



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1387/00

CTS:lmk&wlj:pg

in: 5/6/05  
Due today, if possible keep

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2005 BILL

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regen

1 AN ACT *to repeal* 452.01 (2) (d), 452.01 (2) (e), 452.01 (2) (f), 452.01 (2) (g), 452.01  
2 (5m) (d), 452.133 (1) (g) and 452.135 (1); *to renumber and amend* 452.133 (2)  
3 (a); *to consolidate, renumber and amend* 452.137 (1) and (2); *to amend*  
4 452.01 (1m), 452.01 (2) (a), 452.01 (2) (b), 452.01 (2) (h), 452.01 (3e), 452.01 (3m),  
5 452.01 (4d), 452.01 (4h), 452.01 (4p), 452.01 (4t), 452.01 (5m) (intro), 452.01  
6 (5m) (c), 452.01 (5r), 452.01 (7), 452.01 (10), 452.12 (3), 452.133 (1) (intro.),  
7 452.133 (1) (a), 452.133 (1) (b), 452.133 (1) (c), 452.133 (1) (d), 452.133 (1) (e),  
8 452.133 (1) (f), 452.133 (2) (intro.), 452.133 (2) (b), 452.133 (2) (c), 452.135 (2),  
9 452.138 and 452.139 (1); and *to create* 452.01 (2) (am), 452.01 (2) (bm), 452.01  
10 (5m) (e), 452.01 (5p), 452.01 (5u), 452.01 (7r), 452.132, 452.133 (2) (a) 2., 452.133

INS A

1 (2) (am), 452.133 (2) (d), 452.133 (4), 452.133 (6) and 452.135 (3) of the statutes;  
2 **relating to:** duties of real estate brokers and salespersons.

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*Analysis by the Legislative Reference Bureau*

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

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*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.

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

8 452.01 (2) (a) For ~~another a party,~~ and for commission, money, or other thing  
9 of value, negotiates or offers or attempts to negotiate a sale, exchange purchase, or  
10 rental of an interest or estate in real estate transaction.

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

12 452.01 (2) (am) For a party, and for commission, money, or other thing of value,  
13 provides information and advice on matters that are material to the party's  
14 transaction and that are within the scope of the knowledge, skills, and training  
15 required under s. 452.09 (2) (a) and (3) (a).

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

17 452.01 (2) (b) Is engaged wholly or in part in the business of selling or  
18 exchanging interests or estates in real estate to the extent that a pattern of real  
19 estate sales or exchanges is established, ~~whether or not such real estate is owned by~~

1 such person. Five sales or exchanges in one year or 10 sales or exchanges in 5 years  
2 is presumptive evidence of a pattern of sales or exchanges.

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

4 452.01 (2) (bm) For a party, and for commission, money, or other thing of value,  
5 delivers to a party an on-site presentation of the features and condition of real estate,  
6 except real estate that is offered for rent.

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

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

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

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

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

12 452.01 (2) (h) For another, and for ~~a~~ commission, money, or other thing of  
13 value, promotes the sale, exchange, purchase, option, rental, or leasing of real estate  
14 ~~or business opportunities~~. This paragraph does not apply to a person who only  
15 publishes or disseminates verbatim information provided by another person.

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

17 452.01 (3e) "Brokerage service" means any service described under sub. (2) (a)  
18 ~~to (h)~~ provided by a broker to another person.

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

20 452.01 (3m) "Client" means a party to a transaction who has entered into an  
21 agency agreement with a broker for brokerage services.

22 SECTION 13. 452.01 (4d) of the statutes is amended to read:

23 452.01 (4d) "Employ~~er,~~" when used in reference to a broker employing another  
24 broker, a salesperson, or a time-share salesperson, includes means engaging the  
25 services of another broker, a salesperson, or a time-share salesperson who provides

shows a party ✓

*and customers*

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

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

*and customers*

5 452.01 (4h) "Employee", when used in reference to an employee of a broker,  
6 includes means another broker, a salesperson, or a time-share salesperson who  
7 provides brokerage services to the broker broker's clients on behalf of the broker and  
8 under the broker's supervision, including a broker, salesperson, or time-share  
9 salesperson engaged by the broker as an independent contractor.

10 SECTION 15. 452.01 (4p) of the statutes is amended to read:

11 452.01 (4p) "Employer", when used in reference to a broker who is the  
12 employer of another broker, a salesperson, or a time-share salesperson, includes  
13 means a broker who engages the services of another broker, a salesperson, or a  
14 time-share salesperson who ~~provides services to the broker to provide brokerage~~  
15 services to the broker's clients on behalf of the broker and under the broker's  
16 supervision, including a broker who engages the services of another broker,  
17 salesperson, or time-share salesperson as an independent contractor.

*and customers*

18 SECTION 16. 452.01 (4t) of the statutes is amended to read:

19 452.01 (4t) "Employment", when used in reference to a broker's employment  
20 of another broker, a salesperson, or a time-share salesperson, includes means the  
21 state of ~~providing~~ being engaged by a broker to provide services to the broker by the  
22 other broker's clients on behalf of the broker and under the broker's supervision,  
23 including being engaged by the employing broker, the salesperson or the time-share  
24 salesperson as an independent contractor.

*and customers*

25 SECTION 17. 452.01 (5m) (intro) of the statutes is amended to read:

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1 452.01 (5m) (intro) "Negotiate" means to act as an intermediary between the  
2 parties to a transaction provide to a party assistance within the scope of the  
3 knowledge, skills, and training required under s. 452.09 (2) (a) and (3) (a) in  
4 developing a proposal or agreement relating to a transaction, including doing any of  
5 the following:

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

7 452.01 (5m) (c) Presenting to a party the proposals of other parties to the  
8 transaction and informing the party receiving a proposal of the advantages and  
9 disadvantages giving the party a general explanation of the provisions of the  
10 proposal.

11 SECTION 19. 452.01 (5m) (d) of the statutes is repealed.

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

13 452.01 (5m) (e) Acting as an intermediary to facilitate or participate in  
14 communications between parties related to the parties' interests in a transaction.

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

16 452.01 (5p) "Negotiate" does not include providing to a party information or  
17 advice that relates to real estate or delivering to a party an on-site presentation of  
18 the features and condition of real estate.

