



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-138718  
CTS:lmk&wlj:jf

2  
Keep

2005 BILL

In: 5/12/05  
Due: 5/13/05, if possible

regen

D=N

sec affected

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) and 452.133 (1) (g); to renumber and amend 452.133 (2) (a); to  
3 consolidate, renumber and amend 452.137 (1) and (2); to amend 452.01  
4 (1m), 452.01 (2) (a), 452.01 (2) (b), 452.01 (2) (h), 452.01 (3e), 452.01 (3m), 452.01  
5 (4d), 452.01 (4h), 452.01 (4p), 452.01 (4t), 452.01 (5m) (intro), 452.01 (5m) (a),  
6 452.01 (5m) (c), 452.01 (5r), 452.01 (7), 452.01 (10), 452.12 (3), 452.133 (1)  
7 (intro.), 452.133 (1) (a), 452.133 (1) (b), 452.133 (1) (c), 452.133 (1) (d), 452.133  
8 (1) (e), 452.133 (1) (f), 452.133 (2) (intro.), 452.133 (2) (b), 452.133 (2) (c), 452.135  
9 (1), 452.138 and 452.139 (1); to repeal and recreate 452.135 (2); and to create  
10 452.01 (2) (am), 452.01 (2) (bm), 452.01 (5p), 452.01 (5u), 452.01 (7r), 452.132,  
11 452.133 (2) (a) 2., 452.133 (2) (am), 452.133 (2) (d), 452.133 (4) and (5), 452.133  
12 (6) and 452.135 (3) of the statutes; relating to: duties of real estate brokers and  
13 salespersons.

**Analysis by the Legislative Reference Bureau**  
This bill makes several changes to current law regarding real estate practice.

**BILL**

**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 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 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. 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.

INS  
A

**BROKERAGE SERVICES**

*Also under current law*

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 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

to

**BILL**

broker's client in the transaction and state 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 for the other broker. *does not, in and of itself, constitute negotiation*

**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.

*in the transaction* **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

**BILL***deletes the requirement for*

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.

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

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

2           452.01 (1m) "Agency agreement" means a written agreement between a broker  
3 and a client ~~under s. 452.135 (1) that authorizes the broker to provide brokerage~~  
4 services to the client.

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

6           452.01 (2) (a) For ~~another~~ a party, and for commission, money, or other thing  
7 of value, negotiates or offers or attempts to negotiate a sale, exchange purchase, or  
8 ~~rental of an interest or estate in real estate~~ transaction.

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

**BILL**

INS  
5-4

1 452.01 (2) (am) For a party, and for commission, money, or other thing of value,  
2 provides information and advice on matters that are material to the party's  
3 transaction and that are within the scope of the knowledge, skills, and training  
4 required under s. 452.09 (2) (a) and (3) (a).

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

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

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

12 452.01 (2) (bm) For a party, and for commission, money, or other thing of value,  
13 shows a party real estate, except real estate that is offered for rent.

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

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

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

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

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

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

23 **SECTION 11.** 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.

INS  
5-21

keep

**BILL**

1           **SECTION 12.** 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 ~~for brokerage services.~~

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

5           452.01 (4d) “Employ~~er~~,” when used in reference to a broker employing another  
6           broker, a salesperson, or a time-share salesperson, ~~includes~~ means engaging the  
7           services of another broker, a salesperson, or a time-share salesperson ~~who provides~~  
8           to provide brokerage services to the broker broker’s clients and customers on behalf  
9           of the broker and under the broker’s supervision, including engaging a broker,  
10          salesperson, or time-share salesperson as an independent contractor.

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

12          452.01 (4h) “Employee~~er~~,” when used in reference to an employee of a broker,  
13          ~~includes~~ means another broker, a salesperson, or a time-share salesperson who  
14          provides brokerage services to the broker broker’s clients and customers on behalf  
15          of the broker and under the broker’s supervision, including a broker, salesperson, or  
16          time-share salesperson engaged by the broker as an independent contractor.

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

18          452.01 (4p) “Employer~~er~~,” when used in reference to a broker who is the  
19          employer of another broker, a salesperson, or a time-share salesperson, ~~includes~~  
20          means a broker who engages the services of another broker, a salesperson, or a  
21          time-share salesperson ~~who provides services to the broker to provide brokerage~~  
22          services to the broker’s clients and customers on behalf of the broker and under the  
23          broker’s supervision, including a broker who engages the services of another broker,  
24          salesperson, or time-share salesperson as an independent contractor.

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

**BILL**

1           452.01 (4t) "Employment", when used in reference to a broker's employment  
 2 of another broker, a salesperson, or a time-share salesperson, ~~includes~~ means the  
 3 state of ~~providing~~ being engaged by a broker to provide services to the broker by the  
 4 other broker's clients and customers on behalf of the broker and under the broker's  
 5 supervision, including being engaged by the employing broker, the salesperson or the  
 6 time-share salesperson as an independent contractor.

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

8           452.01 (5m) (intro) "Negotiate" ~~means to act as an intermediary between the~~  
 9 ~~parties to a transaction~~ provide to a party assistance within the scope of the  
 10 knowledge, skills, and training required under s. 452.09 (2) (a) and (3) (a) in  
 11 developing a proposal or agreement relating to a transaction, including doing any of  
 12 the following:

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

14           452.01 (5m) (a) ~~Facilitating~~ Acting as an intermediary by facilitating or  
 15 ~~participating in the parties' discussion of the terms of a contract or agreement~~  
 16 ~~concerning~~ communications between parties related to the parties' interests in a  
 17 transaction.

TNS 7-17

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

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

23           **SECTION 20.** 452.01 (5m) (d) of the statutes is repealed.

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

**BILL**

1 452.01 (5p) "Negotiate" does not include providing to a party information or  
2 advice that relates to real estate or showing a party real estate.

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

4 452.01 (5r) "Party" means a person seeking to sell, exchange, buy or rent an  
5 interest in real estate, a business or a business opportunity. "Party" includes a  
6 person who seeks to grant or accept an option to buy, sell or rent an interest in real  
7 estate, a business or a business opportunity engage in a transaction.

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

9 452.01 (5u) "Real estate" includes a timeshare, or a business or its goodwill,  
10 inventory, or fixtures, whether or not the business includes real property.

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

12 452.01 (7) "Salesperson" means any person other than a broker or time-share  
13 salesperson who is employed by a broker to perform any act authorized by this  
14 chapter to be performed by a broker.

