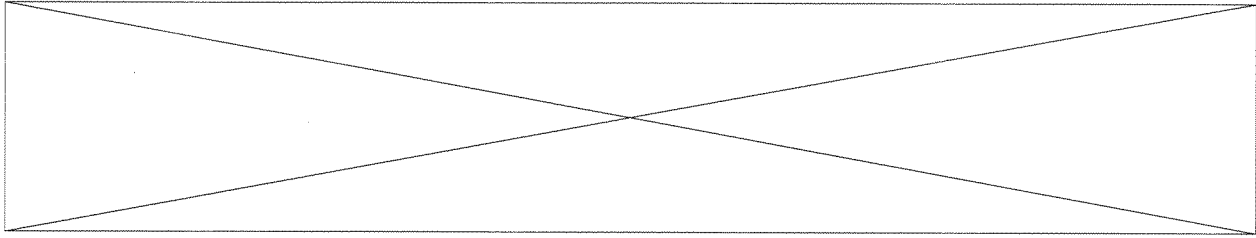


2005 Special Session
2005 - 2006 LEGISLATURE



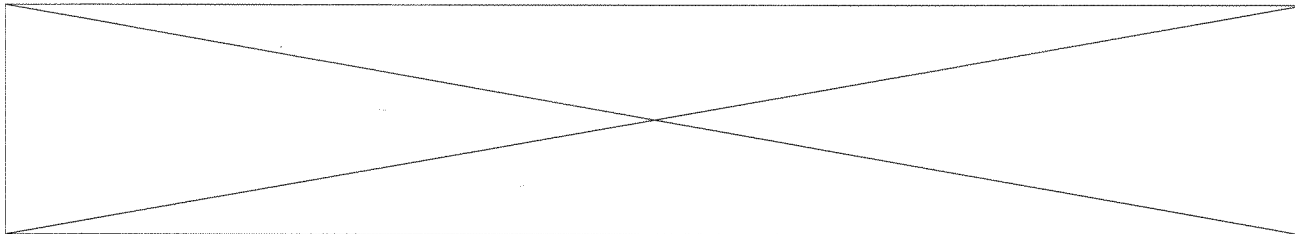
Real estate practice amendments

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

ENGROSSED 2005 BILL

AN ACT *to repeal* 452.01 (2) (d), 452.01 (2) (e), 452.01 (2) (f), 452.01 (2) (g), 452.01 (5m) (d), 452.133 (1) (g), 452.133 (3) (intro.) and 452.135 (1); *to renumber and amend* 452.133 (2) (a), 452.133 (3) (a), 452.133 (3) (b) and 452.133 (3) (c); *to consolidate, renumber and amend* 452.137 (1) and (2); *to amend* 452.01 (1m), 452.01 (2) (a), 452.01 (2) (b), 452.01 (2) (h), 452.01 (3e), 452.01 (3m), 452.01 (4d), 452.01 (4h), 452.01 (4p), 452.01 (4t), 452.01 (5m) (intro), 452.01 (5m) (a), 452.01 (5m) (c), 452.01 (5r), 452.01 (7), 452.01 (10), 452.12 (3), 452.133 (1) (intro.), 452.133 (1) (a), 452.133 (1) (b), 452.133 (1) (c), 452.133 (1) (d), 452.133 (1) (e), 452.133 (1) (f), 452.133 (2) (intro.), 452.133 (2) (b), 452.133 (2) (c), 452.138, 452.139 (1) and 452.14 (3) (f); *to repeal and recreate* 452.135 (2); and *to create* 452.01 (2) (am), 452.01 (7r), 452.132, 452.133 (2) (a) 2., 452.133 (2) (am), 452.133 (2) (d), 452.133 (4) and (5), 452.133 (6) and 452.135 (3) of the statutes; **relating to:** duties of real estate brokers and salespersons.

ENGROSSED BILL



Analysis by the Legislative Reference Bureau

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

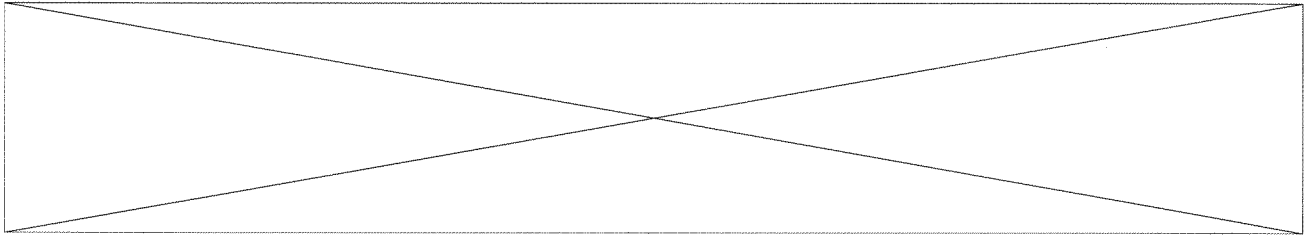
BROKERS' DUTIES TO PARTIES AND CLIENTS

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.

ENGROSSED BILL



BROKERAGE SERVICES

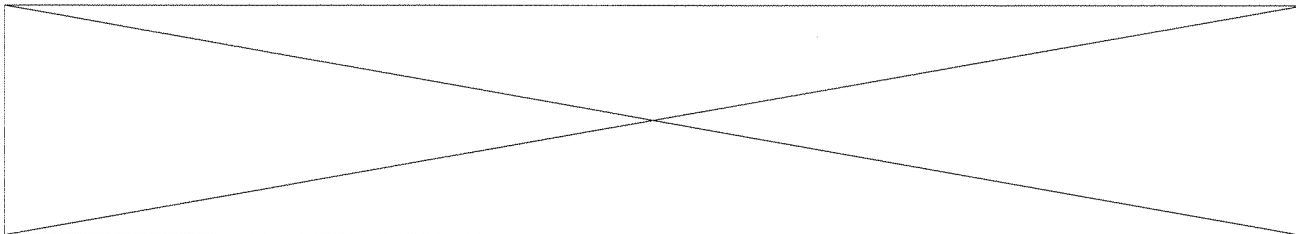
Under current law, ~~a person may not engage in brokerage services unless the person is a licensed broker.~~ Currently, brokerage services include promoting certain transactions in real estate or business opportunities. This bill specifies that brokerage services include promoting certain transactions 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~~ is acting under the authority of an agency agreement. 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 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~~ prior to the authority of an agency agreement being present, 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 is provided at the time

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of the agency agreement and 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.~~