19 SECTION 22. 452.01 (5r) of the statutes is amended to read:

20 452.01 (5r) "Party" means a person seeking to sell, exchange, buy or rent an  
21 interest in real estate, a business or a business opportunity. "Party" includes a  
22 person who seeks to grant or accept an option to buy, sell or rent an interest in real  
23 estate, a business or a business opportunity engage in a transaction.

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

1 452.01 (5u) "Real estate" includes a timeshare, or a business or its goodwill,  
2 inventory, or fixtures, whether or not the business includes real property.

3 SECTION 24. 452.01 (7) of the statutes is amended to read:

4 452.01 (7) "Salesperson" means any person other than a broker or time-share  
5 salesperson who is employed by a broker ~~to perform any act authorized by this~~  
6 ~~chapter to be performed by a broker.~~

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

8 452.01 (7r) "Subagent" means a broker who is authorized by another broker  
9 to provide brokerage services in a transaction to the other broker's client, except that  
10 "subagent" does not include a broker who is an employee of another broker.

11 SECTION 26. 452.01 (10) of the statutes is amended to read:

12 452.01 (10) "Transaction" means actions, including negotiations, intended to  
13 result in the sale, exchange, purchase, or rental of, or the granting or acceptance of  
14 an option to sell, exchange, purchase, or rent, an interest in real estate, ~~or a business~~  
15 ~~or a business opportunity.~~

INS 6-17

16 SECTION 27. 452.12 (3) of the statutes is amended to read:

17 452.12 (3) BROKER'S LIABILITY FOR ACTS OF EMPLOYEES. Each broker shall  
18 supervise, and is responsible for, the acts of, brokerage services provided on behalf  
19 of the broker by any broker, salesperson, or time-share salesperson employed by the  
20 ~~broker, but a broker is not required to supervise, and is not responsible for, brokerage~~  
21 ~~services provided by another broker who is providing brokerage services to the~~  
22 ~~broker's client as a subagent.~~

23 SECTION 28. 452.132 of the statutes is created to read:

24 452.132 **Negotiation; disclosure.** A broker may not engage in negotiation  
25 in a transaction unless all of the following apply:

on behalf of a party who is not the broker's client

negotiate

1 (1) Another party to the transaction is the broker's client or is the client of  
2 another broker ~~whom the broker is~~ a subagent.

3 (2) The broker has provided to each party participating in the negotiation a  
4 copy of the ~~statement~~ <sup>who has engaged the broker to provide brokerage services in a transaction as</sup> required under s. 452.135 (2).

5 **SECTION 29.** <sup>disclosure</sup> 452.133 (1) (intro.) of the statutes is amended to read:

6 452.133 (1) BROKER'S DUTIES TO ALL PARTIES TO A TRANSACTION. (intro.) In A  
7 broker who is providing brokerage services to a party to a transaction, a broker shall  
8 do all of the following owes all of the following duties to the party:

9 **SECTION 30.** <sup>✓</sup> 452.133 (1) (a) of the statutes is amended to read:

10 452.133 (1) (a) ~~Provide~~ The duty to provide brokerage services to all parties to  
11 ~~the transaction honestly, and fairly and in good faith.~~

12 **SECTION 31.** <sup>✓</sup> 452.133 (1) (b) of the statutes is amended to read:

13 452.133 (1) (b) ~~Diligently exercise~~ The duty to provide brokerage services with  
14 ~~reasonable skill and care in providing brokerage services to all parties.~~

15 **SECTION 32.** <sup>✓</sup> 452.133 (1) (c) of the statutes is amended to read:

16 452.133 (1) (c) ~~Disclose to each party~~ The duty to disclose all material adverse  
17 facts that the broker knows and that the party does not know or cannot discover  
18 through reasonably vigilant observation, unless the disclosure of a material adverse  
19 fact is prohibited by law.

20 **SECTION 33.** <sup>✓</sup> 452.133 (1) (d) of the statutes is amended to read:

21 452.133 (1) (d) ~~Keep~~ The duty to keep confidential any information given to the  
22 broker in confidence, or any information obtained by the broker that he or she knows  
23 a reasonable party would want to be kept confidential, unless the information must  
24 be disclosed under par. (c) or s. 452.23 or is otherwise required by law to be disclosed  
25 or the party whose interests may be adversely affected by the disclosure specifically

1 authorizes the disclosure of particular ~~confidential~~ information. A broker shall  
2 continue to keep the information confidential after the transaction is complete and  
3 after the broker is no longer providing brokerage services to the party.

4 **SECTION 34.** 452.133 (1) (e) of the statutes is amended to read:

5 452.133 (1) (e) ~~Provide~~ The duty to provide accurate information about market  
6 conditions that affect ~~a~~ the party's transaction, ~~to any party who requests the~~  
7 ~~information~~, within a reasonable time of after the party's request, unless disclosure  
8 of the information is prohibited by law.

9 **SECTION 35.** 452.133 (1) (f) of the statutes is amended to read:

10 452.133 (1) (f) ~~Account for all~~ The duty to safeguard trust funds and other  
11 ~~property coming into the possession of a~~ held by the broker that belongs to any party  
12 ~~within a reasonable time of receiving the property~~ as required by rules promulgated  
13 by the department under s. 452.13 (5).

14 **SECTION 36.** 452.133 (1) (g) of the statutes is repealed.

15 **SECTION 37.** 452.133 (2) (intro.) of the statutes is amended to read:

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

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

22 452.133 (2) (a) (intro.) ~~Loyally~~ The duty to loyally represent the client's  
23 interests by placing not doing any of the following:



1           1. Placing the client's broker's interests ahead of the client's interests of any  
2 other party, unless loyalty to a client violates the broker's duties under sub. (1) or s.  
3 452.137 (2). *who are not the broker's clients*

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

5           452.133 (2) (a) 2. Disclosing to other parties in the transaction information or  
6 advice the disclosure of which is contrary to the client's interests, unless disclosure  
7 is required by law.

8           **SECTION 40.** 452.133 (2) (am) of the statutes is created to read:

9           452.133 (2) (am) The duty to provide, when requested by the client, information  
10 and advice to the client on matters that are material to the client's transaction and  
11 that are within the scope of the knowledge, skills, and training required under s.  
12 452.09 (2) (a) and (3) (a). These matters include the real estate market and  
13 contractual, legal, and regulatory issues.

