulatory issues.

10 SECTION 55. 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 SECTION 56. 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 SECTION 57. 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 58. 452.133 (4) of the statutes is created to read:

24 452.133 (4) SUBAGENT'S DUTIES. ^(a) A subagent owes all parties the duties specified
 25 in sub. (1) and may not do any of the following:

broker who is providing brokerage services in a transaction as a

1 10 (a) Place the ~~subagent's~~ ^{in whose behalf} interests ahead of the interests of a client of a broker
2 ~~with whom the subagent has entered into a subagency agreement.~~ ^{broker's}

3 20 (b) Provide advice or opinions to parties in the transaction if providing ~~such~~ ^{broker is providing brokerage services as a subagent}
4 advice or opinions is contrary to the interests of a client of the broker ~~with whom the~~ ^{the}
5 ~~subagent has entered into a subagency agreement, unless required by law.~~

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6 SECTION 59. 452.133 ~~(b)~~ ⁽⁶⁾ of the statutes is created to read: ^{on whose behalf the broker is providing brokerage services as a subagent}
7 452.133 ~~(b)~~ ⁽⁶⁾ WAIVER OF DUTIES. The duties imposed by subs. (1), (2) (a), (b), and

8 (c), ~~and (4)~~ ^{and (5)} may not be waived. A client may waive, in part or in full, the broker's
9 duties under sub. (2) (am) and (d), except that a waiver under this subsection is not
10 effective unless the broker provides to the client a written disclosure containing all
11 of the following:

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

16 (b) If the client intends to waive the broker's duty under sub. (2) (d), a copy of
17 the text of that ~~subsection~~ ^{paragraph} and s. 452.01 (5m) and (5p), and a statement that, as a
18 consequence of the client's waiver, that broker will have no legal duty to perform the
19 duty imposed by sub. (2) (d).

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

23 SECTION 60. 452.137 (1) and (2) of the statutes are consolidated, renumbered
24 452.137 (1m) and amended to read:

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1 452.137 (1m) ~~No A broker may provide who is providing~~ brokerage services to
 2 more than one client in a transaction ~~without an agency agreement under s. 452.135~~
 3 ~~(1) with each client and a written consent to multiple representation. The consent~~
 4 ~~to multiple representation shall contain a statement of the broker's duties under s.~~
 5 ~~452.133 (1) to a party to the transaction who is not a client, a statement of the broker's~~
 6 ~~duties to the client under s. 452.133 (2), and a statement that the clients understand~~
 7 ~~the broker's duties and consent to the broker providing brokerage services to more~~
 8 ~~than one client. The consent to multiple representation may contain additional~~
 9 ~~disclosures by the broker or additional agreements between the broker and the~~
 10 ~~clients that do not violate any duty of a broker under this chapter. (2) A broker who~~
 11 ~~represents more than one client in a transaction owes to each client the duties~~
 12 ~~specified in s. 452.133 (2) to each client but (1) and (2), except that if a salesperson~~
 13 ~~employed by a broker is negotiating on behalf of more than one of the broker's clients~~
 14 ~~in a transaction, the salesperson may not place the interests of any client ahead of~~
 15 ~~the interests of another client in the transaction during the negotiations.~~

16 **SECTION 61.** 452.138 of the statutes is amended to read:

17 **452.138 Brokers providing services in more than one transaction.** A

18 broker may provide brokerage services simultaneously to more than one ^{plain} party client
 19 or customer in different transactions unless the broker agrees with a ^{one party} client or
 20 customer that the broker is to provide brokerage services only to that ^{party} client or
 21 customer. If the broker and a ^{one party} client agree that the broker is to provide brokerage
 22 services only to that ^{party} client, the agency agreement under s. 452.135 (1) shall contain
 23 a statement of that agreement.

24 **SECTION 62.** 452.139 (1) of the statutes is amended to read:

1 452.139 (1) ~~FIDUCIARY~~ COMMON LAW FIDUCIARY DUTIES OF BROKER. The duties of
2 a broker specified in this chapter or in rules promulgated under this chapter shall
3 supersede any ~~fiduciary duties of a broker to a party based on~~ duties or obligations
4 under common law ~~principles of agency~~ to the extent that those common law
5 ~~fiduciary duties or obligations~~ are inconsistent with the duties specified in this
6 chapter or in rules promulgated under this chapter.