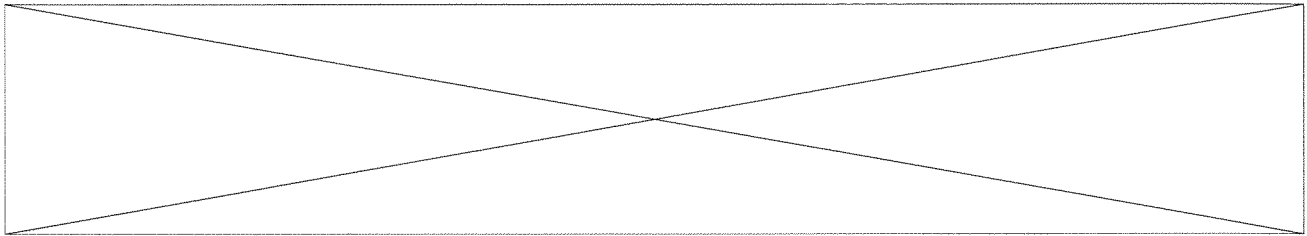
The bill also modifies the current definition of "negotiate." The bill specifies that providing information or advice relating to real estate or showing real estate to a party does not, in and of itself, constitute negotiation.

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 but 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.

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 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.

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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.

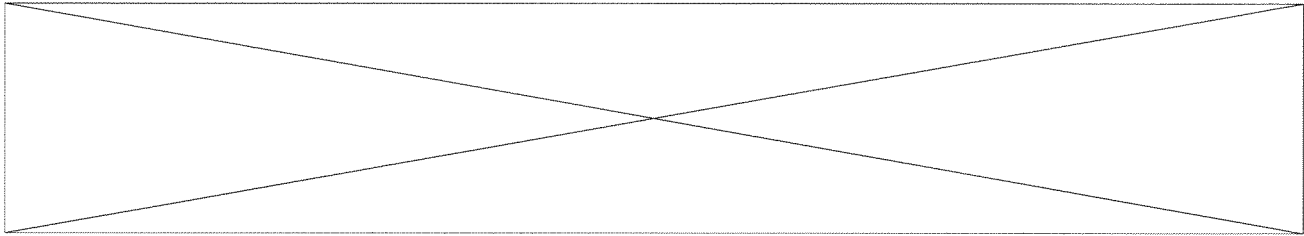
This bill deletes the requirement for written consent. Under the bill, a broker engaged in multiple representation owes each client the duties a broker owes to a client, except that if a broker's employee is negotiating on behalf of more than one of the broker's clients in a transaction, the employee 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.

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

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

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

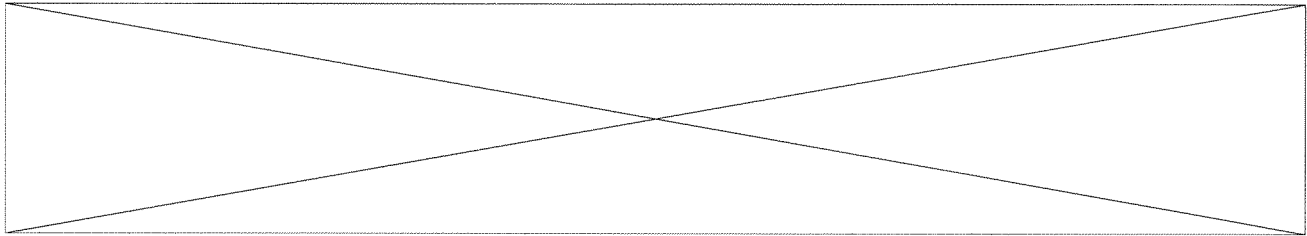
452.01 (2) (??) For another person and for commission, money, or other thing of value and based on criteria provided by that person provides advice or opinions on matters that are material to the person's current or prospective transaction and that are within the scope of the knowledge, skills, and training required for licensure under this chapter.

452.01 (2) (??) For another person and for commission, money, or other thing of value shows real estate, a business or its inventory or fixtures. For the purpose of this sub-section a showing does not include an open house or a showing exclusively for prospective rental.

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

452.01 (2) (a) For ~~another a party~~ another person, and for commission, money, or other thing of value, negotiates or offers or attempts to negotiate a sale,

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exchange, purchase, or rental of, or the granting or acceptance of an option to sell, exchange, purchase, or rent, an interest or estate in real estate, a time share, or a business or its goodwill, inventory, or fixtures, whether or not the business includes real property.

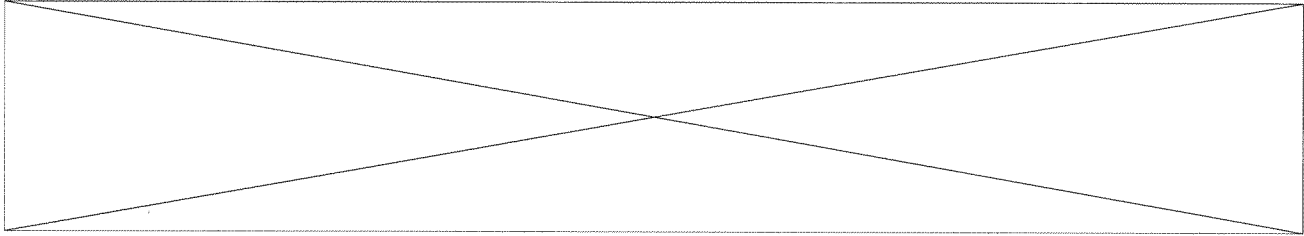
~~SECTION 3. 452.01 (2) (am) of the statutes is created to read:~~

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

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

452.01 (2) (b) Is engaged wholly or in part in the business of selling or exchanging interests or estates in real estate or business opportunities including the goodwill, inventory, or fixtures to the extent that a pattern of real estate sales or exchanges is established, ~~whether or not such real estate is owned by such person,~~ whether or not such real estate or business opportunity is

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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.

