



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1387/3

CTS:lmk&wlj:eh

In: 8/15/05
Dues 8/19/05, if possible

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STAYS

2005 BILL

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1 AN ACT *to repeal* 452.01 (2) (d), 452.01 (2) (e), 452.01 (2) (f), 452.01 (2) (g), 452.01
2 (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), 452.133 (1)
8 (intro.), 452.133 (1) (a), 452.133 (1) (b), 452.133 (1) (c), 452.133 (1) (d), 452.133
9 (1) (e), 452.133 (1) (f), 452.133 (2) (intro.), 452.133 (2) (b), 452.133 (2) (c),
10 452.138, 452.139 (1) and 452.14 (3) (f); *to repeal and recreate* 452.135 (2); and
11 *to create* 452.01 (2) (am), 452.01 (7r), 452.132, 452.133 (2) (a) 2., 452.133 (2)
12 (am), 452.133 (2) (d), 452.133 (4) and (5), 452.133 (6) and 452.135 (3) of the
13 statutes; **relating to:** duties of real estate brokers and salespersons.

Analysis by the Legislative Reference Bureau

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

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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.

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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.

the broker's duty to negotiate

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 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.

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person receiving brokerage services from the broker

person who is not the broker's client

any person, regardless of whether the broker and the person have entered into an agency agreement

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 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.

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.

not later than the time the broker enters into an agency agreement with the client

Under the bill,

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Principal

subagent's

principal

the principal broker's

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4- (CS) TRANSACTIONS
transaction

MULTIPLE REPRESENTATION

given written consent

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:

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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.

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

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, or the granting or acceptance of an option to sell, exchange, purchase, or

plain text

person

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SECTION 2

and based on criteria provided by the person

1 rent, an interest or estate in real estate, a time share, or a business or its goodwill,
2 inventory, or fixtures, whether or not the business includes real property.

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

4 452.01 (2) (am) For a party, *and for another person* and for commission, money, or other thing of value,
5 provides information and *or opinions* advice on matters that are material to the party's
6 transaction and that are within the scope of the knowledge, skills, and training
7 required under s. 452.09 (2) (a) and (3) (a). In this paragraph, providing information
8 and advice includes showing a party real estate, a time share, or a business or its
9 inventory or fixtures, except that providing information and advice does not include
10 such a showing to a party who is seeking to engage in a rental transaction.

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

12 452.01 (2) (b) Is engaged wholly or in part in the business of selling or
13 exchanging interests or estates in real estate to the *the person owns the* extent that a pattern of real
14 estate sales *or businesses* or exchanges is established, *plain text* whether or not such real estate is owned by
15 such person. Five sales *or businesses* or exchanges in one year or 10 sales *or businesses* or exchanges in 5 years
16 is presumptive evidence of a pattern of sales *or businesses* or exchanges.

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

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

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

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

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

22 452.01 (2) (h) For another, *PERSON* and for a commission, money, or other thing of
23 value, promotes the sale, exchange, purchase, option, rental, or leasing of real estate,
24 a time share, or a business opportunities or its goodwill, inventory, or fixtures,
25 whether or not the business includes real property. This paragraph does not apply

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plain text

or businesses including businesses goodwill inventory or fixtures

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

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

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

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

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

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

10 452.01 (4d) "Employer," when used in reference to a broker employing another
11 broker, a salesperson, or a time-share salesperson, includes means engaging the
12 services of another broker, a salesperson, or a time-share salesperson who provides
13 to provide brokerage services to the broker broker's clients and customers on behalf
14 of the broker and under the broker's supervision, including engaging a broker,
15 salesperson, or time-share salesperson as an independent contractor.