7 **SECTION 63.** 452.139 (2) (c) of the statutes is amended to read:

8 452.139 (2) (c) ~~Nothing in this subsection limits~~ This subsection does not limit
9 the liability of ~~a~~ an authorizing broker under s. 452.12 (3) for misrepresentations
10 made by an ~~employee who is a broker.~~ Nothing in this subsection limits a broker
11 providing brokerage services on the authorizing broker's behalf. This subsection
12 does not limit the liability of a client for a misrepresentation that the client makes
13 in connection with brokerage services.

14 **SECTION 64.** 452.14 (3) (f) of the statutes is amended to read:

15 452.14 (3) (f) Accepted from any person except the ~~broker's, salesperson's or~~
16 ~~time-share salesperson's employer, if the broker, salesperson or time-share~~
17 ~~salesperson is employed as a salesperson or time-share salesperson by a broker, an~~
18 authorizing broker on whose behalf the licensee has provided brokerage services a
19 commission or valuable consideration as a ~~salesperson or time-share salesperson for~~
20 ~~the performance of any act specified in this chapter for brokerage services provided~~
21 by the licensee or as compensation for referring a person to another ~~broker,~~
22 ~~salesperson or time-share salesperson licensee~~ or to any other person in connection
23 with a transaction;

24 **SECTION 65.** 452.14 (3) (g) of the statutes is amended to read:

1 452.14 (3) (g) Represented or attempted to represent a broker other than the
 2 employer authorizing broker, without the express knowledge and consent of the
 3 employer authorizing broker;

4 **SECTION 66. Initial applicability.**

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

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

10 (END)

(d-n)

$\text{S} + \text{S} + \text{B}$ B B
 SEC #. Effective date

No B \uparrow (1) This act takes effect on the first
 day of the 6th month beginning after
 the effective date of this subsection.

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1387/P3ins
CTS:.....

1 **Insert 3-12:**

2 delivers to a party an on-site presentation of the features and condition of real estate,
3 except real estate that is offered for rent.

4 **Insert 4-4:**

5 **SECTION 1** 452.01 (4d) of the statutes is amended to read:

6 452.01 (4d) "Employ", when used in reference to a broker employing another
7 broker, a salesperson, or a time-share salesperson, ~~includes~~ means engaging the
8 services of another broker, a salesperson, or a time-share salesperson ~~who provides~~
9 to provide brokerage services to the broker broker's clients on behalf of the broker
10 and under the broker's supervision, including engaging a broker, salesperson, or
11 time-share salesperson as an independent contractor.

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.

13 **Insert 5-13:**

14 **SECTION 2** 452.01 (4h) of the statutes is amended to read:

15 452.01 (4h) "Employee", when used in reference to an employee of a broker,
16 includes means another broker, a salesperson, or a time-share salesperson who
17 provides brokerage services to the broker broker's clients on behalf of the broker and
18 under the broker's supervision, including a broker, salesperson, or time-share
salesperson engaged by the broker as an independent contractor.

19 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.

20 **SECTION 3** 452.01 (4p) of the statutes is amended to read:

21 452.01 (4p) "Employer", when used in reference to a broker who is the employer
22 of another broker, a salesperson, or a time-share salesperson, ~~includes~~ means a
23 broker who engages the services of another broker, a salesperson, or a time-share
salesperson ~~who provides services to the broker~~ to provide brokerage services to the

1 broker's clients on behalf of the broker and under the broker's supervision, including
2 a broker who engages the services of another broker, salesperson, or time-share
3 salesperson as an independent contractor.

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.

4 **SECTION 4.** 452.01 (4t) of the statutes is amended to read:

5 452.01 (4t) "Employment", when used in reference to a broker's employment
6 of another broker, a salesperson, or a time-share salesperson, ~~includes~~ means the
7 state of providing being engaged by a broker to provide services to the broker by the
8 ~~other~~ broker's clients on behalf of the broker and under the broker's supervision,
9 including being engaged by the employing broker, the salesperson or the time-share
10 salesperson as an independent contractor.

(END INSERT 4)

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.