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

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

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

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

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

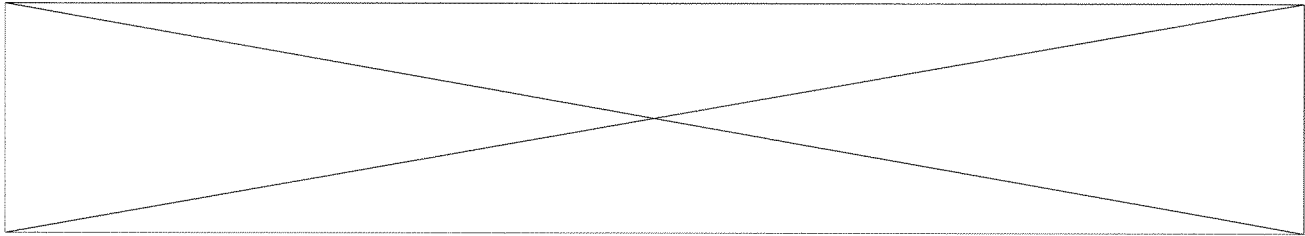
452.01 (2) (h) For another person, and for ~~a~~ commission, money, or other thing of value, promotes the sale, exchange, purchase, option, rental, or leasing of real estate, a time share, or a business opportunities or its goodwill, inventory, or fixtures, whether or not the business includes real property. This paragraph does not apply to a person who only publishes or disseminates verbatim information provided by another person.

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

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

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

ENGROSSED BILL



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

substantive?

"Designated Agency" means a multiple representation relationship in which each client of the broker receives negotiation services from the broker only from licensees employed by the broker who are not providing negotiation services to any other client of the broker in the transaction.

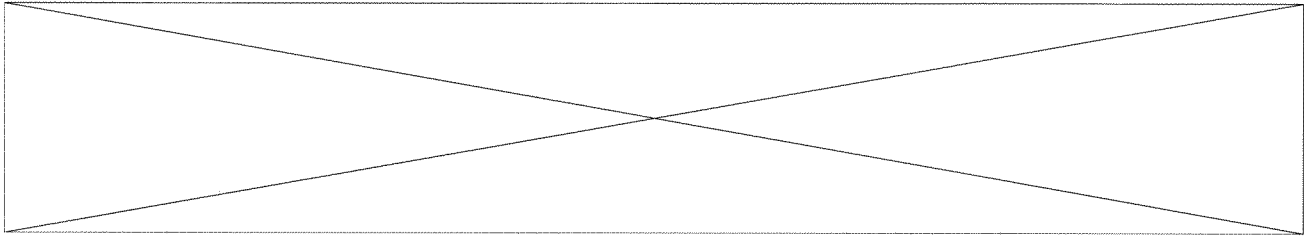
SECTION 12. 452.01 (4d) of the statutes is amended to read:

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

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

452.01 (4h) "Employee", when used in reference to an employee of a broker, ~~includes~~ means another broker, a salesperson, or a time-share salesperson

ENGROSSED BILL



who provides brokerage services to the ~~broker~~ broker's clients and customers on behalf of the broker and under the broker's supervision, including a broker, salesperson, or time-share salesperson engaged by the broker as an independent contractor.

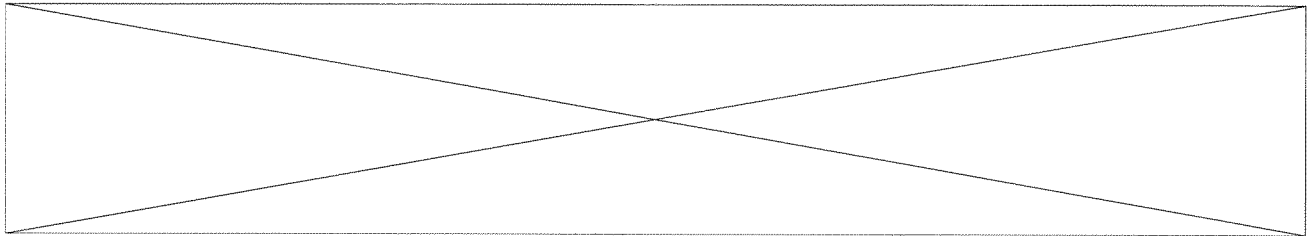
SECTION 14. 452.01 (4p) of the statutes is amended to read:

452.01 (4p) "Employer^{2,3}," when used in reference to a broker who is the employer of another broker, a salesperson, or a time-share salesperson, ~~includes~~ means a broker who engages the services of another broker, a salesperson, or a time-share salesperson ~~who provides services to the broker to provide brokerage services to the broker's clients and customers on behalf of the broker and under the broker's supervision, including a broker who engages the services of another broker, salesperson, or time-share salesperson~~ as an independent contractor.

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

452.01 (4t) "Employment^{2,3}," when used in reference to a broker's employment of another broker, a salesperson, or a time-share salesperson, ~~includes~~ means the state of ~~providing~~ being engaged by a broker to provide services to the broker by the other broker's clients and customers on behalf of the broker and under the broker's supervision, including being engaged by the

ENGROSSED BILL



employing broker, ~~the salesperson or the time-share salesperson~~ as an independent contractor.

“Multiple Representation Relationship” means a situation in which a broker has an agency agreement with more than one client who are a parties in the same transaction.

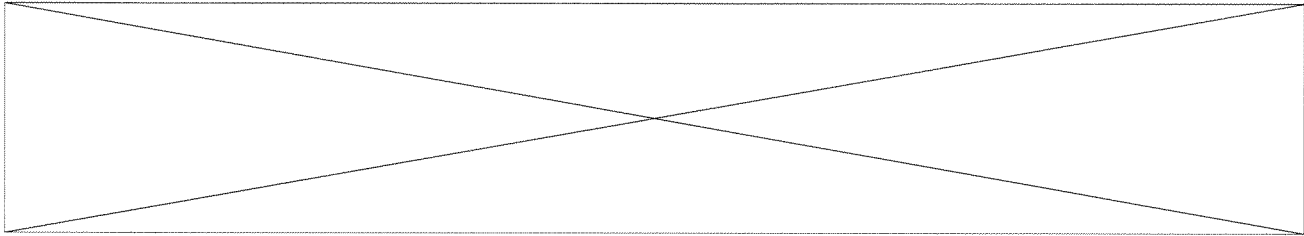
SECTION 16. 452.01 (5m) (intro) of the statutes is amended to read:

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

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

452.01 (5m) (a) ~~Facilitating~~ Acting as an intermediary by facilitating or participating in ~~the parties’ discussion of the terms of a contract or agreement concerning~~ communications between parties related to the parties’ interests in a transaction. In this paragraph, providing advice or opinions on matters that are material to the person’s current or prospective transaction information and advice to a party on real estate matters or showing a party real estate does not, in and of

ENGROSSED BILL



itself, constitute acting as an intermediary by facilitating or participating communications between parties.