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

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

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

23 452.01 (4p) "Employer," when used in reference to a broker who is the
24 employer of another broker, a salesperson, or a time-share salesperson, includes
25 means a broker who engages the services of another broker, a salesperson, or a

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

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

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

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

13 452.01 (5m) (intro) "Negotiate" means to act as an intermediary between the
14 parties to a transaction provide to a party assistance within the scope of the
15 knowledge, skills, and training required under s. 452.09 (2) (a) and (3) (a) in
16 developing a proposal or agreement relating to a transaction, including doing any of
17 the following:

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

19 452.01 (5m) (a) Facilitating Acting as an intermediary by facilitating or
20 participating in the parties' discussion of the terms of a contract or agreement
21 concerning communications between parties related to the parties' interests in a
22 transaction. In this paragraph, providing information and advice to a party on real
23 estate matters, or showing a party real estate does not, in and of itself, constitute
24 acting as an intermediary by facilitating or participating communications between
25 parties.

or opinions

in

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

2 452.01 (5m) (c) Presenting to a party the proposals of other parties to the
3 transaction and ~~informing the party receiving a proposal of the advantages and~~
4 disadvantages giving the party a general explanation of the provisions of the
5 proposal.

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

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

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

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

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

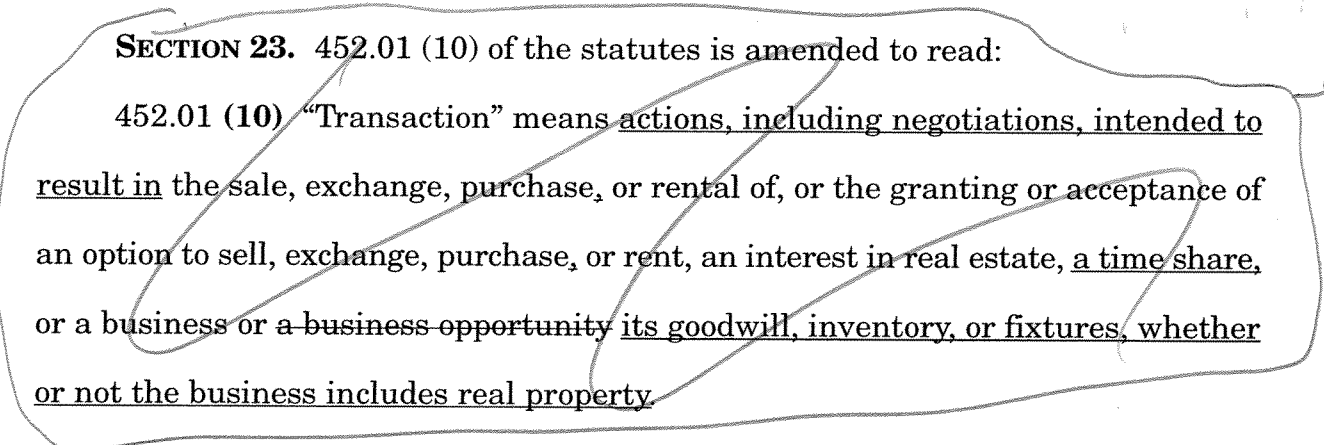
16 **SECTION 22.** 452.01 (7r) of the statutes is created to read:

17 452.01 (7r) "Subagent" means a broker who is engaged by another broker to
18 provide brokerage services in a transaction, but who is not the other broker's
19 employee.

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

21 452.01 (10) "Transaction" means actions, including negotiations, intended to
22 result in the sale, exchange, purchase, or rental of, or the granting or acceptance of
23 an option to sell, exchange, purchase, or rent, an interest in real estate, a time share,
24 or a business or a business opportunity its goodwill, inventory, or fixtures, whether
25 or not the business includes real property.

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who is an employee of

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

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

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

9 **452.132 Brokerage services; authorization; limitations.** A broker may
10 provide brokerage services to a party who is not the broker's client and who is not a
11 client of another broker who has engaged the broker to provide brokerage services
12 as a subagent, except that a broker may not negotiate on behalf of a party to a
13 transaction who is not the broker's client unless all of the following apply:

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

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

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

20 452.133 (1) **BROKER'S DUTIES TO ALL PARTIES TO A TRANSACTION.** (intro.) ~~In A~~
21 broker who is providing brokerage services to a party to a transaction, a broker shall
22 do all of the following owes all of the following duties to the party:
PERSONS IN
person in
person

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

24 452.133 (1) (a) Provide The duty to provide brokerage services to all parties to
25 the transaction honestly, and fairly and in good faith.