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

16 452.01 (7r) "Subagent" means a broker who is engaged by another broker to  
17 provide brokerage services in a transaction, except that "subagent" does not include  
18 a broker who is an employee of another broker.

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

20 452.01 (10) "Transaction" means actions, including negotiations, intended to  
21 result in the sale, exchange, purchase, or rental of, or the granting or acceptance of  
22 an option to sell, exchange, purchase, or rent, an interest in real estate, or a business  
23 or a business opportunity. *Keep*

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

*INS 8-23*



BILL

*Brokerage services authorization limitations*

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

8 ~~452.132~~ **Negotiation; disclosure** A broker may not negotiate in a  
9 transaction on behalf of a party who is not the broker's client unless all of the  
10 following apply:

11 (1) Another party to the transaction is the broker's client or is the client of  
12 another broker who has engaged the broker to provide brokerage services in a  
13 transaction as a subagent.

14 (2) The broker has provided to ~~each party~~ <sup>the</sup> participating in the negotiation a  
15 copy of the disclosure required under s. 452.135 (2).

16 SECTION 29. 452.133 (1) (intro.) of the statutes is amended to read:

17 452.133 (1) BROKER'S DUTIES TO ALL PARTIES TO A TRANSACTION. (intro.) In A  
18 broker who is providing brokerage services to a party to a transaction, a broker shall  
19 do all of the following <sup>on whose behalf the broker is negotiating</sup> owes all of the following duties to the party:

20 SECTION 30. 452.133 (1) (a) of the statutes is amended to read:

21 452.133 (1) (a) ~~Provide~~ The duty to provide brokerage services to all parties to  
22 the transaction honestly, and fairly and in good faith.

23 SECTION 31. 452.133 (1) (b) of the statutes is amended to read:

24 452.133 (1) (b) ~~Diligently exercise~~ The duty to provide brokerage services with  
25 reasonable skill and care in providing brokerage services to all parties.

*INS 9-16*

*INS 9-8*

*INS 9-16*

**BILL**

1           **SECTION 32.** 452.133 (1) (c) of the statutes is amended to read:

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

6           **SECTION 33.** 452.133 (1) (d) of the statutes is amended to read:

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

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

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

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

21           452.133 (1) (f) ~~Account for all~~ The duty to safeguard trust funds and other  
22 ~~property coming into the possession of a~~ held by the broker that belongs to any party  
23 ~~within a reasonable time of receiving the property as required by rules promulgated~~  
24 by the department under s. 452.13 (5).

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

**BILL**

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

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

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

8           452.133 (2) (a) (intro.) ~~Loyally~~ The duty to loyally represent the client's  
9 interests by ~~placing~~ not doing any of the following:

10           1. Placing the client's broker's interests ahead of the client's interests of any  
11 ~~other party, unless loyalty to a client violates the broker's duties under sub. (1) or s.~~  
12 ~~452.137 (2).~~

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

14           452.133 (2) (a) 2. Disclosing to parties in the transaction who are not the  
15 broker's clients information or advice the disclosure of which is contrary to the  
16 client's interests, unless disclosure is required by law.

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

18           452.133 (2) (am) The duty to provide, when requested by the client, information  
19 and advice to the client on matters that are material to the client's transaction and  
20 that are within the scope of the knowledge, skills, and training required under s.  
21 452.09 (2) (a) and (3) (a). These matters include the real estate market and  
22 contractual, legal, and regulatory issues.

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

24           452.133 (2) (b) ~~Disclose~~ The duty to disclose to the client all information known  
25 by the broker that is material to the transaction and that is not known by the client

**BILL**

1 or discoverable by the client through reasonably vigilant observation, except for  
2 confidential information under sub. (1) (d) and other information the disclosure of  
3 which is prohibited by law.

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

5 452.133 (2) (c) ~~Fulfill~~ The duty to fulfill any obligation required by the agency  
6 agreement, and any order of the client that is within the scope of the agency  
7 agreement, that ~~are~~ is not inconsistent with another duty that the broker has under  
8 this chapter or any other law. INS 12-11

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

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

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

12 452.133 (4) SUBAGENTS DUTIES. (a) A broker who has been engaged by another  
13 broker to provide brokerage services in a transaction as a subagent owes all parties  
14 the duties specified in sub. (1) and may not do any of the following:

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

18 2. Place the broker's interests ahead of the interests of a client of another broker  
19 who has engaged the broker to provide brokerage services in a transaction as a  
20 subagent.

21 3. Provide advice or opinions to parties in the transaction if providing the  
22 advice or opinions is contrary to the interests of a client of another broker who has  
23 engaged the broker to provide brokerage services in a transaction as a subagent,  
24 unless required by law.

for the broker

the

the

the

for the broker

**BILL**

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

*DUTIES WITHOUT AGENCY OR SUBAGENCY RELATIONSHIP*

4 (5) OTHER DUTIES If a broker is providing brokerage services to a party in a  
5 transaction in which no party is the broker's client and no party is the client of  
6 another broker who has engaged the broker to provide brokerage services in a  
7 transaction as a subagent, then all of the following apply:

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

10 (b) The broker may not provide advice or opinions to any party if providing the  
11 advice or opinions is contrary to the interests of any other party. *unless required by law*

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

12 **452.133 (6) WAIVER OF DUTIES.** The duties imposed by subs. (1), (2) (a), (b), and  
13 (c), (4), and (5) may not be waived. A client may waive, in part or in full, the broker's  
14 duties under sub. (2) (am) and (d), except that a waiver under this subsection is not  
15 effective unless the broker provides to the client a written disclosure containing all  
16 of the following:  
17

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

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

**BILL**

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

*repealed*

4 **SECTION 46.** 452.135 (1) of the statutes is amended to read:

5 ~~452.135 (1) No Subject to s. 452.132, a broker may provide brokerage services  
6 without to a party who has not entered into an agency agreement that authorizes the  
7 broker to provide those brokerage services with the broker, but a broker may not  
8 engage another broker to provide brokerage services to a client as a subagent unless  
9 the agency agreement between the broker and the client authorizes the broker to  
10 engage a subagent. The agency agreement shall contain a statement of the terms  
11 and conditions of the brokerage services that the broker will provide, including a  
12 statement required under s. 452.138, if applicable.~~

*who is not the  
broker's client*

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

14 452.135 (2) A broker may not negotiate on behalf of a party to a transaction  
15 unless the broker has provided to the party a written statement in the following form:

**BROKER DISCLOSURE TO CUSTOMERS**

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

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

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

**BILL**

*within a reasonable time if you request it unless disclosure of the information is prohibited by law*

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

*duty to certain unless disclosure of the information is prohibited by law*

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

*protect your confidentiality unless the law requires it the broker will not disclose your confidential information or the confidential information of other parties*

7 The duty to safeguard trust funds and other property the broker holds.  
8 Please review this information carefully. A broker or salesperson can answer  
9 your questions about brokerage services, but if you need legal advice, tax advice, or  
10 a professional home inspection, contact an attorney, tax advisor, or home inspector.