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

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

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

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

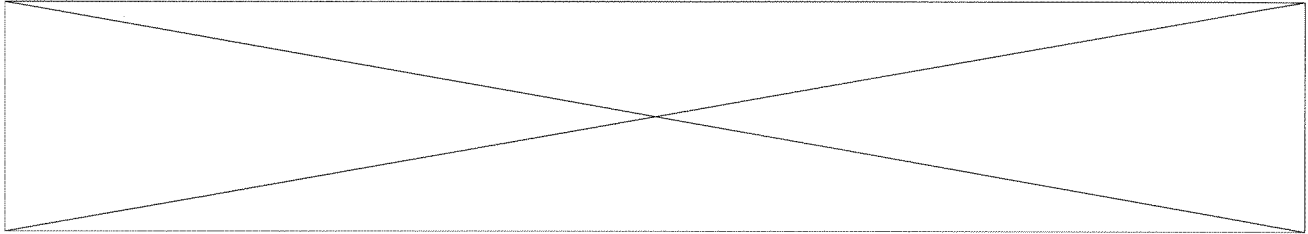
452.01 (5r) "Party" means a person seeking to ~~sell, exchange, buy or rent an interest in real estate, a business or a business opportunity.~~ "Party" includes a ~~person who seeks to grant or accept an option to buy, sell or rent an interest in real estate, a business or a business opportunity~~ engage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

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

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

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

ENGROSSED BILL



✓ 452.01 (7r) "Subagent" means a broker who is engaged by another broker known as the principal broker to provide brokerage services in a transaction, but who is not the other principal broker's employee.

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

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

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

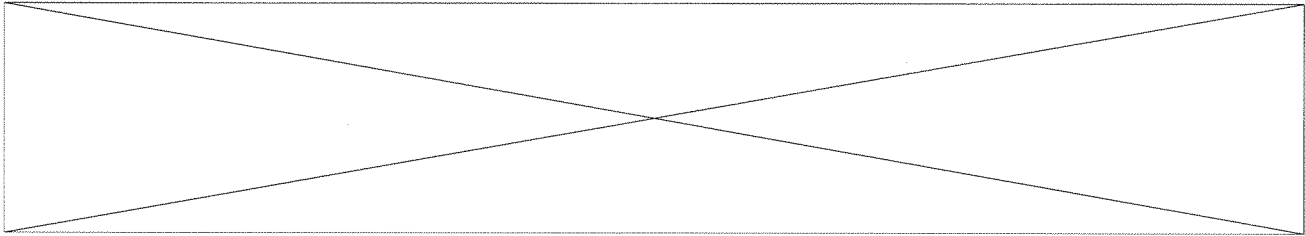
✓ 452.12 (3) BROKER'S LIABILITY FOR ACTS OF EMPLOYEES. Each broker shall supervise, and is responsible for, the acts of, brokerage services provided on behalf of the broker by any broker, salesperson, or time-share salesperson employed by who is an employee of the broker, but a broker is not required 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.

SECTION 25. 452.132 of the statutes is created to read:

452.132 ~~Brokerage services; authorization; limitations.~~ A broker may provide brokerage services to a party who is not the broker's client and who is not

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ENGROSSED BILL



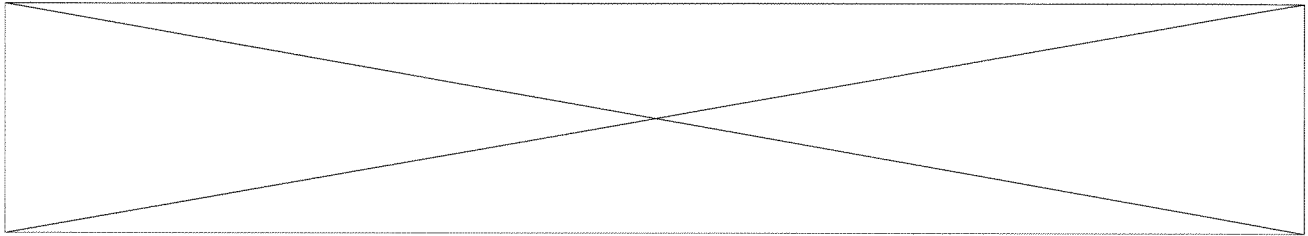
~~a client of another broker who has engaged the broker to provide brokerage services as a subagent, except that a broker may not negotiate on behalf of a party to a transaction who is not the broker's client unless all of the following apply:~~

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

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

452.135(1) A broker may provide brokerage services to any person without an agency agreement. A broker may not negotiate on behalf of a party to a transaction who is not the broker's client unless the broker has provided to the party the written agency disclosure statement under sub-section (2). If a subagent accepts an offer of subagency from a principal broker the subagent, if the written agency disclosure under sub-section (2) has not already been given, shall provide any non-client person receiving brokerage services within the scope of the subagency agreement the agency disclosure required under sub-section (2) prior to providing additional brokerage services to the person. No later than the time a broker enters into an agency agreement with a client the written agency disclosure required under sub-section (3) shall be provided to the client.

ENGROSSED BILL



SECTION 26. 452.133 (1) (intro.) of the statutes is amended to read:

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

SECTION 27. 452.133 (1) (a) of the statutes is amended to read:

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

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

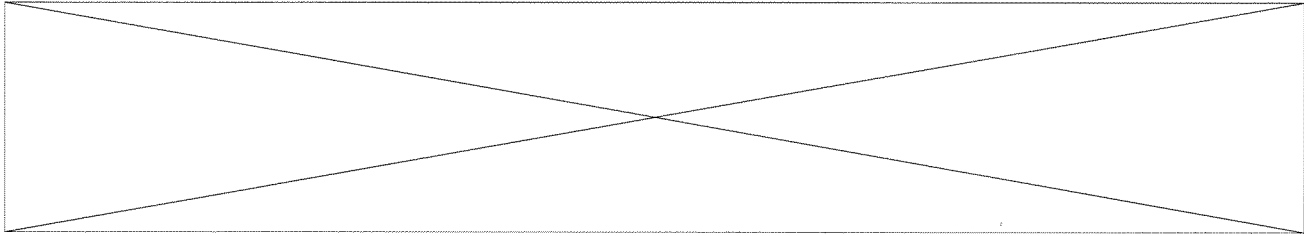
452.133 (1) (b) ~~Diligently exercise~~ The duty to provide brokerage services
with reasonable skill and care ~~in providing brokerage services to all parties.~~