14           **SECTION 41.** 452.133 (2) (b) of the statutes is amended to read:

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

20           **SECTION 42.** 452.133 (2) (c) of the statutes is amended to read:

21           452.133 (2) (c) ~~Fulfill~~ The duty to fulfill any obligation required by the agency  
22 agreement, and any order of the client that is within the scope of the agency  
23 agreement, that ~~are~~ is not inconsistent with another duty that the broker has under  
24 this chapter or any other law.

25           **SECTION 43.** 452.133 (2) (d) of the statutes is created to read:

10  
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1 452.133 (2) (d) The duty to negotiate on behalf of the client.

has been engaged  
by another broker  
to provide

2 SECTION 44. 452.133 (4) of the statutes is created to read:

3 452.133 (4) SUBAGENT'S DUTIES. (a) A broker who ~~is providing~~ brokerage  
4 services in a transaction as a subagent owes all parties the duties specified in sub.

5 (1) and may not do any of the following:

6 ~~2004~~ Place the broker's interests ahead of the interests of a client of a broker on  
7 whose behalf the broker is providing brokerage services as a subagent.

another  
who has engaged

8 ~~3004~~ Provide advice or opinions to parties in the transaction if providing the  
9 advice or opinions is contrary to the interests of a client of the broker on whose behalf  
10 the broker is providing brokerage services as a subagent, unless required by law.

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

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

who has engaged the broker to provide  
brokerage services in a transaction

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

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

21 SECTION 45. 452.133 (6) of the statutes is created to read:

22 452.133 (6) WAIVER OF DUTIES. The duties imposed by subs. (1), (2) (a), (b), and  
23 (c), (4), and (5) may not be waived. A client may waive, in part or in full, the broker's  
24 duties under sub. (2) (am) and (d), except that a waiver under this subsection is not

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1 effective unless the broker provides to the client a written disclosure containing all  
2 of the following:

3 (a) If the client intends to waive the broker's duty under sub. (2) (am), a copy  
4 of the text of that paragraph, and a statement that, as a consequence of the client's  
5 waiver, that broker will have no legal duty to perform the duty imposed by sub. (2)  
6 (am).

7 (b) If the client intends to waive the broker's duty under sub. (2) (d), a copy of  
8 the text of that paragraph and s. 452.01 (5m) and (5p), and a statement that, as a  
9 consequence of the client's waiver, that broker will have no legal duty to perform the  
10 duty imposed by sub. (2) (d).

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11 (c) A statement that as a consequence of the client's waiver, the client may  
12 require the assistance of an attorney or another service provider to fulfill the client's  
13 goals and contractual duties in the transaction.

repealed  
and  
recreated

14 SECTION 46. 452.135 (1) of the statutes is repealed.

15 SECTION 47. 452.135 (2) of the statutes is amended to read:

16 452.135 (2) ~~No A broker may provide brokerage services to not negotiate on~~  
17 ~~behalf of a party to a transaction unless the broker has provided to the party a written~~  
18 ~~agency disclosure form containing all of the following:~~

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

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

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

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

25 NOTICE TO CLIENTS AND CUSTOMERS

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

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

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

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

19 ~~CONFIDENTIAL INFORMATION:~~

20 ~~.....~~

21 ~~.....~~

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

24 BROKER DISCLOSURE TO CUSTOMERS

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 provide brokerage services to you fairly and honestly.

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

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 material adverse facts*

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

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

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

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

**SECTION 48.** 452.135 (3) of the statutes is created to read:

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

**BROKER DISCLOSURE TO CLIENTS**

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

3 INS The duty to provide brokerage services to you fairly and honestly. ✓

4 14-6 The duty to exercise reasonable skill and care in providing brokerage services  
5 to you. ✓

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

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

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

12 Because you have entered into an agency agreement with a broker, you are the  
13 broker's client. A broker owes additional duties to a client. ✓

14 The broker will provide, at your request, information and advice on real estate  
15 matters that affect your transaction, unless you release the broker from this duty. ✓

16 You are entitled to receive, upon request, all material information, not just adverse  
17 information.

18 The broker will fulfill the broker's obligations under the agency agreement and  
19 fulfill your lawful requests that are within the scope of the agency agreement. ✓

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

21 The broker will not place the broker's interests ahead of your interests. The  
22 broker will not, unless required by law, give information or advice to other parties  
23 who are not the broker's clients, if giving the information or advice is contrary to your  
24 interests. ✓

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

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

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

15 This disclosure is required by <sup>section</sup> (s) 452.135 of the Wisconsin statutes and is for  
16 information only. It is a plain-language summary of a broker's duties to you under  
17 <sup>section</sup> (s) 452.133 of the Wisconsin statutes.

18 **SECTION 49.** 452.137 (1) and (2) of the statutes are consolidated, renumbered  
19 452.137 (1m) and amended to read:

20 452.137 (1m) ~~No~~ A broker may provide who is providing brokerage services to  
21 more than one client in a transaction ~~without an agency agreement under s. 452.135~~  
22 ~~(1) with each client and a written consent to multiple representation. The consent~~  
23 ~~to multiple representation shall contain a statement of the broker's duties under s.~~  
24 ~~452.133 (1) to a party to the transaction who is not a client, a statement of the broker's~~  
25 ~~duties to the client under s. 452.133 (2), and a statement that the clients understand~~

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

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

11 **452.138 Brokers providing services in more than one transaction.** A

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

18 SECTION 51. 452.139 (1) of the statutes is amended to read:

19 452.139 (1) ~~FIDUCIARY~~ COMMON LAW DUTIES OF BROKER. The duties of a broker  
 20 specified in this chapter or in rules promulgated under this chapter shall supersede  
 21 any fiduciary duties of a broker to a party based on duties or obligations under  
 22 common law principles of agency to the extent that those common law fiduciary  
 23 duties or obligations are inconsistent with the duties specified in this chapter or in  
 24 rules promulgated under this chapter.

25 SECTION 52. Initial applicability.



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

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

6           **SECTION 53. Effective date.**

7           (1) This act takes effect on the first day of the 6th month beginning after the  
8 effective date of this subsection.

9

(END)



1

**Insert A:**

This bill makes several changes to current law regarding real estate practice. ✓

**BROKER'S DUTIES TO PARTIES AND CLIENTS**

Under current law, a broker providing brokerage services owes certain duties to all parties to a transaction, including the duties to: (1) provide brokerage services to all parties honestly, fairly, and in good faith; (2) when negotiating on behalf of a party, present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals; and (3) account for all property coming into the broker's possession within a reasonable time after receiving it. This bill deletes the second duty, above. The bill also deletes a broker's duty to provide brokerage services in good faith and to account for property within a reasonable time. Instead, under the bill, a broker must safeguard property held by the broker according to rules promulgated by the Department of Regulation and Licensing (Department) under authority granted by current law.