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

14 SECTION 48. 452.135 (3) of the statutes is created to read:  
15 452.135 (3) A broker may not negotiate on behalf of a client unless the broker  
16 has provided to the client a written statement in the following form:

**BROKER DISCLOSURE TO CLIENTS**

18 Under Wisconsin law, a broker owes certain duties to all parties to a  
19 transaction:

- 20 The duty to provide brokerage services to you fairly and honestly.
- 21 The duty to exercise reasonable skill and care in providing brokerage services
- 22 to you.

*INS 13-24*

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

**BILL**

*If the duty to*

1 must disclose to you in writing material adverse facts which are certain known

2 defects affecting a property

*about*

*certain*

*unless disclosure of the information is prohibited by law*

3 The duty to keep confidential information given to the broker in confidence,

4 except material adverse facts.

*INS 16-3*

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

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

*The broker must provide you with*

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

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

11 information.

*keep facts*

*keep facts affecting the transaction*

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

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

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

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

24 The broker may, with your authorization in the agency agreement, enter into  
25 agreements with subagents. A subagent is another broker who works for your broker



**BILL**

1 by providing brokerage services for your benefit. A subagent will not put the  
2 subagent's own interests ahead of your interests. A subagent will not, unless  
3 required by law, provide advice or opinions to other parties if doing so is contrary to  
4 your interests.

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

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

11 **SECTION 49.** 452.137 (1) and (2) of the statutes are consolidated, renumbered  
12 452.137 (1m) and amended to read:

13 452.137 (1m) ~~No~~ A broker may provide who is providing brokerage services to  
14 more than one client in a transaction ~~without an agency agreement under s. 452.135~~  
15 ~~(1) with each client and a written consent to multiple representation. The consent~~  
16 ~~to multiple representation shall contain a statement of the broker's duties under s.~~  
17 ~~452.133 (1) to a party to the transaction who is not a client, a statement of the broker's~~  
18 ~~duties to the client under s. 452.133 (2), and a statement that the clients understand~~  
19 ~~the broker's duties and consent to the broker providing brokerage services to more~~  
20 ~~than one client. The consent to multiple representation may contain additional~~  
21 ~~disclosures by the broker or additional agreements between the broker and the~~  
22 ~~clients that do not violate any duty of a broker under this chapter. (2) A broker who~~  
23 ~~represents more than one client in a transaction owes to each client the duties~~  
24 ~~specified in s. 452.133 (2) to each client but (1) and (2), except that if an employee of~~  
25 a broker is negotiating on behalf of more than one of the broker's clients in a

**BILL**

1 transaction, the employee may not place the interests of any client ahead of the  
2 interests of another client ~~in the transaction~~ during the negotiations.

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

4 **452.138 Brokers providing services in more than one transaction.** A  
5 broker may provide brokerage services simultaneously to more than one party in  
6 different transactions unless the broker agrees with a client that the broker is to  
7 provide brokerage services only to that client. If the broker and a client agree that  
8 the broker is to provide brokerage services only to that client, the agency agreement  
9 ~~under s. 452.135 (1)~~ shall contain a statement of that agreement.

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

11 452.139 (1) ~~FIDUCIARY~~ COMMON LAW DUTIES OF BROKER. The duties of a broker  
12 specified in this chapter or in rules promulgated under this chapter shall supersede  
13 ~~any fiduciary duties of a broker to a party based on~~ duties or obligations under  
14 ~~common law principles of agency to the extent that those common law fiduciary~~  
15 ~~duties or obligations~~ are inconsistent with the duties specified in this chapter or in  
16 rules promulgated under this chapter.

17 **SECTION 52. Initial applicability.**

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

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

23 **SECTION 53. Effective date.**

INS 18-17

**BILL**

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

3

(END)

dn

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1387/2ins  
CTS:.....

1 **Insert A:**

2 4 Under current law, a person may not engage in brokerage services unless the  
3 person is a licensed broker. Currently, brokerage services include promoting certain  
4 transactions in real estate or business opportunities. This bill specifies that  
5 brokerage services include promoting certain transactions in real estate, time  
6 shares, or businesses or their goodwill, inventory, or fixtures, whether or not the  
7 business includes real property. ✓

8 **Insert 5-4:**

9 109 In this paragraph, providing information and advice includes showing a party real  
10 estate, a time share, or a business or its inventory or fixtures, except that providing  
11 information and advice does not include such a showing to a party who is seeking to  
12 engage in a rental transaction.

13 **Insert 5-21:**

14 , a time share, or a business opportunities or its goodwill, inventory, or fixtures,  
15 whether or not the business includes real property ✓

16 **Insert 7-17:**

17 109 In this paragraph, providing information and advice to a party on real estate matters  
18 or showing a party real estate does not, in and of itself, constitute acting as an  
19 intermediary to facilitate communications between parties. ✓  
*by ing or participating*

20 **Insert 8-23:**

21 ✓ , a time share, or a business or a business opportunity its goodwill, inventory, or  
22 fixtures, whether or not the business includes real property ✓

23 **Insert 9-8:**

1 A broker may provide brokerage services to a party who is not the broker's client and  
2 who is not a client of another broker who has engaged the broker to provide brokerage  
3 services as a subagent, except that

4 **Insert 9-16:**

5 **SECTION 1.** 452.13 (1) (a) of the statutes is amended to read:

6 452.13 (1) (a) "Client funds" means all downpayments, earnest money deposits  
7 or other money related to a conveyance of real estate, a time share, or a business or  
8 its goodwill, inventory, or fixtures that is received by a broker, salesperson, or  
9 time-share salesperson on behalf of the broker's, salesperson's, or time-share  
10 salesperson's principal or any other person. "Client funds" does not include  
11 promissory notes.