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

2 452.133 (1) (b) ~~Diligently exercise~~ The duty to provide brokerage services with
3 reasonable skill and care ~~in providing brokerage services to all parties.~~

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

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

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

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

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

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

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

24 452.133 (1) (f) ~~Account for all~~ The duty to safeguard trust funds and other
25 property ~~coming into the possession of a~~ held by the broker that belongs to any party

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

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

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

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

9 **SECTION 35.** 452.133 (2) (a) of the statutes is renumbered 452.133 (2) (a) (intro.)
10 amended to read: *and additional*

11 452.133 (2) (a) (intro.) Loyally The duty to loyally represent the client's
12 interests by placing not doing any of the following: *brokers*

13 1. Placing the client's broker's interests ahead of the client's interests of any
14 other party, unless loyalty to a client violates the broker's duties under sub. (1) or s.
15 452.137 (2). *plain text* *INS 10-17* *all*

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

17 452.133 (2) (a) 2. Disclosing to parties in the transaction who are not the
18 broker's clients information or advice the disclosure of which is contrary to the
19 client's interests, unless disclosure is required by law. *persons* *other than* *the*

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

21 452.133 (2) (am) The duty to provide, when requested by the client, information
22 and advice to the client on matters that are material to the client's transaction and
23 that are within the scope of the knowledge, skills, and training required under s.
24 452.09 (2) (a) and (3) (a). These matters include the real estate market and
25 contractual, legal, and regulatory issues.

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

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

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

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

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

13 452.133 (2) (d) The duty to negotiate on behalf of the client.

14 **SECTION 41.** 452.133 (3) (intro.) of the statutes is repealed.

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

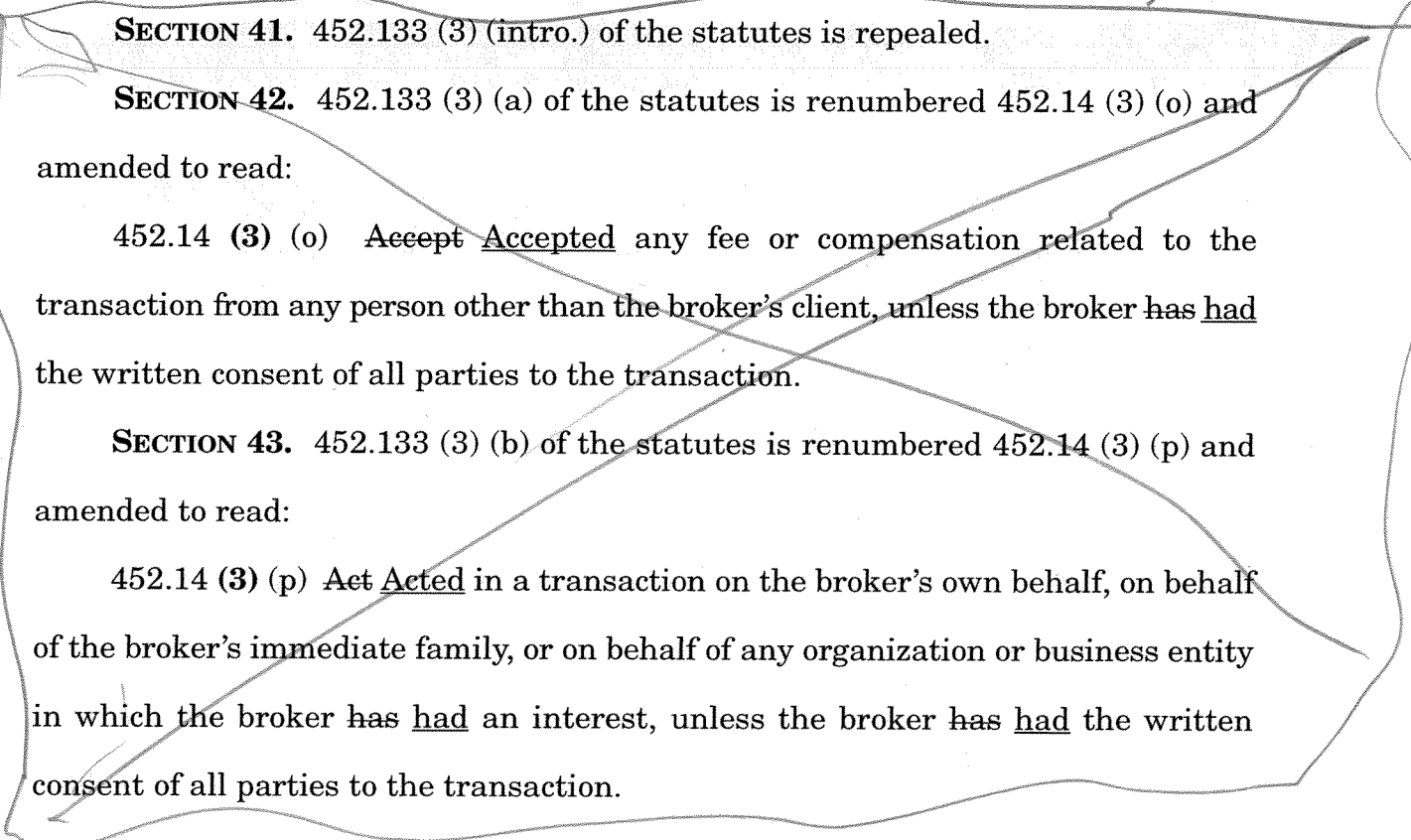
17 452.14 (3) (o) ~~Accept~~ Accepted any fee or compensation related to the
18 transaction from any person other than the broker's client, unless the broker has had
19 the written consent of all parties to the transaction.