Under current law, a broker owes to the broker's client all the duties owed to a party, and three additional duties: the duties to 1) loyally represent the client's interests by placing the client's interests ahead of the interests of any other party; 2) disclose to the client all material information known to the broker and not known to the client or discoverable through reasonably vigilant observation, unless the information is confidential; and 3) fulfill any legal obligation required by the agency agreement and any legal order by the client that is within the scope of the agency agreement.

This bill modifies the duty to loyally represent the client's interests. Under the bill, a broker owes the client the duty not to place the broker's interests ahead of the client's interests or to disclose information or advice to non-client parties if disclosure is contrary to the client's interests. The bill also creates a duty to provide, upon the client's request, certain types of information and advice; and a duty to negotiate on behalf of a client. Under the bill, a client may waive these last two duties, but only in writing.

**BROKERAGE SERVICES**

Under current law, a broker may not provide brokerage services to a party to a transaction unless the broker and the party enter into an agency agreement that authorizes the broker to provide the services. The agency agreement must contain a statement of the terms and conditions of the brokerage services that the broker will provide. Current law also provides that a broker may not provide brokerage services to a party or a client unless the broker has provided the party or client with a disclosure form that (1) identifies the broker's clients in the transaction; (2) recites the broker's duties to the broker's clients; (3) recites the broker's duties to a party; and (4) contains a statement, the text of which is prescribed by current law, describing the broker's duties to disclose certain known defects affecting a property and to maintain the confidentiality of certain other information. (use 2x) states

Under the bill, a broker may provide brokerage services to a party with whom the broker does not have an agency agreement, except that a broker may not negotiate on behalf of such a party unless another party to the transaction is the broker's client or is a client of another broker who has engaged the broker to provide brokerage services in the transaction as a subagent (see "Subagency" below), and the broker has provided the party with a disclosure form reciting the broker's duties to a party. The bill deletes the requirements that the disclosure form identify the broker's client in the transaction and recite the broker's duties to the broker's client. Under the bill, the client disclosure form summarizes the broker's duties to parties and the broker's disclosure and confidentiality duties.

The bill creates a separate disclosure form for a broker's clients. Under the bill, a broker may not negotiate on behalf of a client unless the broker has provided the form to the client. The client disclosure form summarizes the broker's duties to clients and the broker's disclosure and confidentiality duties. The client disclosure form also summarizes the broker's duties if the client is involved in a transaction in which another party is also the broker's client (see "Multiple representation" below).

If the broker is providing services to a party in a transaction in which no party is the broker's client or a client of another broker who has engaged the broker to provide brokerage services as a subagent (see "Subagency" below), the bill creates broker duties in addition to the duties that the broker owes to all parties. In such a transaction, the broker owes all parties the duty not to place the broker's interests ahead of the interests of any party in the transaction, and the broker may not provide advice or opinions to any party if doing so is contrary to the interests of any other party.

The bill also modifies the current definition of "negotiate" and specifies that negotiation does not include providing information or advice relating to real estate or showing real estate to a party.

### SUBAGENCY

This bill defines a subagent as a broker who is engaged by another broker to provide brokerage services in a transaction and who is not the other broker's employee. A broker may not engage another broker to provide brokerage services to the broker's client as a subagent unless the agency agreement between the broker and the client authorizes the broker to engage a subagent. A broker providing services as a subagent may not provide brokerage services to a client of another broker who has engaged the broker as a subagent if the services are beyond the scope of the agency agreement between the other broker's client and the other broker.

Under the bill, a broker who has been engaged to provide brokerage services in a transaction as a subagent owes all parties the duties owed by a broker who is not a subagent. Additionally, a broker providing brokerage services as a subagent may not place the broker's interests ahead of the interests of a client of another broker who has engaged the broker as a subagent, or provide advice or opinions to parties in a transaction if doing so is contrary to the interests of a client of another broker who has engaged the broker as a subagent. A broker who has been engaged by another broker as a subagent does not owe the other broker's client the additional duties that a broker owes to the broker's own client.

Under the bill, a broker is not required to supervise, and is not responsible for, brokerage services provided by another broker who the broker has engaged to provide brokerage services as a subagent. ✓

**MULTIPLE REPRESENTATION**

Currently, a broker may not provide brokerage services to more than one client in a transaction (multiple representation) unless the broker has entered into an agency agreement with each client and each client has consented to multiple representation in writing. ✓ Current law mandates that consent to multiple representation contain certain disclosures. ✓ Under current law, a broker who represents more than one client in a transaction owes each client the duties that a broker owes to a client, but the broker may not place the interests of any client ahead of the interests of another client in the transaction. ✓

This bill permits a broker to engage in multiple representation without obtaining each client's written consent. ✓ Under the bill, a broker engaged in multiple representation owes each client the duties a broker owes to a client, except that if a broker's employee is negotiating on behalf of more than one of the broker's clients in a transaction, the employee may not place the interests of any client ahead of the interests of another client during the negotiation. ✓

**BROKER LIABILITY**

Current law provides that duties imposed on brokers by statutes or by rules supersede fiduciary duties the broker has to a party based on common law principles of agency, to the extent that common law is inconsistent with the statutes or rules. ✓ Under the bill, a broker's duties under the statutes or rules supersede any inconsistent common law duties or obligations, not just fiduciary duties based on agency principles. ✓

Under current law, a broker must supervise, and is responsible for, the acts of any broker, salesperson, or time-share salesperson employed by the broker. Under the bill, a broker is responsible for brokerage services provided on behalf of the broker by a broker, salesperson, or time-share salesperson employed by the broker. ✓

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**Insert 5-6:**

*end of insert A*

~~SECTION 11.~~ 452.01 (5m) (a) of the statutes is amended to read:

452.01 (5m) (a) ~~Facilitating~~ Acting as an intermediary by facilitating or participating in the parties' discussion of the terms of a contract or agreement concerning communications between parties related to the parties' interests in a 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.