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

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

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

ENGROSSED BILL



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

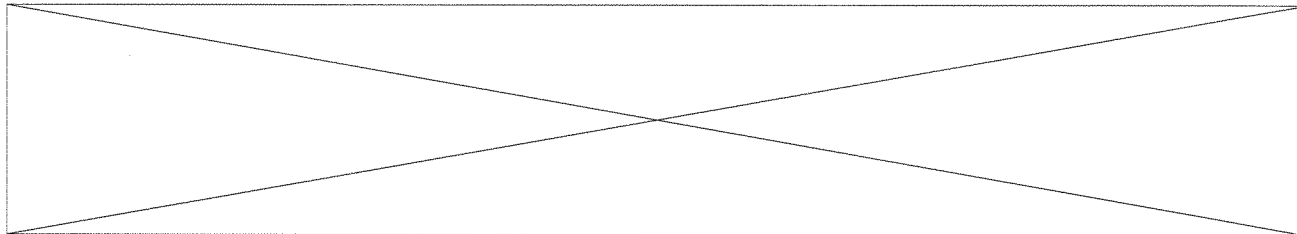
SECTION 31. 452.133 (1) (e) of the statutes is amended to read:

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

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

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

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SECTION 33. 452.133 (1) (g) of the statutes is repealed.

SECTION 34. 452.133 (2) (intro.) of the statutes is amended to read:

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

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

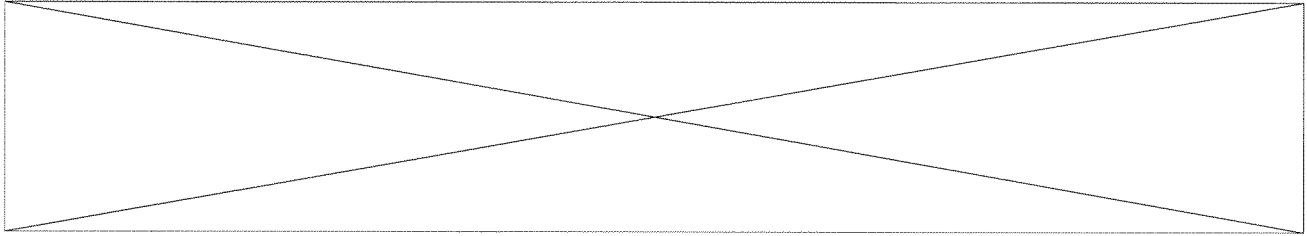
452.133 (2) (a) (intro.) ~~Loyally~~ The duty to loyally represent the client's interests by placing not doing any of the following:

1. P1. Placing the client's broker's interests ahead of the client's broker's interests of any other party, unless loyalty to a client violates the broker's duties under sub. (1) or s. 452.137 (2).

SECTION 36. 452.133 (2) (a) 2. of the statutes is created to read:

452.133 (2) (a) 2. Placing a client's interests ahead of non-clients in the transaction by not dDisclosisclosing to partiespersons in the transaction who are not the other than the broker's clients information or advice the disclosure of which is contrary to the client's interests of one of the broker's clients, unless the disclosure is required by law.

ENGROSSED BILL



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

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

SECTION 38. 452.133 (2) (b) of the statutes is amended to read:

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

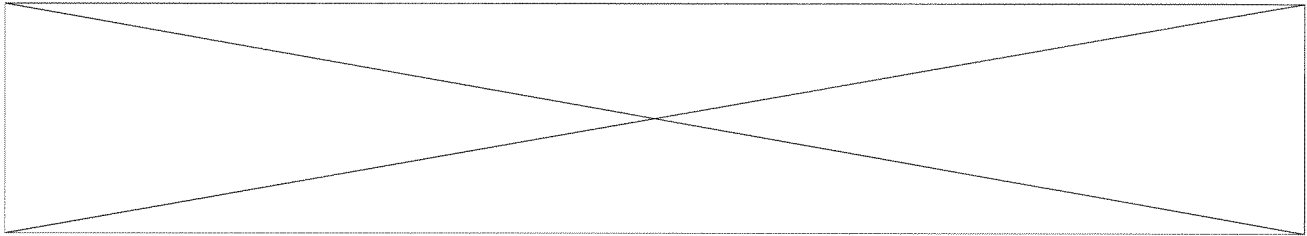
SECTION 39. 452.133 (2) (c) of the statutes is amended to read:

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

SECTION 40. 452.133 (2) (d) of the statutes is created to read:

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

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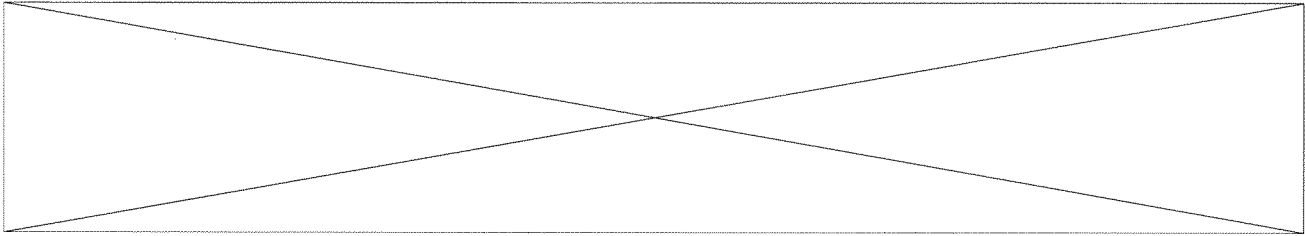


452.133(3) Duties To Clients In Negotiations In Multiple

Representation Relationships

1. Multiple Representation With Designated Agency. If a broker is engaged in a designated agency relationship in a transaction each salesperson may provide the client for whom they are negotiating information, opinions and advice to assist their client in the negotiations whether or not the information, opinions or advice favor the interests of one client over another. Each client in a designated agency relationship shall be given written notice prior to the execution of the client's agency agreement of the client's ability to reject a designated agency relationship at any time.
2. Multiple Representation Without Designated Agency. If one or more clients in a transaction has rejected the a designated agency relationship or one licensee of a employed by a broker is negotiating on behalf of more than one of the broker's clients in a transaction, neither the broker nor any of the broker's employed licensees may place the interests of any client ahead of the interests of another client during the negotiations.