BEGIN
INSERT
5-13

11 **SECTION 5.** 452.01 (5u) of the statutes is created to read:

12 452.01 (5u) "Real estate" includes a timeshare, or a business or its goodwill,
13 inventory, or fixtures, whether or not the business includes real property.

14 **Insert 5-24:**

15 is authorized by another broker to provide brokerage services in a transaction to the
16 other broker's client, except that "subagent" does not include a broker who is an
17 employee of another broker.

18 **Insert 8-18:**

19 , but a broker is not required to supervise, and is not responsible for, brokerage
20 services provided by another broker who is providing brokerage services to the
21 broker's client as a subagent.

Score
all
of
insert

22 **Insert 10-16:**

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

1 452.133 (1) (e) ~~Provide~~ The duty to provide accurate information about market
 2 conditions that affect ~~a~~ ^{↓ ↓} the party's transaction, ~~to any party who requests the~~
 3 ~~information~~, within a reasonable time of after the party's request, unless disclosure
 4 of the information is prohibited by law.

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

5 **Insert 13-6:**

6 (b) A broker who is providing brokerage services in a transaction as a subagent
 7 of another broker does not owe to the other broker's client the duties under sub. (2). ✓

8 **(5) OTHER DUTIES.** If a broker is providing brokerage services to a party in a
 9 transaction in which no party is the broker's client and no party is the client of
 10 another broker for whom the broker is acting as a subagent, then all of the following
 11 apply:

12 (a) The broker owes all parties the duty not to place the broker's interests ahead
 13 of the interests of any party in the transaction.

14 (b) The broker may not provide advice or opinions to any party if providing the
 15 advice or opinions is contrary to the interests of any other party.

16 **Insert 13-23:**

17 ~~SECTION 7.~~ 452.135 (1) ✓ of the statutes is repealed.

18 ~~SECTION 8.~~ 452.135 (2) ✓ of the statutes is amended to read:

19 452.135 (2) ~~No~~ A broker may ~~provide brokerage services to~~ not negotiate on
 20 behalf of a party to a transaction unless the broker has provided to the party a written
 21 ~~agency disclosure form containing all of the following:~~

22 (a) ~~A statement of which party is the broker's client or, if the broker is providing~~
 23 ~~brokerage services to more than one client under s. 452.137, a statement of which~~
 24 ~~parties are the broker's clients.~~

~~(b) A statement of the broker's duties to his or her client under s. 452.133 (2).~~

~~(c) A statement of the broker's duties to a party under s. 452.133 (1).~~

~~(d) A statement regarding confidentiality that shall be in the following form:~~

~~NOTICE TO CLIENTS AND CUSTOMERS~~

~~A BROKER IS REQUIRED TO MAINTAIN THE CONFIDENTIALITY OF ALL INFORMATION GIVEN TO THE BROKER IN CONFIDENCE AND OF ALL INFORMATION OBTAINED BY THE BROKER THAT HE OR SHE KNOWS A REASONABLE PARTY WOULD WANT TO BE KEPT CONFIDENTIAL, UNLESS THE INFORMATION IS REQUIRED TO BE DISCLOSED BY LAW. THE FOLLOWING INFORMATION IS REQUIRED TO BE DISCLOSED BY LAW:~~

~~1. MATERIAL ADVERSE FACTS, AS DEFINED IN SECTION 452.01 (5g) OF THE WISCONSIN STATUTES.~~

~~2. ANY FACTS KNOWN BY THE BROKER THAT CONTRADICT ANY INFORMATION INCLUDED IN A WRITTEN INSPECTION REPORT ON THE PROPERTY OR REAL ESTATE THAT IS THE SUBJECT OF THE TRANSACTION.~~

~~TO ENSURE THAT THE BROKER IS AWARE OF WHAT SPECIFIC INFORMATION YOU CONSIDER CONFIDENTIAL, YOU MAY LIST THAT INFORMATION IN THE SPACE BELOW THAT IS MARKED "CONFIDENTIAL INFORMATION". AT A LATER TIME, YOU MAY ALSO PROVIDE THE BROKER WITH OTHER WRITTEN NOTIFICATION OF WHAT INFORMATION YOU CONSIDER TO BE CONFIDENTIAL.~~