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

22 452.14 (3) (p) ~~Act~~ Acted in a transaction on the broker's own behalf, on behalf
23 of the broker's immediate family, or on behalf of any organization or business entity
24 in which the broker has had an interest, unless the broker has had the written
25 consent of all parties to the transaction.

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

3 452.14 (3) (q) Except as provided in s. 452.19, refer, recommend or suggest
4 referred, recommended, or suggested to a party to the transaction the services of an
5 individual or entity from which the broker may receive might have received
6 compensation for a referral or in which the broker has had an interest, unless the
7 broker has disclosed the fact that he or she may receive the broker might have
8 received compensation or has disclosed his or her interest in the individual or entity
9 providing the services.

10 SECTION 45. 452.133 (4) and (5) of the statutes are created to read: *but does not owe the principal broker's clients the duties under sub (2)*

11 452.133 (4) SUBAGENT'S DUTIES. (a) ~~A broker who has been engaged by another~~
12 ~~broker to provide brokerage services in a transaction as a subagent~~ owes all parties
13 the duties specified in sub. (1) ~~and may not do any of the following:~~ *(b) A subagent*

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

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

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

24 (5) DUTIES WITHOUT AGENCY OR SUBAGENCY RELATIONSHIP. If a broker is providing
25 brokerage services to a party in a transaction in which no party is the broker's client

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1 and no party is the client of another broker who has engaged the broker to provide
2 brokerage services for the broker in the transaction as a subagent, then all of the
3 following apply:

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

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

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

10 452.133 (6) WAIVER OF DUTIES. The duties imposed by subs. (1), (2) (a), (b), and

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

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

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

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

the person or a party to a current or prospective transaction with the person receiving the brokerage services

relating to the services of the person receiving from the broker

owes the person the duties under sub. (1) and

(am);

(2m);

duty

sub. (2) (d)

the

b

BILL

INS 15-2

1

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

2

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

3

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:

4

5

6

BROKER DISCLOSURE TO CUSTOMERS

7

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:

8

9

10

11

12

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

13

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

14

15

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.

16

17

18

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

19

20

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.