12 History: 1981 c. 94, 391; 1985 a. 305; 1987 a. 399; 1989 a. 307; 1991 a. 221; 1993 a. 33.

12 **Insert 12-11:**

13 **SECTION 2.** 452.133 (3) (intro.) of the statutes is repealed.

14 **SECTION 3.** 452.133 (3) (a) of the statutes is renumbered 452.14 (1) (o) and

15 amended to read:

16 452.14 (1) (o) ~~Accept~~ Accepted any fee or compensation related to the  
17 transaction from any person other than the broker's client, unless the broker has had  
18 the written consent of all parties to the transaction.

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

19 **SECTION 4.** 452.133 (3) (b) of the statutes is renumbered 452.14 (1) (p) and

20 amended to read:

21 452.14 (1) (p) ~~Act~~ Acted in a transaction on the broker's own behalf, on behalf  
22 of the broker's immediate family, or on behalf of any organization or business entity

1 in which the broker ~~has~~ had an interest, unless the broker ~~has~~ had the written  
2 consent of all parties to the transaction.

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

3 ~~SECTION 5.~~ 452.133 (3) (c) of the statutes is renumbered 452.14 (1) (q) and

4 amended to read:

5 452.14 (1) (q) Except as provided in s. 452.19, ~~refer, recommend or suggest~~

6 referred, recommended, or suggested to a party to the transaction the services of an

7 individual or entity from which the broker ~~may receive~~ might have received

8 compensation for a referral or in which the broker ~~has~~ had an interest, unless the

9 broker ~~has~~ disclosed the fact that ~~he or she may receive~~ the broker might have

10 received compensation or ~~has~~ disclosed his or her interest in the individual or entity

11 providing the services.

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

12 **Insert 15-24:**

13 ~~NOTE~~ within a reasonable time if you request it, unless disclosure of the information is

14 prohibited by law.

15 **Insert 16-3:**

16 ~~NOTE~~ protect your confidentiality. Unless the law requires it, the broker will not disclose

17 your confidential information or the confidential information of other parties.

18 **Insert 18-17:**

19 ~~SECTION 6.~~ 452.14 (3) (f) of the statutes is amended to read:

20 452.14 (3) (f) Accepted from any person except the broker's, salesperson's<sup>1</sup> or

21 time-share salesperson's employer, if the broker, salesperson<sup>2</sup> or time-share

22 salesperson is employed as a salesperson or time-share salesperson by a broker, a

23 commission or valuable consideration as a salesperson or time-share salesperson for

24 the performance of any act specified in this chapter or as compensation for referring

1 a person to another broker, salesperson<sup>3</sup> or time-share salesperson or to any other  
2 person in connection with a real estate transaction;

3 **History:** 1981 c. 94, 391; 1983 a. 27 s. 2202 (44); 1983 a. 354; 1985 a. 305; 1987 a. 399; 1989 a. 307, 341, 359; 1991 a. 32, 163; 1993 a. 127; 1995 a. 400.

3 **SECTION 7.** 452.14 (3) (jm) of the statutes is amended to read:

4 452.14 (3) (jm) Intentionally encouraged or discouraged any person from  
5 purchasing or renting real estate, a time share, or a business or its goodwill,  
6 inventory, or fixtures in a particular area on the basis of race. If the board finds that  
7 any broker, salesperson or time-share salesperson has violated this paragraph, the  
8 board shall, in addition to any temporary penalty imposed under this subsection,  
9 apply the penalty provided in s. 452.17 (4);

**History:** 1981 c. 94, 391; 1983 a. 27 s. 2202 (44); 1983 a. 354; 1985 a. 305; 1987 a. 399; 1989 a. 307, 341, 359; 1991 a. 32, 163; 1993 a. 127; 1995 a. 400.

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

LRB-1387/2dn

CTS:.....

ml

(date)

Representative Wieckert:

This is a redraft of LRB-1387/1. Please review it carefully to ensure it is consistent with your intent.

This draft, like previous versions, specifies that brokerage services include promoting certain transactions with respect to real estate, a timeshare, or a business or its goodwill, inventory, or fixtures, whether or not the business includes real property. Note that this version eliminates the defined term "real estate." Instead, to ensure consistency with the revised description of the scope of brokerage services, it amends ss. 452.01 (10) (definition of "transaction"), 452.13 (1) (a) (defining "client funds"), 452.14 (3) (f) (accepting compensation from a person other than the employer), and 452.14 (3) (jm) (prohibiting encouraging or discouraging a person from a sale or rental in an area on the basis of race). Without modifications to the preceding sections, the draft creates potential ambiguity as to whether those sections apply in a transaction involving a time share or a business or its goodwill, inventory, or fixtures. Is this okay? Based on instructions from Rick Staff, this draft does not, however, make a similar modification to s. 452.01 (2) (b) (defining "broker" on the basis of a pattern of certain transactions).

would create

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-1387/2dn

CTS:lmk:ch

May 13, 2005

Representative Wieckert:

This is a redraft of LRB-1387/1. Please review it carefully to ensure it is consistent with your intent.

This draft, like previous versions, specifies that brokerage services include promoting certain transactions with respect to real estate, a timeshare, or a business or its goodwill, inventory, or fixtures, whether or not the business includes real property. Note that this version eliminates the defined term "real estate." Instead, to ensure consistency with the revised description of the scope of brokerage services, it amends ss. 452.01 (10) (definition of "transaction"), 452.13 (1) (a) (defining "client funds"), 452.14 (3) (f) (accepting compensation from a person other than the employer), and 452.14 (3) (jm) (prohibiting encouraging or discouraging a person from a sale or rental in an area on the basis of race). Without modifications to the preceding sections, the draft would create potential ambiguity as to whether those sections apply in a transaction involving a time share or a business or its goodwill, inventory, or fixtures. Is this okay? Based on instructions from Rick Staff, this draft does not, however, make a similar modification to s. 452.01 (2) (b) (defining "broker" on the basis of a pattern of certain transactions).