~~CONFIDENTIAL INFORMATION:~~

~~.....
.....~~

1 ~~(e) Any additional information that the broker determines is necessary to~~
2 ~~clarify the broker's relationship to his or her client or customer.~~

3 BROKER DISCLOSURE TO CUSTOMERS

4 You are a customer of the broker. The broker is either an agent of another party
5 in the transaction or a subagent of another broker who is the agent of another party
6 in the transaction. The broker, or a salesperson acting on behalf of the broker, may
7 provide brokerage services to you. Whenever the broker is providing brokerage
8 services to you, the broker owes you, the customer, the following duties:

9 The duty to provide brokerage services to you fairly and honestly.

10 The duty to exercise reasonable skill and care in providing brokerage services
11 to you.

12 The duty to disclose to you in writing certain known defects affecting a property
13 ("material adverse facts"), and to provide you with accurate information about
14 market conditions that affect your transaction. The broker may not, however,
15 provide information to you if the information is confidential.

16 The duty to keep confidential information given to the broker in confidence.

17 The duty to safeguard trust funds and other property the broker holds.

18 Please review this information carefully. A broker or salesperson can answer
19 your questions about brokerage services, but if you need legal advice, tax advice, or
20 a professional home inspection, contact an attorney, tax advisor, or home inspector.

21 This disclosure is required by s. 452.135 of the Wisconsin statutes and is for
22 information only. It is a plain-language summary of a broker's duties to you under
23 s. 452.133 of the Wisconsin statutes.

24 History: 1993 a. 127.

SECTION 9. 452.135 (3) of the statutes is created to read:

1 452.135 (3) A broker may not negotiate on behalf of a client unless the broker
2 has provided to the client a written statement in the following form:

3 **BROKER DISCLOSURE TO CLIENTS**

4 Under Wisconsin real estate practice law, a broker owes certain duties to all
5 parties to a transaction:

6 The duty to provide brokerage services to you fairly and honestly.

7 The duty to exercise reasonable skill and care in providing brokerage services
8 to you.

9 The duty to disclose to you in writing certain known defects affecting a property
10 (“material adverse facts”), and to provide you with accurate information about
11 market conditions that affect your transaction. The broker may not, however,
12 provide information to you if the information is confidential.

13 The duty to keep confidential information given to the broker in confidence.

14 The duty to safeguard trust funds and other property the broker holds.

15 Because you have entered into an agency agreement with a broker, you are the
16 broker’s client. A broker owes additional duties to a client.

17 The broker will provide, at your request, information and advice on real estate
18 matters that affect your transaction, unless you release the broker from this duty.
19 You are entitled to receive, upon request, all material information, not just adverse
20 information.

21 The broker will fulfill the broker’s obligations under the agency agreement and
22 fulfill your lawful requests that are within the scope of the agency agreement.

23 The broker will negotiate for you, unless you release the broker from this duty.

24 The broker will not place the broker’s interests ahead of your interests. The
25 broker will not, unless required by law, give information or advice to other parties

1 who are not the broker's clients, if giving the information or advice is contrary to your
2 interests.

3 If you become involved in a transaction in which another party is also the
4 broker's client, different duties may apply. If different salespersons employed by the
5 broker negotiate on behalf of you and the other client, the broker's duties will remain
6 the same. If the same salesperson negotiates on behalf of you and the other client,
7 the salesperson may not favor the interests of either client.

8 The broker may, with your authorization in the agency agreement, enter into
9 agreements with subagents. A subagent is another broker who works for your broker
10 by providing brokerage services for your benefit. A subagent will not put the
11 subagent's own interests ahead of your interests. A subagent will not, unless
12 required by law, provide advice or opinions to other parties if doing so is contrary to
13 your interests.

14 Please review this information carefully. A broker or salesperson can answer
15 your questions about brokerage services, but if you need legal advice, tax advice, or
16 a professional home inspection, contact an attorney, tax advisor, or home inspector.

17 This disclosure is required by s. 452.135 of the Wisconsin statutes and is for
18 information only. It is a plain-language summary of a broker's duties to you under
19 s. 452.133 of the Wisconsin statutes.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1387/P3dn

CTS:.....