**Insert 6-17:**

1           452.12 (3) ✓ BROKER'S LIABILITY FOR ACTS OF EMPLOYEES. Each broker shall  
 2 supervise, and is responsible for, the acts of, brokerage services provided on behalf  
 3 of the broker by any broker, salesperson, or time-share salesperson employed by the  
 4 broker, but a broker is not required to supervise, and is not responsible for, brokerage  
 5 services provided by another broker who the broker has engaged to provide  
 6 brokerage services as a subagent. ✓

7           **Insert 10-6:**

8           1. Provide brokerage services to a client of a <sup>another</sup> broker who has engaged the broker  
 9 to provide brokerage services as a subagent if the services are beyond the scope of the  
 10 agency agreement between the other broker's client and the other broker.

11           **Insert 11-14:**

12           ~~SECTION 2.~~ ✓ 452.135 (1) of the statutes is amended to read:

13           452.135 (1) No Subject to s. 452.132, a broker may provide brokerage services  
 14 without to a party who has not entered into an agency agreement that authorizes the  
 15 broker to provide those brokerage services with the broker, but a broker may not  
 16 engage another broker to provide brokerage services to a client as a subagent unless  
 17 the agency agreement between the broker and the client authorizes the broker to  
 18 engage a subagent. The agency agreement shall contain a statement of the terms  
 19 and conditions of the brokerage services that the broker will provide, including a  
 20 statement required under s. 452.138, if applicable. ✓

History: 1993 a. 127.

21           **Insert 11-16:**

22           452.135 (2) ✓ A broker may not negotiate on behalf of a party to a transaction  
 23 unless the broker has provided to the party a written statement in the following form:

24           BROKER DISCLOSURE TO CUSTOMERS

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

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 provide you with accurate information about market conditions  
10 that affect your transaction, except information that is confidential. The broker  
11 must disclose to you in writing *material adverse facts which are* certain known defects affecting a property *material*

12 *adverse facts*”).

13 The duty to keep confidential information given to the broker in confidence,  
14 except adverse material facts.

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

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

19 This disclosure is required by *section* s. 452.135 of the Wisconsin statutes and is for  
20 information only. It is a plain-language summary of a broker’s duties to you under

21 *section* s) 452.133 of the Wisconsin statutes.

22 **Insert 14-6:**

23 The duty to provide you with accurate information about market conditions  
24 that affect your transaction, except information that is confidential. The broker

1 must disclose to you in writing <sup>material adverse facts which are</sup> certain known defects affecting a property ("material  
2 adverse facts").

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

LRB-1387/1dn

CTS: g/mks

(date)

Representative Wieckert:

This is a redraft of LRB-1387/P3. Please review it carefully to ensure it is consistent with your intent, and note the following questions and comments.

1. Like the previous version, this draft defines "real estate" as including a timeshare, or a business or its goodwill, inventory, or fixtures, whether or not the business includes real property. The purpose is to ensure that these items, included in the original drafting instructions in a proposed amendment to the definition of "broker," are included consistently and unambiguously throughout ch. 452. It also obviates the need to repeat this language in other places in ch. 452. The application of this term is limited by s. 452.01 (intro) to ch. 452.
2. The instructions for this draft indicate that a subagent's client is the broker who has engaged the subagent. However, "client" is a defined term in the draft as well as current law. Brokers owe specified duties to "clients." I don't think it is your intent that a subagent should owe the same duties to the broker who engaged the subagent. Therefore, this draft does not provide that a broker is a subagent's client.
3. The instructions for this draft also indicate that the definition of "subagent" should indicate that a subagent provides brokerage services "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." In this draft, "subagent" is defined as "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." I did not include the suggested language because this draft uses "on behalf of" in describing the relationship between a broker and the broker's employee. See proposed s. 452.01 (4d). "On behalf of" and "under the authority of" would, I think, wrongly suggest that the broker is responsible for brokerage services provided by a subagent. See proposed s. 452.12 (3).
4. I have not included "within the scope of an agency agreement between the other broker and the other broker's client" in the definition of "subagent." This appears to be a substantive restriction on the practice of a subagent, rather than a definition of a subagent. I have therefore created provision (proposed s. 452.133, (a) 1.) that prohibits a subagent from providing brokerage services to the other broker's client that are beyond the scope of the agency agreement between the other broker and the other broker's client.

(4)



5. The drafting instructions proposed that “negotiate” include the following: “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.” ✓

Based on the proposed language, proposed s. 452.01 (5p) ✓ as well as proposed s. 452.01 (2) (bm) ✓ in this draft refer simply to “showing a party real estate,” instead of “presenting an on-site presentation,” etc. As requested, this draft also moves the “acting as an intermediary” language to proposed 452.01 (5m) (a). ✓

However, for the sake of clarity and readability, proposed s. 452.01 (5m) (a) ✓ does not incorporate the second sentence of the language in the drafting instructions (“Providing information and advice...”). If I understand the drafting instructions correctly, I do not believe the language in this draft results in a substantive change. ✓ If neither providing information and advice nor showing a party real estate constitutes acting as an intermediary, then neither activity can amount to negotiating. ✓ On the other hand, if you mean that providing information and advice *and* showing a party real estate amounts to acting as an intermediary, and therefore constitutes negotiation, then the draft must be revised. ✓

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

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

LRB-1387/1dn  
CTS:lmk:jf

May 6, 2005

Representative Wieckert:

This is a redraft of LRB-1387/P3. Please review it carefully to ensure it is consistent with your intent, and note the following questions and comments.

1. Like the previous version, this draft defines "real estate" as including a timeshare, or a business or its goodwill, inventory, or fixtures, whether or not the business includes real property. The purpose is to ensure that these items, included in the original drafting instructions in a proposed amendment to the definition of "broker" are included consistently and unambiguously throughout ch. 452. It also obviates the need to repeat this language in other places in ch. 452. The application of this term is limited by s. 452.01 (intro) to ch. 452.
2. The instructions for this draft indicate that a subagent's client is the broker who has engaged the subagent. However, "client" is a defined term in the draft as well as current law. Brokers owe specified duties to "clients." I don't think it is your intent that a subagent should owe the same duties to the broker who engaged the subagent. Therefore, this draft does not provide that a broker is a subagent's client.
3. The instructions for this draft also indicate that the definition of "subagent" should indicate that a subagent provides brokerage services "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." In this draft, "subagent" is defined as "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." I did not include the suggested language because this draft uses "on behalf of" in describing the relationship between a broker and the broker's employee. See proposed s. 452.01 (4d). "On behalf of" and "under the authority of" would, I think, wrongly suggest that the broker is responsible for brokerage services provided by a subagent. See proposed s. 452.12 (3).
4. I have not included "within the scope of an agency agreement between the other broker and the other broker's client" in the definition of "subagent." This appears to be a substantive restriction on the practice of a subagent, rather than a definition of a subagent. I have therefore created provision (proposed s. 452.133 (4) (a) 1.) that prohibits a subagent from providing brokerage services to the other broker's client that are beyond the scope of the agency agreement between the other broker and the other broker's client.