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SECTION 41. ~~452.133 (3) (intro.) of the statutes is repealed.~~renumbered
452.133(4)

SECTION 42. ~~452.133 (3) (a) of the statutes is renumbered 452.14 (3) (o) and~~
amended to read:

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

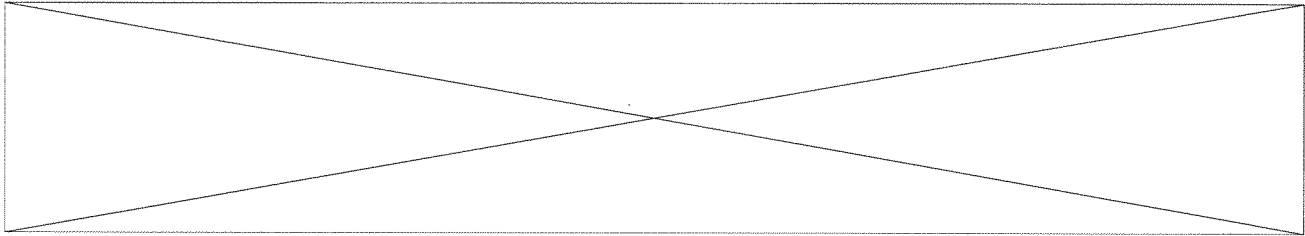
SECTION 43. ~~452.133 (3) (b) of the statutes is renumbered 452.14 (3) (p) and~~
amended to read:

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

SECTION 44. ~~452.133 (3) (c) of the statutes is renumbered 452.14 (3) (q) and~~
amended to read:

~~452.14 (3) (q) Except as provided in s. 452.19, refer, recommend or suggest~~
~~referred, recommended, or suggested to a party to the transaction the services of~~
~~an individual or entity from which the broker may receive~~ might have received
~~compensation for a referral or in which the broker has had an interest, unless the~~

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~~broker has disclosed the fact that he or she may receive the broker might have received compensation or has disclosed his or her interest in the individual or entity providing the services.~~

SECTION 45. 452.133 (45) and (56) of the statutes are created to read:

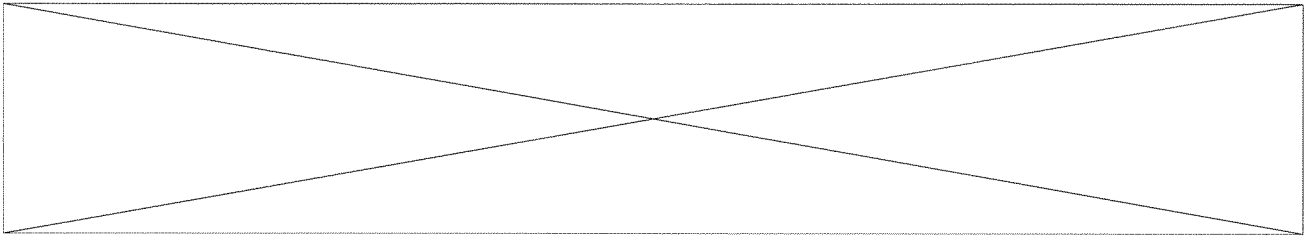
452.133 (45) SUBAGENT'S DUTIES. (a) A broker who has been engaged by another broker to provide brokerage services in a transaction as a subagent owes all parties the duties specified in sub. (1) but does not owe to the engaging client(s) of the principal broker in the transaction 's client the duties under sub. (2).

~~(2) and~~ The subagent may not do any of the following:

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

2. Provide advice or opinions to parties in the transaction if providing the advice or opinions is contrary to the interests of the client of another broker who has engaged the ~~broker~~ subagent to provide brokerage services for the ~~engaging~~ principal broker's client ~~broker~~ in the transaction as a subagent, unless required by law.

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

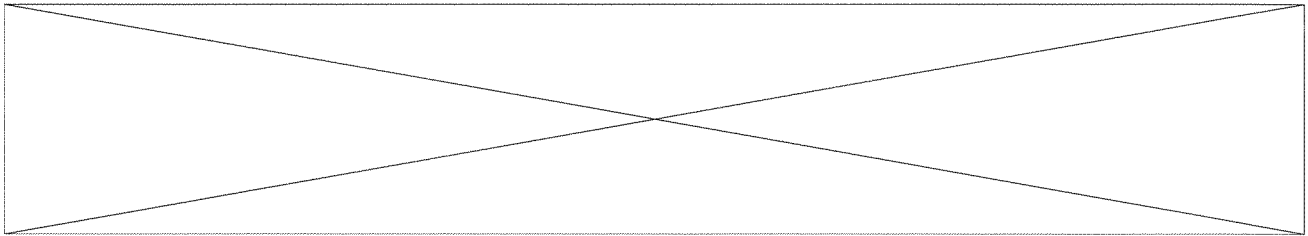
(5) DUTIES WITHOUT AGENCY OR SUBAGENCY RELATIONSHIP. If a broker is providing brokerage services to a party person in a transaction in which no party is the broker's client and no party is the client of another broker who has engaged the broker to provide brokerage services for the broker in the transaction as a subagent, without an agency agreement with the person or a subagency relationship with another broker in a transaction in which the person is a party or a prospective party then all of the following apply:

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

(b) The broker owes the party the duties under (1) and, in addition, may not, unless required by law, provide advice or opinions related to the brokerage services being provided to any the party person if providing the advice or opinions is contrary to the interests of the person or any other party party to a current or prospective transaction with the person receiving the brokerage services.

SECTION 46. 452.133 (6) of the statutes is created to read:

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

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

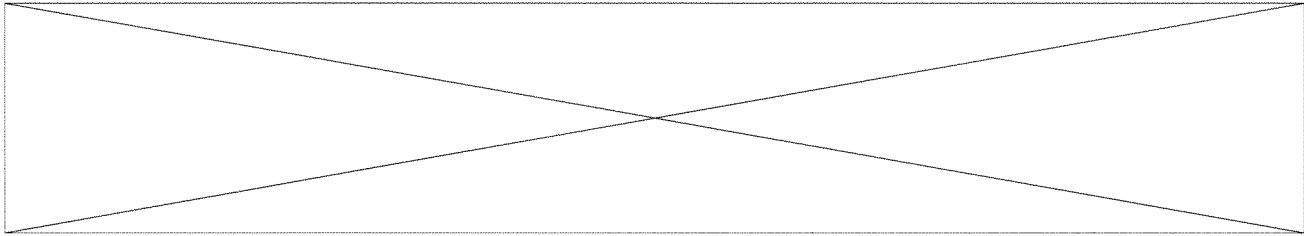
(b) If the client intends to waive the broker's duty under sub. (2) (d), a copy of the text of that paragraph and s. 452.01 (5m) and (5p), and a statement that, as a consequence of the client's waiver, that broker will have no legal duty to perform the duty imposed by sub. (2) (d).

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

SECTION 47. 452.135 (1) of the statutes is repealed.