Handwritten initials: CTS, WJ

(date)

Representative Wieckert:

This is a redraft of LRB-1387/P2 based on instructions from Rick Staff. Please review it carefully, and note the following questions and comments:

1. Like the proposed language prepared by the WRA, the ^{statement} disclosure to clients in this draft (proposed. s. 452.135 (2)) indicates that a broker may engage a subagent to assist the broker in providing services to a client, but only if the client authorizes the broker to do so in the agency agreement. This appears to be currently required by DRL rule (s. RL 24.07 (8) (a) 4.), but not by statute. Given that legislative action would be required in order to change s. 452.135 (2), but the rule may, in theory, be changed without legislative action, should the draft include a statutory provision that parallels s. RL 24.07 (8) (a) 4.?

2. Like the previous version, this draft identifies showing real estate as a brokerage service. It does not include showing real estate as a subset of providing information and advice on real estate matters, but incorporates definitional language suggested by Rick. Is this okay?

3. This draft includes language that clarifies the distinction between a subagent and a broker who is employed as another broker's salesperson. See proposed ss. 452.01 (4d), (4h), (4p), and (4t), 452.01 (7r), 452.12 (3), and 452.133 (4).

4. This draft includes a delayed effective date (about 6 months after publication). Is this okay?

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

Not

Shouldn't this also be required in § 452.135? If the statutes do not require client authorization in the agency agreement, DRL could change the rule. In that event, the statutory disclosure would be incorrect, unless the legislature acted to fix the disclosure.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1387/P3dn
CTS:wlj:pg

April 29, 2005

Representative Wieckert:

This is a redraft of LRB-1387/P2 based on instructions from Rick Staff. Please review it carefully, and note the following questions and comments:

1. Like the proposed language prepared by the WRA, the disclosure statement to clients in this draft (proposed. s. 452.135 (2)) indicates that a broker may engage a subagent to assist the broker in providing services to a client, but only if the client authorizes the broker to do so in the agency agreement. This appears to be currently required by DRL rule (s. RL 24.07 (8) (a) 4.), but not by statute. Shouldn't this also be required in ch. 452? If the statutes do not require client authorization in the agency agreement, DRL could change the rule. In that event, the statutory disclosure statement would be incorrect, unless the legislature acted to fix the disclosure.
2. Like the previous version, this draft identifies showing real estate as a brokerage service. It does not include showing real estate as a subset of providing information and advice on real estate matters, but incorporates definitional language suggested by Rick. Is this okay?
3. This draft includes language that clarifies the distinction between a subagent and a broker who is employed as another broker's salesperson. See proposed ss. 452.01 (4d), (4h), (4p), and (4t), 452.01 (7r), 452.12 (3), and 452.133 (4).
4. This draft includes a delayed effective date (about 6 months after publication). Is this okay?

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

I.

SECTION 23. 452.01 (5u) of the statutes is created to read:

452.01 (5u) "Real estate" includes a timeshare, or a business or its goodwill, inventory, or fixtures, whether or not the business includes real property.

Comment: I have no idea why this was done but if there is a good reason the inclusion of business as part of real estate should be restricted to this chapter.

II. "Employ" and "Subagent"

The following drafting instructions were provided:

CURRENT 452.01

(4d) "Employ", when used in reference to a broker employing another broker, a salesperson or a time-share salesperson, means the establishment of an relationship in which the other broker, a salesperson or a time-share salesperson provides brokerage services in the name of and under the supervision of the employing broker. A broker, a salesperson or a time-share salesperson may only be employed by one broker employer at any time. Employment status under this section is not affected by the classification of the employee as an independent contractor or employee under tax, worker's compensation or other laws. ~~includes engaging the services of another broker, a salesperson or a time-share salesperson who provides services to the broker as an independent contractor.~~

SECTION 25. 452.01 (7r) of the statutes is created to read:

452.01 (7r) "Subagent" means 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.

Comment: brokerage services are not provided "to" the other broker's client they are provided: 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. (As was stated in the drafting instructions.)

no - not definition

✱ This language must be added to clarify relationships which should not be deleted from the drafting instructions: The subagent's client is the other broker who is the party to the agency agreement not the other broker's client.

see 452.133(4)(b)

452.01 (4h) "Employee", when used in reference to an employee of a broker, means another broker, a salesperson, or a time-share salesperson who provides brokerage services to the broker's clients on behalf of the broker and under the broker's supervision, including a broker, salesperson, or time-share salesperson engaged by the broker as an independent contractor.