5. The drafting instructions proposed that “negotiate” include the following: “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.”

Based on the proposed language, proposed s. 452.01 (5p) as well as proposed s. 452.01 (2) (bm) in this draft refer simply to “showing a party real estate,” instead of “presenting an on-site presentation,” etc. As requested, this draft also moves the “acting as an intermediary” language to proposed 452.01 (5m) (a).

However, for the sake of clarity and readability, proposed s. 452.01 (5m) (a) does not incorporate the second sentence of the language in the drafting instructions (“Providing information and advice...”). If I understand the drafting instructions correctly, I do not believe the language in this draft results in a substantive change. If neither providing information and advice nor showing a party real estate constitutes acting as an intermediary, then neither activity can amount to negotiating. On the other hand, if you mean that providing information and advice *and* showing a party real estate amounts to acting as an intermediary, and therefore constitutes negotiation, then the draft must be revised.

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

**Siciliano, Chris**

**From:** Hanaman, Cathlene  
**Sent:** Tuesday, May 10, 2005 2:26 PM  
**To:** Siciliano, Chris  
**Subject:** FW: LRB-1387-1.doc

Can you print this to the color printer? What is the name of that printer anyway? Maybe I have access to it.  
 -----Original Message-----

**From:** Sundberg, Christopher  
**Sent:** Tuesday, May 10, 2005 2:24 PM  
**To:** Hanaman, Cathlene  
**Subject:** LRB-1387-1.doc

LRB-1387/1

**Brokers' Duties To Parties And Clients**

Under current law, a broker providing brokerage services owes certain duties to all parties to a transaction, including the duties to: 1) provide brokerage services to all parties honestly, fairly, and in good faith; 2) when negotiating on behalf of a party, present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals; and 3) account for all property coming into the broker's possession within a reasonable time after receiving it. This bill ~~deletes~~ modifies the second duty, above. The bill also deletes a broker's duty to provide brokerage services in good faith in order to eliminate misinterpretations of this undefined term ~~and to account for property within a reasonable time.~~

~~Instead, under the~~ The duty to account for all property ~~bill~~, is amended by requiring a broker ~~must~~ to safeguard property held by the broker

according to rules promulgated by the Department of Regulation and Licensing under authority granted by current law.

Under current law, a broker owes to the broker's client all the duties owed to a party, and three additional duties to: 1) loyally represent the client's interests by placing the client's interests ahead of the interests of any other party; 2) disclose to the client all material information known to the broker and not known to the client or discoverable through reasonably vigilant observation, unless the information is confidential; and 3) fulfill any legal obligation required by the agency agreement and any legal order by the client that is within the scope of the agency agreement.

This bill modifies the duty to loyally represent the client's interests by defining its meaning. Under the bill, a broker owes the client the duty not to place the broker's interests ahead of the client's interests or to disclose information or advice to nonclient parties if disclosure is contrary to the client's interests. The bill also creates a duty to provide, upon the client's request, certain types of information and advice; and a duty to negotiate on behalf of a client. Under the bill, a client may waive these last two duties, but only in writing.

**BROKERAGE SERVICES**

Under current law, a broker may not provide brokerage services to a party to a transaction unless the broker and the party enter into an agency agreement that authorizes the broker to provide the services. The agency agreement must contain a statement of the terms and conditions of the brokerage services that the broker will provide. Current law also provides that a broker may not provide brokerage services to a party or a client unless the broker has provided the party or client with a disclosure form that: 1) identifies the broker's clients in the transaction; 2) states the broker's duties to the broker's clients; 3) states the broker's duties to a party; and 4) contains a statement, the text of which is prescribed by current law, describing the

broker's duties to disclose certain known defects affecting a property and to maintain the confidentiality of certain other information.

Under the bill, a broker may provide brokerage services to a party with whom the broker does not have an agency agreement, except that a broker may not negotiate on behalf of such a party unless ~~another party to the transaction is the broker's client or is a client of~~ of the broker is representing a client in the transaction or another broker ~~who~~ has engaged the broker to provide

brokerage services in the transaction as a subagent (see "Subagency," below), and the broker has provided the party with a disclosure form stating the broker's duties to a party. ~~The bill deletes the requirements that the disclosure form identify the broker's client in the transaction and state the broker's duties to the broker's client.~~

Under the bill, the ~~client~~ agency disclosure form ~~summarizes~~ takes the form of plain English disclosures tailored specifically to clients and customers. ~~the broker's duties to parties and the broker's disclosure and confidentiality duties.~~

~~The bill creates a separate disclosure form for a broker's clients.~~ Under the bill, a broker may not negotiate on behalf of a client unless the broker has provided the client disclosure form to the client. The client disclosure form summarizes the broker's duties to clients and the broker's disclosure and confidentiality duties. The client disclosure form also summarizes the broker's duties if the client is involved in a transaction in which another party is also the broker's client (see "Multiple representation," below).

If the broker is providing services to a party in a transaction in which no party is the broker's client or a client of another broker who has engaged the broker to provide brokerage services as a subagent (see "Subagency," below), the bill creates broker duties in addition to the duties that the broker owes to all parties. In such a transaction, the broker owes all parties the duty not to place the broker's interests ahead of the interests of any party in the transaction, and the broker may not provide advice or opinions to any party if doing so is contrary to the interests of any other party.