21

22

23

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

BILL

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

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

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

8 452.135 (3) A broker may not negotiate on behalf of a client unless the broker
9 has provided to the client a written statement in the following form:

10 BROKER DISCLOSURE TO CLIENTS

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

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

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

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

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

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

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

INS
16-7

a customer's
instructions

with

requested

confidential information

BILL

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

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

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

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

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

10 The broker will not place the broker's interests ahead of your interests. The

11 broker will not, unless required by law, give information or advice to other parties

12 who are not the broker's clients, if giving the information or advice is contrary to your

13 interests.

INS 17-17

14 If you become involved in a transaction in which another party is also the
15 broker's client, different duties may apply. If different salespersons employed by the

16 broker negotiate on behalf of you and the other client, the broker's duties will remain

17 the same. If the same salesperson negotiates on behalf of you and the other client,

18 the salesperson may not favor the interests of either client.

19 The broker may, with your authorization in the agency agreement, enter into

20 agreements with subagents. A subagent is another broker who works for your broker

21 by providing brokerage services for your benefit. A subagent will not put the

22 subagent's own interests ahead of your interests. A subagent will not, unless

23 required by law, provide advice or opinions to other parties if doing so is contrary to

24 your interests.

4

10

11

17

18

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24

engage other brokers

assist

the broker's persons

in your

BILL

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

4 This disclosure is required by s. 452.135 of the Wisconsin Statutes and is for
5 information only. It is a plain-language summary of a broker's duties to you under
6 section 452.133 of the Wisconsin Statutes. *(1), (2), (2m), and (6)*

7 **SECTION 50.** 452.137 (1) and (2) of the statutes are consolidated, renumbered
8 452.137 (1m) and amended to read:

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

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

INS
18-9

2 a client

BILL

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

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

8 **452.139 (1) FIDUCIARY COMMON LAW DUTIES OF BROKER.** The duties of a broker
 9 specified in this chapter or in rules promulgated under this chapter shall supersede
 10 ~~any fiduciary duties of a broker to a party based on~~ duties or obligations under
 11 ~~common law principles of agency to the extent that those common law fiduciary~~
 12 ~~duties or obligations~~ are inconsistent with the duties specified in this chapter or in
 13 rules promulgated under this chapter.

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

15 **452.14 (3) (f)** Accepted from any person except the broker's, salesperson's, or
 16 time-share salesperson's employer, if the broker, salesperson, or time-share
 17 salesperson is employed as a salesperson or time-share salesperson by a broker, a
 18 commission or valuable consideration as a salesperson or time-share salesperson for
 19 the performance of any act specified in this chapter or as compensation for referring
 20 a person to another broker, salesperson, or time-share salesperson or to any other
 21 person in connection with a real-estate transaction;

22 **SECTION 54. Initial applicability.**

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

*(1) (intro.), (a), (b), (c), (d), (e), (f), (g), and
 (2) (intro.), (a), (b), (c), and (d), (4), (5), and (6)
 the renumbering and amendment of section
 452.133 (2)(a) of the statutes, and
 and the creation of section 452.133
 (2)(a) 2. of the statutes*

1 **Insert A-1:**

Ⓝ
No ff

Under the bill, a broker satisfies this duty by doing the following: 1) placing the client's interests ahead of the broker's interests; and 2) placing the client's interests ahead of the interests of nonclients in the transaction by not disclosing information and advice to nonclients if disclosure is contrary to the client's interests. *

2 **Insert A-2:**

✓
The bill also modifies the current definition of "negotiate." The bill specifies that providing advice or opinions that are material to a person's transaction or showing real estate to a party does not, in and of itself, constitute negotiation.

3 **Insert A-3:**

This bill deletes the requirement for written consent. Under the bill, if a broker provides negotiation services to each client in a multiple representation transaction only through an employee who is not negotiating on behalf of any other client in the transaction, the employee may provide information, opinions, and advice, even if the information, opinions, or advice favor the interests of one of the clients in the transaction. A client may decline to receive negotiation services in this manner. If a client declines, or if an employee of a broker provides negotiation services to more than one client in a transaction, neither the broker nor any of the broker's employees may place the interests of any client ahead of the interests of another client in the negotiations.