SECTION 48. 452.135 (2) of the statutes is repealed and recreated to read:

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

BROKER DISCLOSURE TO CUSTOMERS

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

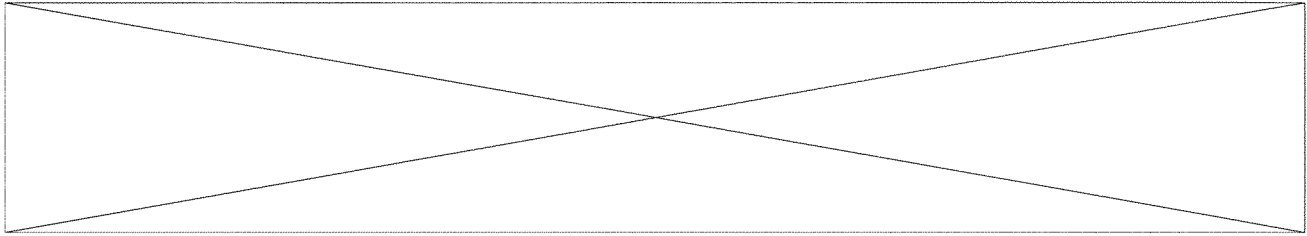
The duty to provide brokerage services to you fairly and honestly.

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

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

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

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

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

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

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

SECTION 49. 452.135 (3) of the statutes is created to read:

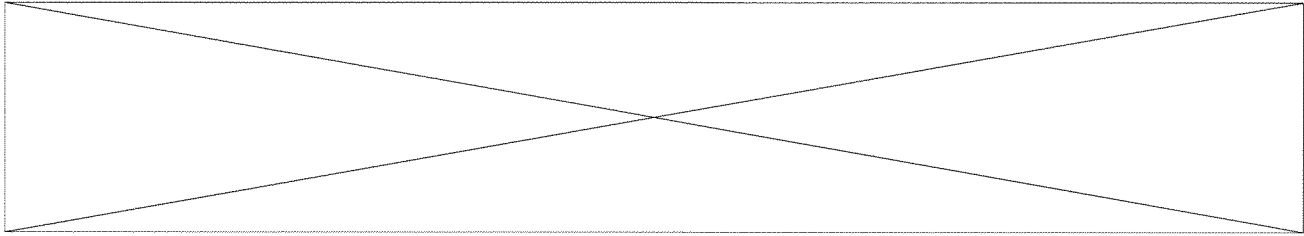
452.135 (3) ~~A broker may not negotiate on behalf of a client unless the broker has provided to the client a written statement in the following form:~~

BROKER DISCLOSURE TO CLIENTS

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

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

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

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

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

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

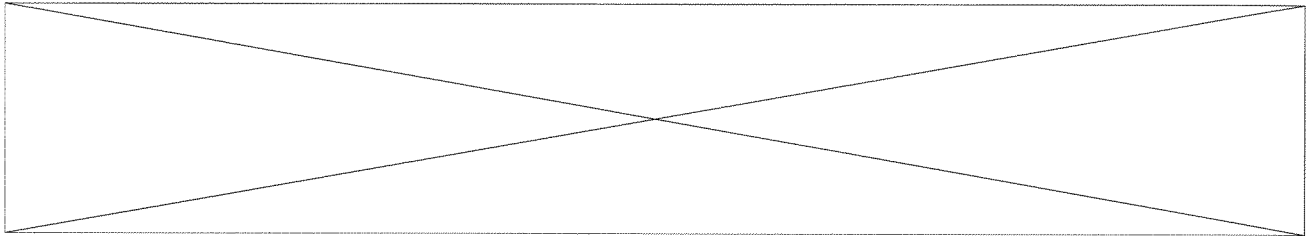
The duty to safeguard trust funds and other property the broker holds.

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

The broker will provide, at your request, information and advice on real estate matters that affect your transaction, unless you release the broker from this duty. The broker must provide you with all material facts affecting the transaction, not just adverse facts.

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

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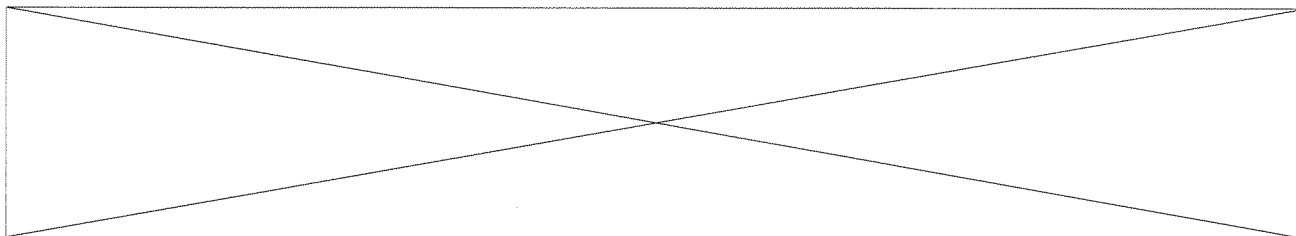
The broker will negotiate for you, unless you release the broker from this duty.

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

If you become involved in a transaction in which another party is also the broker's client, different duties may apply. If different salespersons employed by the broker negotiate on behalf of you and the other client, the broker's duties will remain the same. Each salesperson will provide "their" client information, opinions and advice to assist "their" client in the negotiations although confidential information cannot be revealed to another client. If you do not wish to participate in this type of multiple representation relationship please indicate this below by checking "I do not wish to participate in dual representation transactions." below. If you check "I do not wish to participate in dual representation transactions. " neither you or any other party in the transaction will receive opinions or advice from the broker which may favor the interests of either you or the other party.

I do not wish to participate in dual representation transactions.

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✓ ~~If the same salesperson negotiates on behalf of you and the other client, the salesperson may not favor the interests of either client.~~

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

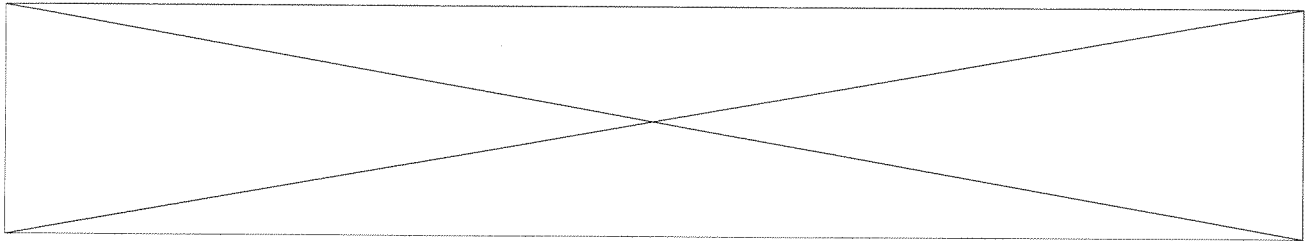
Please review this information carefully. A broker or salesperson can answer your questions about brokerage services, but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax advisor, or home inspector.