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

**Sundberg, Christopher**

**From:** Staff, Rick -VP Legal Services [rickstaff@wra.org]  
**Sent:** Monday, May 16, 2005 2:49 PM  
**To:** Staff, Rick -VP Legal Services; Becher, Scott; Kunkel, Mark; Sundberg, Christopher  
**Cc:** Theo, Mike - VP Public Affairs; Malkasian, Bill - Pres; Black, William; Conrad, Debbie - Attorney; Rucka, Tracy; Cullen, Thomas; Lamont, Cori-Training Specialist  
**Subject:** RE: Do we have a winner

Here is the attachment -oops

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

**From:** Staff, Rick -VP Legal Services  
**Sent:** Monday, May 16, 2005 2:17 PM  
**To:** 'Becher, Scott'; Mark Kunkel (E-mail); Christopher Sundberg (E-mail)  
**Cc:** Theo, Mike - VP Public Affairs; Malkasian, Bill - Pres; BLACK, WILLIAM; Conrad, Debbie - Attorney; Rucka, Tracy; Cullen, Thomas; Lamont, Cori-Training Specialist  
**Subject:** RE: Do we have a winner

The draft looks good - not perfect. I'll leave it to the political folks to decide what to do with it. I've only given it a quick read, however, I believe the following revisions are necessary.

In order of importance:

✓ 1) Section 2 must be revised to drop the term "transaction." As written a broker is someone who negotiates "a series of actions, including negotiations" Section 26 has the same problem when it refers to "negotiate in a transaction."

✓ 2) The second sentence of the definition of subagent (section 22) currently provides that "except that "subagent" does not include a broker who is an employee of another broker."

The problem is that every broker who works for another broker is excluded by this language. The following may be a better approach:

"except that "subagent" does not include employees of the other broker."

✓ 3) 452.13(1) (a) (Section 25) should not be amended. This section has lots of history and the addition of timeshares and business opportunities would not be consistent with this history or likely the rules and standards of practice of the banking and real estate industry. A more technical answer relates to the term "conveyance" which is used in the sense of Chapter 706 conveyances. Adding business opportunities particularly would run afoul of this intent.

*no x-ref to 452.13(1)(a) in ch. 706*

4) **SECTION 55.** 452.14 (3) (jm) cannot be amended to include business opportunities. This section relates to fair housing laws and these laws do not apply to business opportunities.

On a general note I am disappointed that the LRB analysis continues to include inaccuracies and generalizations that consistently portray the bill in a more negative light than necessary.

One example:

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; This bill deletes the second duty, above.

In fact, the second duty is amended, not deleted.

*draft repeals 452.133 (i) (g) duties not recreated elsewhere in the draft?*

**Richard Staff**

Vice President

Wisconsin REALTORS Association  
4801 Forest Run Rd. Suite 201  
Madison, WI 53704

Phone: 608-242-2265  
Fax: 608-242-2279

[www.wra.org](http://www.wra.org) <<http://www.wra.org/>>

**Unsubscribe:**

**By unsubscribing, you are authorizing the WRA to discontinue all e-mail correspondence with you. You will not receive any information from the WRA via e-mail, (this includes but is not limited to: education events, call to actions, committee information, DR Hottips and DR Heads-up, etc), click here... [unsubscribe@wra.org](mailto:unsubscribe@wra.org) <<mailto:unsubscribe@wra.org?subject=Unsubscribe>>**

*This e-mail message is intended solely for the person to whom it is addressed and may contain confidential and/or privileged information. If you have received this e-mail message in error, but are affiliated with the person to whom it is addressed, please notify the addressee that the e-mail has been received (otherwise delete it). Any review, dissemination, copying, printing or other use of this e-mail message by persons other than the address is prohibited.*

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

**From:** Becher, Scott [<mailto:Scott.Becher@legis.state.wi.us>]  
**Sent:** Monday, May 16, 2005 10:21 AM  
**To:** [rickstaff@wra.org](mailto:rickstaff@wra.org)  
**Subject:** Do we have a winner

<<05-13872dn.pdf>> <<05-13872.pdf>>

↑  
↑  
keep

**2005 BILL**

lw: 5/17/05  
Duc: 5/18/05, if possible

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), 452.133 (3) (intro.) and 452.135 (1); *to renumber and*

3 *amend* 452.133 (2) (a), 452.133 (3) (a), 452.133 (3) (b) and 452.133 (3) (c); *to*

4 *consolidate, renumber and amend* 452.137 (1) and (2); *to amend* 452.01

5 (1m), 452.01 (2) (a), 452.01 (2) (b), 452.01 (2) (h), 452.01 (3e), 452.01 (3m), 452.01

6 (4d), 452.01 (4h), 452.01 (4p), 452.01 (4t), 452.01 (5m) (intro), 452.01 (5m) (a),

7 452.01 (5m) (c), 452.01 (5r), 452.01 (7), 452.01 (10), 452.12 (3), 452.13 (1) (a),

8 452.133 (1) (intro.), 452.133 (1) (a), 452.133 (1) (b), 452.133 (1) (c), 452.133 (1)

9 (d), 452.133 (1) (e), 452.133 (1) (f), 452.133 (2) (intro.), 452.133 (2) (b), 452.133

10 (2) (c), 452.138, 452.139 (1), 452.14 (3) (f) and 452.14 (3) (jm); *to repeal and*

11 *recreate* 452.135 (2); and *to create* 452.01 (2) (am), 452.01 (7r), 452.132,

12 452.133 (2) (a) 2., 452.133 (2) (am), 452.133 (2) (d), 452.133 (4) and (5), 452.133

**BILL**

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

---

***Analysis by the Legislative Reference Bureau***

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

**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 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 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 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. 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 person may not engage in brokerage services unless the person is a licensed broker. Currently, brokerage services include promoting certain transactions in real estate or business opportunities. This bill specifies that brokerage services include promoting certain transactions in real estate, time shares, or businesses or their goodwill, inventory, or fixtures, whether or not the business includes real property.

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. Also under current law, a broker may not provide brokerage services to a

**BILL**

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 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 to the party 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 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 client. 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." The bill specifies that providing information or advice relating to real estate or showing real estate to a party does not, in and of itself, constitute negotiation.

**SUBAGENCY**

This bill defines a subagent as a broker who is engaged by another broker to provide brokerage services for the other broker 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. *but*

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 the client of another broker who has engaged the broker as a subagent in the transaction, or provide advice or opinions to parties in the transaction if doing so is contrary to the interests of a client

**BILL**

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 deletes the requirement for 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.

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

- 1           **SECTION 1.** 452.01 (1m) of the statutes is amended to read:
- 2           452.01 (1m) "Agency agreement" means a written agreement between a broker
- 3 and a client ~~under s. 452.135 (1)~~ that authorizes the broker to provide brokerage
- 4 services to the client.
- 5           **SECTION 2.** 452.01 (2) (a) of the statutes is amended to read:

**BILL**

INS  
5-1

1

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

2

3

4

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

5

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). In this paragraph, providing information  
and advice includes showing a party real estate, a time share, or a business or its  
inventory or fixtures, except that providing information and advice does not include  
such a showing to a party who is seeking to engage in a rental transaction.