~~The bill also modifies the current definition of "negotiate" and specifies that negotiation does not include providing information or advice relating to real estate or showing real estate to a party.~~

#### SUBAGENCY

This bill defines a subagent as a broker who is engaged by another broker to provide brokerage services in a transaction and who is not the other broker's employee. A broker may not engage another broker to provide brokerage services to the broker's client as a subagent unless the agency agreement between the broker and the client authorizes the broker to engage a subagent. ~~A broker providing services as a subagent may not provide brokerage services to a client of another broker who has engaged the broker as a subagent if the services are beyond the scope of the agency agreement between the other broker's client and the other broker.~~

Under the bill, a broker who has been engaged to provide brokerage services in a transaction as a subagent owes all parties the duties owed by a broker who is not a subagent. Additionally, a broker providing brokerage services as a subagent may not place the broker's interests ahead of the interests of a client of another broker who has engaged the broker as a subagent, or provide advice or opinions to parties in a transaction if doing so is contrary to the interests of a client of another broker who has engaged the broker as a subagent. A broker who has been engaged by another broker as a subagent does not owe the other broker's client the additional duties that a broker owes to the broker's own client.

~~Under the bill, a broker is not required to supervise, and is not responsible for, brokerage services provided by another broker who the broker has engaged to provide brokerage services as a subagent.~~

**MULTIPLE REPRESENTATION**

Currently, a broker may not provide brokerage services to more than one client in a transaction (multiple representation) unless the broker has entered into an agency agreement with each client and each client has consented to multiple representation in writing. Current law mandates that consent to multiple representation contain certain disclosures. Under current law, a broker who represents more than one client in a transaction owes each client the duties that a broker owes to a client, but the broker may not place the interests of any client ahead of the interests of another client in the transaction.

This bill ~~permits a broker to engage in multiple representation without obtaining each client's written consent~~ requires a broker to disclose in writing the broker's duties to the client should the broker represent more than one client in the transaction prior to entering into an agency agreement. The disclosure is part of a plain-English disclosure received by a client and the client would consent or reject the potential multiple representation relationship by consenting to or rejecting the proposed agency agreement. Under the bill, a broker engaged in multiple representation owes each client the duties a broker owes to a client, except that if a broker's employee is negotiating on behalf of more than one of the broker's clients in a transaction, the employee may not place the interests of any client ahead of the interests of another client during the negotiation.

**BROKER LIABILITY**

Current law provides that duties imposed on brokers by statutes or by rules supersede fiduciary duties the broker has to a party based on common law principles of agency, to the extent that common law is inconsistent with the statutes or rules. Under the bill, a broker's duties under the statutes or rules supersede any inconsistent common law duties or obligations, not just fiduciary duties based on agency principles.

Under current law, a broker must supervise, and is responsible for, the acts of any broker, salesperson, or time-share salesperson employed by the broker. Under the bill, a broker is responsible for brokerage services provided on behalf of the broker by a broker, salesperson, or time-share salesperson employed by the broker.

*prev BS, except req, to more than one cl in a T, except*

• **DEFINITION OF BROKER**

REVISE SECTIONS 3 AND 5 TO BE CONSISTENT WITH DRAFTING INSTRUCTIONS – THIS IS NECESSARY BECAUSE CLARIFYING THE ROLE OF SHOWINGS IS INTEGRAL TO THE DEFINITION OF BROKERAGE AS IT RELATES TO PROVIDING INFORMATION AND ADVICE.

**NEEDED BILL DRAFT REVISIONS ARE REDLINED**

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 the party's transaction and that are within the scope of the knowledge, skills, and training required under s. 452.09 (2) (a) and (3) (a). For the purpose of this subsection providing information and advice includes showing a party real estate or a timeshare other than showings to prospective tenants.

~~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, except real estate that is offered for rent.~~

a party seeking  
to rent RE

• **DEFINITION OF NEGOTIATE**

REVISE SECTIONS 17, 18 AND 21 TO BE CONSISTENT WITH DRAFTING INSTRUCTIONS –THE DRAFTING INSTRUCTIONS CLARIFIED THAT PROVIDING INFORMATION AND ADVICE OR SHOWING REAL ESTATE MAY OCCUR DURING NEGOTIATIONS BUT THAT THESE ACTIVITIES DO NOT CONSTITUTE NEGOTIATION IN AND OF THEMSELVES. BECAUSE “NEGOTIATION” TRIGGERS AGENCY RELATIONSHIP AND AGENCY DISCLOSURE REQUIREMENTS THIS SECTION IS NECESSARY TO CLARIFY THAT “PROVIDING INFORMATION AND ADVICE” AND “SHOWINGS” ALONE DO NOT TRIGGER THE REQUIREMENT FOR AGENCY RELATIONSHIPS OR AGENCY DISCLOSURES. THE BILL DRAFT IS INCORRECT BECAUSE “PROVIDING INFORMATION AND ADVICE” AND “SHOWINGS” CAN BE A PART OF NEGOTIATIONS.

**NEEDED BILL DRAFT REVISIONS ARE REDLINED**

SECTION 17. 452.01 (5m) (intro) of the statutes is amended to read:

452.01 (5m) (intro) “Negotiate” means to ~~act as an intermediary between the parties to a transaction~~ provide to a party assistance within the scope of the knowledge, skills, and training required under s. 452.09 (2) (a) and (3) (a) in developing a proposal or agreement relating to a transaction, including doing any of the following:

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

452.01 (5m) (a) ~~Facilitating~~ Acting as an intermediary by facilitating or participating in the parties' discussion of the terms of a contract or agreement concerning communications between 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.

~~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 showing a party real estate.~~

• **DEFINITION OF REAL ESTATE**

THE DRAFTER ATTEMPTS TO SIMPLIFY THE DRAFT BY INCLUDING BUSINESS OPPORTUNITIES WITHIN THE DEFINITION OF REAL ESTATE. THIS WILL CREATE NUMEROUS PROBLEMS AS THE REGULATION OF BUSINESS OPPORTUNITY TRANSACTIONS IS DISTINCT FROM REGULATIONS RELATED TO REAL ESTATE TRANSACTIONS. THIS SECTION SHOULD BE DELETED AND THE CURRENT STATUTORY CONSTRUCTION SHOULD BE MAINTAINED.