This disclosure is required by s. 452.135 of the Wisconsin Statutes and is for information only. It is a plain-language summary of a broker's duties to you under section 452.133(3) of the Wisconsin Statutes.

SECTION 50. 452.137 (1) and (2) of the statutes are consolidated, renumbered 452.137 (1m) and amended to read:

452.137 (1m) ~~No~~ A broker ~~may provide~~ who is providing brokerage services to more than one client of the broker in a ~~transaction~~multiple representation

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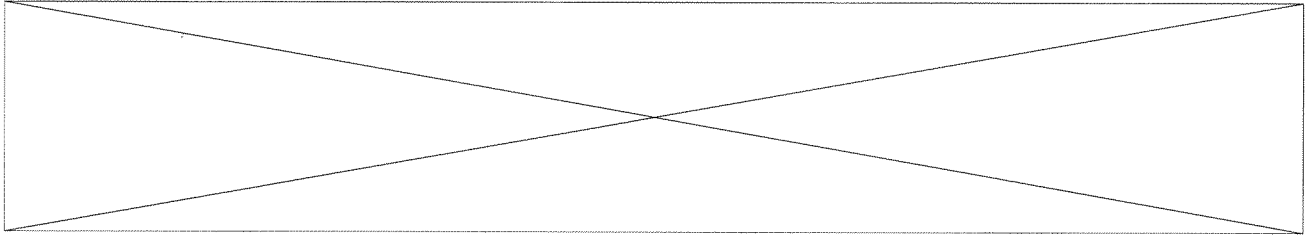


~~relationship without an agency agreement under s. 452.135 (1) with each client and a written consent to multiple representation. The consent to multiple representation shall contain a statement of the broker's duties under s. 452.133 (1) to a party to the transaction who is not a client, a statement of the broker's duties to the client under s. 452.133 (2), and a statement that the clients understand the broker's duties and consent to the broker providing brokerage services to more than one client. The consent to multiple representation may contain additional disclosures by the broker or additional agreements between the broker and the clients that do not violate any duty of a broker under this chapter.~~

~~(2) A broker who represents more than one client in a transaction owes to each client the duties specified in s. 452.133 (2) to each client but (1) and (2). However, a licensee employed by the broker may not place the interests of any client ahead of the interests of another client in the transaction during the negotiations if any client of the broker in the transaction has rejected designated agency or except that if a single licensee employee employed by the broker is negotiating on behalf of more than one of the broker's clients in a transaction, the employee licensee may not place the interests of any client ahead of the interests of another client in the transaction during the negotiations.~~

SECTION 51. 452.138 of the statutes is amended to read:

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

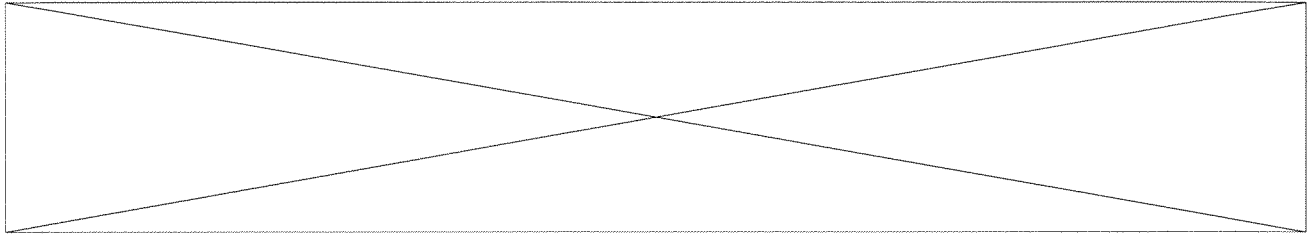
SECTION 52. 452.139 (1) of the statutes is amended to read:

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

SECTION 53. 452.14 (3) (f) of the statutes is amended to read:

452.14 (3) (f) Accepted from any person except the broker's, salesperson's, or time-share salesperson's employer, if the broker, salesperson, or time-share salesperson is employed as a salesperson or time-share salesperson by a broker, a commission or valuable consideration as a salesperson or time-share salesperson for the performance of any act specified in this chapter or as compensation for

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referring a person to another broker, salesperson, or time-share salesperson or to any other person in connection with a ~~real-estate~~ transaction;

SECTION 54. Initial applicability.

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

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

SECTION 55. Effective date.

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

(END)

Sundberg, Christopher

From: Staff, Rick -VP Legal Services [rickstaff@wra.org]
Sent: Wednesday, August 10, 2005 2:58 PM
To: Sundberg, Christopher
Subject: RE: LRB-1387/3 analysis

The bill amends section 452.01 (5m) (c) which is the definition of one element of negotiation. This element of negotiation, as amended, continues as a duty owed to clients (a subset of parties). In summary, the duty remains a duty under Chapter 452, amended as to the scope of the duty and the parties to whom the duty is owed.

[Staff, Rick -VP Legal Services]

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

From: Sundberg, Christopher [mailto:Christopher.Sundberg@legis.state.wi.us]
Sent: Wednesday, August 10, 2005 2:24 PM
To: Staff, Rick -VP Legal Services
Cc: Becher, Scott
Subject: LRB-1387/3 analysis

Before the next version of the draft goes out, I'd like to give you a chance to explain your position about inaccuracies and negative generalizations in the analysis of LRB-1387/3. In particular, how does the bill "amend" a broker's duty, when negotiating on behalf of a party, to present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals? The bill repeals s. 452.133 (1) (g), which is the source of the duty. Is this correct? If so, does another section of the bill restore a portion of this particular duty?

From: Staff, Rick -VP Legal Services [mailto:rickstaff@wra.org]
Sent: Monday, May 16, 2005 2:17 PM
To: 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

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.

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.

Richard Staff

Vice President

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

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

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

From: Becher, Scott [<mailto:Scott.Becher@legis.state.wi.us>]
Sent: Monday, May 16, 2005 10:21 AM
To: rickstaff@wra.org

Subject: Do we have a winner

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