6

7

8

9

10

11

12

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

13

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

14

15

16

17

18

SECTION 5. 452.01 (2) (d) of the statutes is repealed.

19

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

20

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

21

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

22

SECTION 9. 452.01 (2) (h) of the statutes is amended to read:

23

452.01 (2) (h) For another, and for ~~a~~ commission, money, or other thing of  
value, promotes the sale, exchange, purchase, option, rental, or leasing of real estate,  
a time share, or a business opportunities or its goodwill, inventory, or fixtures.

24

25



**BILL****SECTION 9**

1 whether or not the business includes real property. This paragraph does not apply  
2 to a person who only publishes or disseminates verbatim information provided by  
3 another person.

4 **SECTION 10.** 452.01 (3e) of the statutes is amended to read:

5 452.01 **(3e)** “Brokerage service” means any service described under sub. (2) ~~(a)~~  
6 ~~to (h)~~ provided by a broker to another person.

7 **SECTION 11.** 452.01 (3m) of the statutes is amended to read:

8 452.01 **(3m)** “Client” means a party to a transaction who has entered into an  
9 agency agreement with a broker for brokerage services.

10 **SECTION 12.** 452.01 (4d) of the statutes is amended to read:

11 452.01 **(4d)** “Employer” when used in reference to a broker employing another  
12 broker, a salesperson, or a time-share salesperson, ~~includes~~ means engaging the  
13 services of another broker, a salesperson, or a time-share salesperson ~~who provides~~  
14 to provide brokerage services to the broker broker’s clients and customers on behalf  
15 of the broker and under the broker’s supervision, including engaging a broker,  
16 salesperson, or time-share salesperson as an independent contractor.

17 **SECTION 13.** 452.01 (4h) of the statutes is amended to read:

18 452.01 **(4h)** “Employee” when used in reference to an employee of a broker,  
19 ~~includes~~ means another broker, a salesperson, or a time-share salesperson who  
20 provides brokerage services to the broker broker’s clients and customers on behalf  
21 of the broker and under the broker’s supervision, including a broker, salesperson, or  
22 time-share salesperson engaged by the broker as an independent contractor.

23 **SECTION 14.** 452.01 (4p) of the statutes is amended to read:

24 452.01 **(4p)** “Employer” when used in reference to a broker who is the  
25 employer of another broker, a salesperson, or a time-share salesperson, ~~includes~~

**BILL**

1 means a broker who engages the services of another broker, a salesperson, or a  
2 time-share salesperson who provides services to the broker to provide brokerage  
3 services to the broker's clients and customers on behalf of the broker and under the  
4 broker's supervision, including a broker who engages the services of another broker,  
5 salesperson, or time-share salesperson as an independent contractor.

6 **SECTION 15.** 452.01 (4t) of the statutes is amended to read:

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

13 **SECTION 16.** 452.01 (5m) (intro) of the statutes is amended to read:

14 452.01 (5m) (intro) "Negotiate" means to ~~act as an intermediary between the~~  
15 ~~parties to a transaction~~ provide to a party assistance within the scope of the  
16 knowledge, skills, and training required under s. 452.09 (2) (a) and (3) (a) in  
17 developing a proposal or agreement relating to a transaction, including doing any of  
18 the following:

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

20 452.01 (5m) (a) ~~Facilitating~~ Acting as an intermediary by facilitating or  
21 participating in the parties' discussion of the terms of a contract or agreement  
22 concerning communications between parties related to the parties' interests in a  
23 transaction. In this paragraph, providing information and advice to a party on real  
24 estate matters or showing a party real estate does not, in and of itself, constitute

**BILL**

**SECTION 17**

1 acting as an intermediary by facilitating or participating communications between  
2 parties.

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

4 452.01 **(5m)** (c) Presenting to a party the proposals of other parties to the  
5 transaction and ~~informing the party receiving a proposal of the advantages and~~  
6 ~~disadvantages~~ giving the party a general explanation of the provisions of the  
7 proposal.

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

9 **SECTION 20.** 452.01 (5r) of the statutes is amended to read:

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

14 **SECTION 21.** 452.01 (7) of the statutes is amended to read:

15 452.01 **(7)** "Salesperson" means any person other than a broker or time-share  
16 salesperson who is employed by a broker ~~to perform any act authorized by this~~  
17 ~~chapter to be performed by a broker.~~

18 **SECTION 22.** 452.01 (7r) of the statutes is created to read:

19 452.01 **(7r)** "Subagent" means a broker who is engaged by another broker to  
20 provide brokerage services in a transaction, except that "subagent" does not include

21 a broker who is an employee of another broker, *but who is not the other*  
*broker's employee*

22 **SECTION 23.** 452.01 (10) of the statutes is amended to read:

23 452.01 **(10)** "Transaction" means actions, including negotiations, intended to  
24 result in the sale, exchange, purchase, or rental of, or the granting or acceptance of  
25 an option to sell, exchange, purchase, or rent, an interest in real estate, a time share.

**BILL**

1 or a business or ~~a business opportunity~~ its goodwill, inventory, or fixtures, whether  
2 or not the business includes real property.

3 SECTION 24. 452.12 (3) of the statutes is amended to read:

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

10 SECTION 25. 452.13 (1) (a) of the statutes is amended to read:

11 452.13 (1) (a) "Client funds" means all downpayments, earnest money deposits  
12 or other money related to a conveyance of real estate, a time share, or a business or  
13 its goodwill, inventory, or fixtures that is received by a broker, salesperson, or  
14 time-share salesperson on behalf of the broker's, salesperson's, or time-share  
15 salesperson's principal or any other person. "Client funds" does not include  
16 promissory notes.

17 SECTION 26. 452.132 of the statutes is created to read:

18 **452.132 Brokerage services; authorization; limitations.** A broker may  
19 provide brokerage services to a party who is not the broker's client and who is not a  
20 client of another broker who has engaged the broker to provide brokerage services  
21 as a subagent, except that a broker may not negotiate in a transaction on behalf of  
22 a party <sup>to a transaction</sup> who is not the broker's client unless all of the following apply:

23 (1) Another party to the transaction is the broker's client or is the client of  
24 another broker who has engaged the broker to provide brokerage services in a  
25 transaction as a subagent.