Comment: Employees provide brokerage services to both clients and customers of the broker. As per the drafting instructions the definition should read on behalf of the broker,

in the name of the broker and under the supervision of the broker. An alternative to "in the name of the broker" would be "under the license of the broker."

III.

SECTION 20. 452.01 (5m) (e) of the statutes is created to read:

452.01 (5m) (e) Acting as an intermediary to facilitate or participate in communications between parties related to the parties' interests in a transaction.

SECTION 21. 452.01 (5p) of the statutes is created to read:

452.01 (5p) "Negotiate" does not include providing to a party information or advice that relates to real estate or delivering to a party an on-site presentation of the features and condition of real estate.

Comment: These sections should be redrafted to be consistent with the drafting instructions regarding the ordering of the section as (a). Furthermore section 21 must return to being a subset of section 20 with giving information and advice or showings "not, in and of itself" constituting acting as an intermediary. The revision substantially alters the meaning of the section and inaccurately excludes the actions from the definition of negotiating rather than clarifying that more than these actions are required before a broker is considered to be acting as an intermediary.

(a) 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.

IV.

SECTION 38. 452.133 (2) (a) of the statutes is renumbered 452.133 (2) (a) (intro.) amended to read:

452.133 (2) (a) (intro.) Loyally The duty to loyally represent the client's interests by not doing any of the following:

SECTION 39. 452.133 (2) (a) 2. of the statutes is created to read:

452.133 (2) (a) 2. Disclosing to other parties in the transaction information or advice the disclosure of which is contrary to the client's interests, unless disclosure is required by law. *Comment: Section 39 only applies to non-client parties per the drafting instructions.*

V.

Section 44 (5) OTHER DUTIES. If a broker is providing brokerage services to a party in a transaction in which no party is the broker's client and no party is the client of another broker for whom the broker is acting as a subagent, then all of the following apply:

(a) The broker owes all parties the duty not to place the broker's interests ahead of the interests of any party in the transaction.

nothing in written comments re P2

452.138(b)
(1) Subj. to sub (2), a B may provide BS to a party who is not the B's client
(2) If a B...

(b) The broker may not provide advice or opinions to any party if providing the advice or opinions is contrary to the interests of any other party.

Comment: There must be an affirmative statement that a broker is not required to have an agency relationship or a subagency relationship prior to negotiations as was provided in the drafting instructions. RL 24 requires an agency relationship prior to providing brokerage services and would still be applicable with the language in this draft.

Needs provision that negates RL 24

VI.

BROKER DISCLOSURE TO CUSTOMERS

SECTION 47

You are a customer of the broker. The broker is either an agent of another party in the transaction or a subagent of another broker who is the agent of another party in the transaction. The broker, or a salesperson acting on behalf of the broker, may provide brokerage services to you. Whenever the broker is providing brokerage services to you, the broker owes you, the customer, the following duties:

The duty to disclose to you in writing certain known defects affecting a property ("material adverse facts"), and to provide you with accurate information about market conditions that affect your transaction. The broker may not, however, provide information to you if the information is confidential. *except for*
The duty to keep confidential information given to the broker in confidence. *The broker must always disclose to you certain... except mat. adv. facts.*

Comment: The duty to disclosure material adverse facts supercedes confidentiality under both current law and the drafting instructions. The same error occurs in the disclosure for clients.

VII.

SECTION 50. 452.138 of the statutes is amended to read:

452.138 Brokers providing services in more than one transaction. A

broker may provide brokerage services simultaneously to more than one party in different transactions unless the broker agrees with a client one party that the broker is to provide brokerage services only to that client one party. If the broker and a client one party agree that the broker is to provide brokerage services only to that client party, the agency agreement under s. 452.135 (1) shall contain a statement of that agreement.

Current Law: 452.138 Brokers providing services in more than one transaction.

A broker may provide brokerage services simultaneously to more than one party in different transactions unless the broker agrees with a client that the broker is to provide brokerage services only to that client. If the broker and a client agree that the broker is to provide brokerage services only to that client, the agency agreement under s. 452.135 (1) shall contain a statement of that agreement.

✓ *Comment: Do not substitute "one party" for "client."*