**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.

• **PRE-AGENCY RELATIONSHIPS**

THE DRAFTER DEPARTED FROM THE ORIGINAL APPROACH OF ADDRESSING WHEN A BROKER MUST HAVE AN AGENCY RELATIONSHIP WITH A PARTY. THE PRIMARY FLAW WITH THE BILL DRAFT IS THAT IT FAILS TO OVERRIDE CURRENT ADMINISTRATIVE RULES THAT REQUIRE AN AGENCY RELATIONSHIP PRIOR TO PROVIDING BROKERAGE SERVICES. FURTHERMORE, THE BILL DRAFT REVERSES THE LOGIC OF THE PROPOSAL BY INDIRECTLY ADDRESSING THE REQUIREMENT FOR AN AGENCY RELATIONSHIP AS A SECONDARY ISSUE ARISING OUT OF NEGOTIATION. THE ISSUE OF WHEN AN AGENCY RELATIONSHIP IS REQUIRED IS OF FUNDAMENTAL IMPORTANCE AND MUST BE ADDRESSED DIRECTLY. OTHER PROBLEMS WITH THIS SECTION IS THE FACT THAT (2) MISTAKENLY REQUIRES AGENCY DISCLOSURE TO ALL PARTIES.

**SECTION 28.** 452.132 of the statutes is created to read:

**452.132 Negotiation; disclosure.** A broker may not negotiate in a transaction on behalf of a party who is not the broker's client unless all of the following apply:

- (1) Another party to the transaction is the broker's client or is the client of another broker who has engaged the broker to provide brokerage services in a transaction as a subagent.
- (2) The broker has provided to each party participating in the negotiation a copy of the disclosure required under s. 452.135 (2).

**WRA Task Force Proposal:**

**BROKERAGE SERVICES AND AGENCY RELATIONSHIPS**

**452.132 Agency Relationships**

(1) Agency Relationships.

(a) A broker shall not be required to have an agency relationship with a party or a subagency relationship with a broker when providing brokerage services prior to conducting negotiations on behalf of a party in a transaction.

(b) When conducting negotiations on behalf of a party in a transaction the broker shall be acting under the authority of an agency agreement with a party in the transaction or a subagency relationship with a broker who has an agency agreement with a party in the transaction.

• **SUBAGENCY DUTIES**

**The drafter's notes to this section provide:**

*4. I have not included "within the scope of an agency agreement between the other broker and the other broker's client" in the definition of "subagent." This appears to be a substantive restriction on the practice of a subagent, rather than a definition of a subagent. I have therefore created provision (proposed s. 452.133 (4) (a) 1.) that prohibits a subagent from providing brokerage services to the other broker's client that are beyond the scope of the agency agreement between the other broker and the other broker's client.*

**Comment: No problem taking it out of the definition but why add it back?**

**SECTION 44.** 452.133 (4) and (5) of the statutes are created to read:

452.133 (4) SUBAGENT'S DUTIES. (a) A broker who has been engaged by another broker to provide brokerage services in a transaction as a subagent owes all parties the duties specified in sub. (1) and may not do any of the following:

~~1. Provide brokerage services to a client of another broker who has engaged the broker to provide brokerage services as a subagent if the services are beyond the scope of the agency agreement between the other broker's client and the other broker.~~

2. Place the broker's interests ahead of the interests of ~~a~~ the client of another broker who has engaged the broker to provide brokerage services ~~in~~ on behalf of the client in a transaction as a



subagent.

3. Provide advice or opinions to parties in the transaction if providing the advice or opinions is contrary to the interests of ~~a~~ <sup>the</sup> client of ~~another~~ broker who has engaged the broker to provide brokerage services ~~on behalf of the client in a~~ <sup>the</sup> transaction as a subagent, unless required by law.

(b) A broker who has been engaged by another broker to provide brokerage services in a transaction as a subagent does not owe to the other broker's client the duties under sub. (2).

(5) ~~OTHER DUTIES~~ <sup>DUTIES go w/o A or S ref.</sup> 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 who has engaged the broker to provide brokerage services on behalf of the client in the transaction 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.

(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 unless required by law.

• **CUSTOMER DISCLOSURE**

SECTION 47. 452.135 (2) of the statutes is repealed and recreated to read:

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

**BROKER DISCLOSURE TO CUSTOMERS**

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 provide brokerage services to you fairly and honestly.

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

The duty to provide you with accurate information about market conditions within a reasonable time if you request it, unless disclosure of the information is prohibited by law.

~~that affect your transaction, except information that is confidential.~~

The broker duty to disclose

~~must disclose to you in writing certain material adverse facts which are certain known defects affecting a property unless disclosure of the information is prohibited by law.~~

The duty to protect your confidentiality. Unless the law requires it the broker will not disclose your confidential information or the confidential information of other parties. ~~The duty to keep confidential information given to the broker in confidence,~~

~~except adverse material facts.~~

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

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

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

• **CLIENT DISCLOSURES**

Revise duties to all parties per customer disclosure

Because you have entered into an agency agreement with a broker, you are the

broker's client. A broker owes additional duties to a client.

The broker will provide, at your request, information and advice on real estate matters that affect your transaction, unless you release the broker from this duty.

The agent must provide you with information about all material facts affecting the transaction (not just adverse material facts).

~~You are entitled to receive, upon request, all material information, not just adverse information.~~

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

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

The broker will not place the broker's interests ahead of your interests. The broker will not, unless required by law, give information or advice to other parties who are not the broker's clients, if giving the information or advice is contrary to your interests.

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

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

**Sundberg, Christopher**

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**From:** Staff, Rick -VP Legal Services [rickstaff@wra.org]  
**Sent:** Thursday, May 12, 2005 10:30 AM  
**To:** Sundberg, Christopher  
**Subject:** RE: Follow-up on agency bill

No, just real estate.

-----Original Message-----

**From:** Sundberg, Christopher [mailto:Christopher.Sundberg@legis.state.wi.us]  
**Sent:** Thursday, May 12, 2005 10:13 AM  
**To:** Staff, Rick -VP Legal Services  
**Subject:** RE: Follow-up on agency bill

Under proposed 452.01 (2) (b) (sec. 4 of LRB-1387/1), a person may essentially be presumed to be a broker on the basis of a certain number of sales or exchanges in a given time period. In the draft, and under current law, this only applies to sales or exchanges of "real estate." Should this include time shares and businesses?

-----Original Message-----

**From:** Staff, Rick -VP Legal Services [mailto:rickstaff@wra.org]  
**Sent:** Thursday, May 12, 2005 8:25 AM  
**To:** Sundberg, Christopher; Kunkel, Mark  
**Cc:** Malkasian, Bill - Pres; Theo, Mike - VP Public Affairs  
**Subject:** Follow-up on agency bill

Chris,

Just checking in to see if there is anything you would like to discuss as you work on the redraft. You can e-mail me or call me at 608-566-9029.

**Rick Staff**

Vice President

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