**BILL****SECTION 26**

1           (2) The broker has provided to the party on whose behalf the broker is  
2 negotiating a copy of the disclosure required under s. 452.135 (2).

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

4           452.133 (1) **BROKER'S DUTIES TO ALL PARTIES TO A TRANSACTION.** (intro.) In A  
5 broker who is providing brokerage services to a party to a transaction, a broker shall  
6 do all of the following owes all of the following duties to the party:

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

8           452.133 (1) (a) Provide The duty to provide brokerage services ~~to all parties to~~  
9 ~~the transaction~~ honestly, and fairly and in good faith.

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

11          452.133 (1) (b) Diligently exercise The duty to provide brokerage services with  
12 reasonable skill and care in providing brokerage services to all parties.

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

14          452.133 (1) (c) Disclose to each party The duty to disclose all material adverse  
15 facts that the broker knows and that the party does not know or cannot discover  
16 through reasonably vigilant observation, unless the disclosure of a material adverse  
17 fact is prohibited by law.

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

19          452.133 (1) (d) Keep The duty to keep confidential any information given to the  
20 broker in confidence, or any information obtained by the broker that he or she knows  
21 a reasonable party would want to be kept confidential, unless the information must  
22 be disclosed ~~under par. (c) or s. 452.23 or is otherwise required by law to be disclosed~~  
23 or the party whose interests may be adversely affected by the disclosure specifically  
24 authorizes the disclosure of particular ~~confidential~~ information. A broker shall

**BILL**

1 continue to keep the information confidential after the transaction is complete and  
2 after the broker is no longer providing brokerage services to the party.

3 **SECTION 32.** 452.133 (1) (e) of the statutes is amended to read:

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

8 **SECTION 33.** 452.133 (1) (f) of the statutes is amended to read:

9 452.133 (1) (f) ~~Account for all~~ The duty to safeguard trust funds and other  
10 ~~property coming into the possession of a~~ held by the broker that belongs to any party  
11 ~~within a reasonable time of receiving the property as required by rules promulgated~~  
12 by the department under s. 452.13 (5).

13 **SECTION 34.** 452.133 (1) (g) of the statutes is repealed.

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

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

19 **SECTION 36.** 452.133 (2) (a) of the statutes is renumbered 452.133 (2) (a) (intro.)  
20 amended to read:

21 452.133 (2) (a) (intro.) ~~Loyally~~ The duty to loyally represent the client's  
22 interests by placing not doing any of the following:

23 1. Placing the client's broker's interests ahead of the client's interests of any  
24 other party, unless loyalty to a client violates the broker's duties under sub. (1) or s.  
25 452.137 (2).

**BILL****SECTION 37**

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

2           452.133 (2) (a) 2. Disclosing to parties in the transaction who are not the  
3 broker's clients information or advice the disclosure of which is contrary to the  
4 client's interests, unless disclosure is required by law.

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

6           452.133 (2) (am) The duty to provide, when requested by the client, information  
7 and advice to the client on matters that are material to the client's transaction and  
8 that are within the scope of the knowledge, skills, and training required under s.  
9 452.09 (2) (a) and (3) (a). These matters include the real estate market and  
10 contractual, legal, and regulatory issues.

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

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

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

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

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

23           452.133 (2) (d) The duty to negotiate on behalf of the client.

24           **SECTION 42.** 452.133 (3) (intro.) of the statutes is repealed.

**BILL**

1           **SECTION 43.** 452.133 (3) (a) of the statutes is renumbered 452.14 (3) (o) and  
2 amended to read:

3           452.14 (3) (o) ~~Accept~~ Accepted any fee or compensation related to the  
4 transaction from any person other than the broker's client, unless the broker has had  
5 the written consent of all parties to the transaction.

6           **SECTION 44.** 452.133 (3) (b) of the statutes is renumbered 452.14 (3) (p) and  
7 amended to read:

8           452.14 (3) (p) ~~Act~~ Acted in a transaction on the broker's own behalf, on behalf  
9 of the broker's immediate family, or on behalf of any organization or business entity  
10 in which the broker has had an interest, unless the broker has had the written  
11 consent of all parties to the transaction.

12           **SECTION 45.** 452.133 (3) (c) of the statutes is renumbered 452.14 (3) (q) and  
13 amended to read:

14           452.14 (3) (q) ~~Except as provided in s. 452.19, refer, recommend or suggest~~  
15 referred, recommended, or suggested to a party to the transaction the services of an  
16 individual or entity from which the broker ~~may receive~~ might have received  
17 compensation for a referral or in which the broker has had an interest, unless the  
18 broker ~~has disclosed the fact that he or she may receive~~ the broker might have  
19 received compensation or ~~has disclosed his or her interest in the individual or entity~~  
20 providing the services.

21           **SECTION 46.** 452.133 (4) and (5) of the statutes are created to read:

22           452.133 (4) SUBAGENT'S DUTIES. (a) A broker who has been engaged by another  
23 broker to provide brokerage services in a transaction as a subagent owes all parties  
24 the duties specified in sub. (1) and may not do any of the following:



**BILL****SECTION 46**

1           1. Place the broker's interests ahead of the interests of the client of another  
2 broker who has engaged the broker to provide brokerage services for the broker in  
3 the transaction as a subagent.

4           2. Provide advice or opinions to parties in the transaction if providing the  
5 advice or opinions is contrary to the interests of the client of another broker who has  
6 engaged the broker to provide brokerage services for the broker in the transaction  
7 as a subagent, unless required by law.

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

11           **(5) DUTIES WITHOUT AGENCY OR SUBAGENCY RELATIONSHIP.** If a broker is providing  
12 brokerage services to a party in a transaction in which no party is the broker's client  
13 and no party is the client of another broker who has engaged the broker to provide  
14 brokerage services for the broker in the transaction as a subagent, then all of the  
15 following apply:

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

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

21           **SECTION 47.** 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

**BILL**

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).

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.

14 **SECTION 48.** 452.135 (1) of the statutes is repealed.

15 **SECTION 49.** 452.135 (2) of the statutes is repealed and recreated to read:

16 452.135 (2) A broker may not negotiate on behalf of a party to a transaction who  
17 is not the broker's client unless the broker has provided to the party a written  
18 statement in the following form:

19 **BROKER DISCLOSURE TO CUSTOMERS**

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

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

**BILL****SECTION 49**

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

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

6           The duty to disclose to you in writing certain material adverse facts about a  
7 property, unless disclosure of the information is prohibited by law.

8           The duty to protect your confidentiality. Unless the law requires it, the broker  
9 will not disclose your confidential information or the confidential information of  
10 other parties.

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

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

18           **SECTION 50.** 452.135 (3) of the statutes is created to read:

19           452.135 (3) A broker may not negotiate on behalf of a client unless the broker  
20 has provided to the client a written statement in the following form:

21           **BROKER DISCLOSURE TO CLIENTS**

22           Under Wisconsin law, a broker owes certain duties to all parties to a  
23 transaction:

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

**BILL**

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

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

6           The duty to disclose to you in writing certain material adverse facts about a  
7 property, unless disclosure of the information is prohibited by law.

8           The duty to protect your confidentiality. Unless the law requires it, the broker  
9 will not disclose your confidential information or the confidential information of  
10 other parties.

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 The broker must provide you with all material facts affecting the transaction, not  
17 just adverse facts.

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.

**BILL****SECTION 50**

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 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 section 452.133 of the Wisconsin Statutes.

18           **SECTION 51.** 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~~

**BILL**

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 an employee of~~  
7 ~~a broker is negotiating on behalf of more than one of the broker's clients in a~~  
8 ~~transaction, the employee may not place the interests of any client ahead of the~~  
9 ~~interests of another client in the transaction during the negotiations.~~

10 **SECTION 52.** 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 that the broker is to  
14 provide brokerage services only to that client. If the broker and a client agree that  
15 the broker is to provide brokerage services only to that client, the agency agreement  
16 ~~under s. 452.135 (1)~~ shall contain a statement of that agreement.

17 **SECTION 53.** 452.139 (1) of the statutes is amended to read:

18 **452.139 (1) FIDUCIARY COMMON LAW DUTIES OF BROKER.** The duties of a broker  
19 specified in this chapter or in rules promulgated under this chapter shall supersede  
20 ~~any fiduciary duties of a broker to a party based on duties or obligations under~~  
21 ~~common law principles of agency~~ to the extent that those common law fiduciary  
22 ~~duties or obligations~~ are inconsistent with the duties specified in this chapter or in  
23 rules promulgated under this chapter.

24 **SECTION 54.** 452.14 (3) (f) of the statutes is amended to read:

**BILL**

1 452.14 (3) (f) Accepted from any person except the broker's, salesperson's, or  
2 time-share salesperson's employer, if the broker, salesperson, or time-share  
3 salesperson is employed as a salesperson or time-share salesperson by a broker, a  
4 commission or valuable consideration as a salesperson or time-share salesperson for  
5 the performance of any act specified in this chapter or as compensation for referring  
6 a person to another broker, salesperson, or time-share salesperson or to any other  
7 person in connection with a real estate transaction;

8 **SECTION 55.** 452.14 (3) (jm) of the statutes is amended to read:

9 452.14 (3) (jm) Intentionally encouraged or discouraged any person from  
10 purchasing or renting real estate, a time share, or a business or its goodwill,  
11 inventory, or fixtures in a particular area on the basis of race. If the board finds that  
12 any broker, salesperson, or time-share salesperson has violated this paragraph, the  
13 board shall, in addition to any temporary penalty imposed under this subsection,  
14 apply the penalty provided in s. 452.17 (4);

15 **SECTION 56. Initial applicability.**

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

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

21 **SECTION 57. Effective date.**

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

24 (END)

**2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1387/3ins  
CTS:.....

1           **Insert 5-1:**  
2           452.01 (2) (a) For another a party, and for commission, money, or other thing  
3           of value, negotiates or offers or attempts to negotiate a sale, exchange, purchase, or  
4           rental of, or the granting or acceptance of an option to sell, exchange, purchase, or  
5           rent, an interest or estate in real estate, a time share, or a business or its goodwill,  
6           inventory, or fixtures, whether or not the business includes real property. ✓

**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.



**Barman, Mike**

---

**From:** Barman, Mike  
**Sent:** Tuesday, May 24, 2005 10:58 AM  
**To:** Rep.Wieckert  
**Cc:** Becher, Scott  
**Subject:** Updated Wickert Report

**Importance:** High



wieckert-status  
report.doc

## Barman, Mike

---

**From:** Barman, Mike  
**Sent:** Tuesday, May 24, 2005 10:57 AM  
**To:** Rep. Wieckert  
**Cc:** Becher, Scott  
**Subject:** Requested (by Scott) Real Estate Draft



05-1387/3



05-1387/P3dn

*Mike Barman*

Mike Barman - Senior Program Asst. (PH. 608-266-3561)  
(E-Mail: [mike.barman@legis.state.wi.us](mailto:mike.barman@legis.state.wi.us)) (FAX: 608-264-6948)

State of Wisconsin  
Legislative Reference Bureau - Legal Section - Front Office  
1 East Main, Suite 200 Madison, WI 53703

## Sundberg, Christopher

---

**From:** Becher, Scott  
**Sent:** Wednesday, July 27, 2005 11:22 AM  
**To:** Sundberg, Christopher  
**Subject:** FW: Rewrite w/ Bill Black approval

Chris- FYI.. Could you please make these changes..

Scott Becher  
Rep. Wieckert

---

**From:** Staff, Rick -VP Legal Services [mailto:rickstaff@wra.org]  
**Sent:** Wednesday, July 27, 2005 11:08 AM  
**To:** Becher, Scott; Theo, Mike - VP Public Affairs; Malkasian, Bill - Pres  
**Cc:** Conrad, Debbie - Attorney; KING, KEVIN; Black, William  
**Subject:** Rewrite w/ Bill Black approval

Scott,

The attached draft was revised by myself and Bill Black. We are in agreement on all points other than the issue of how consumers respond to the designated agency relationship disclosure in the agency disclosure. The draft explains the relationship and gives the consumer the right to opt out in favor of a traditional dual agency relationship. Bill Black prefers the approach of requiring consumers to consent to the designated agency relationship and if they don't they are in a traditional dual agency relationship. It is a friendly disagreement on style but everything else is agreed upon. Mike will be in touch to talk about the political issues but I wanted to get you the draft asap so it could go over to LRB. If you could let me know who our drafter is I'll get in touch early next week and go over the changes with him or her.

Thanks much,

Rick Staff  
566-9029

<<452 rewrite editable rjs 7-26-05.doc>> <<452 rewrite editable rjs 7-26-05short.doc>>