4 **Insert 4-5:**

5 **SECTION 4-452.01 (2) (bm)** of the statutes is created to read:

Ⓝ
6 452.01 (2) (bm) For another person and for commission, money, or other thing
7 of value shows real estate or a business or its inventory or fixtures, except that this
8 paragraph does not include conducting an open house or showing a property that is
9 offered exclusively for rent.

10 **Insert 7-12:**

11 **SECTION 7-452.01 (5j)** of the statutes is created to read:

12 452.01 (5j) "Multiple representation transaction" means a transaction in
13 which more than one client of a broker is a party.

14 **Insert 7-23:**

1 ✓ that are material to a transaction in which a person is engaged or intends to engage

2 **Insert 8-12:**

3 **SECTION 3** ✓ 452.01 (5w) of the statutes is created to read:

4 452.01 (5w) "Principal broker" means a broker who engages a subagent to
5 provide brokerage services in a transaction.

6 **Insert 11-17:**

7 ✓ Placing the client's interests ahead of the interests of persons in the transaction who
8 are not the broker's clients by not

9 **Insert 12-13:**

10 **SECTION 4** 452.133 (2m) of the statutes is created to read:

11 452.133 (2m) DUTIES OF BROKER NEGOTIATING IN MULTIPLE REPRESENTATION
12 TRANSACTION. **Not** ↑

13 (a) If a broker who is negotiating on behalf of more than one of the broker's
14 clients in a multiple representation transaction provides negotiation services to each
15 client only through an employee of the broker who is not negotiating on behalf of any
16 other client of the broker in the transaction, the employee may provide to the client
17 on whose behalf the employee is negotiating information, opinions, and advice, even
18 if the information, opinions, or advice favor the interests of the client on whose behalf
19 the employee is negotiating over the interests of another client of the broker. A client
20 may at any time decline to receive negotiation services as described in this
21 paragraph. Before entering into an agency agreement with a person, a broker shall
22 provide written notice to the person of a client's right to decline to receive negotiation
23 services as described in this paragraph.

24 (b) If one or more of a broker's clients in a multiple representation transaction
25 decline to receive negotiation services as described in paragraph (a), or if a broker's

1 client in a multiple representation transaction receives negotiation services from the
2 broker through an employee who is providing negotiation services to another client
3 of the broker in the same transaction, neither the broker nor any of the broker's
4 employees may place the interests of any client ahead of the interests of another
5 client in the negotiations.

6 **Insert 13-25:**

7 person who is a party or a prospective party to a transaction, and the broker does not
8 have an agency agreement with the person and is not a subagent of another broker
9 in the transaction

10 **Insert 15-2:**

11 **SECTION 5.** 452.135 of the statutes is repealed and recreated to read:

12 **452.135 Providing brokerage services; disclosures.** (1) Except as
13 provided in sub. (2), a broker may provide brokerage services to any person.

14 (2) (a) A broker may not negotiate on behalf of a party to a transaction who is
15 not the broker's client unless the broker has provided to the party a copy of the
16 following written disclosure statement:

17 **Insert 16-7:**

18 (b) Before providing brokerage services to a person pursuant to an agreement
19 with a principal broker, a subagent shall provide to the person a copy of the written
20 disclosure statement under par. (a), unless the person has already received the
21 disclosure statement. This paragraph does not apply to the principal broker's client.

22 (3) A broker shall provide to a client a copy of the following written disclosure
23 statement not later than the time a broker enters into an agency agreement with the
24 client:

Insert 17-17:

Each salesperson will provide to his or her client information, opinions, and advice to assist the client in the negotiations, although the salesperson cannot reveal confidential information to another client. If you do not wish to receive negotiation services in this manner, indicate by checking the box below. If you check the box, neither you nor any other party in the transaction will receive from the broker opinions or advice that may favor your interests or the interests of another party.

Insert Symbol "box"



If I become involved in a transaction in which another party is also my broker's client, I decline to receive negotiation services from an employee of the broker who is not providing negotiation services to another client of the broker in my transaction.

Insert 18-9:

~~452.137 (1m) No A broker may provide who is providing brokerage services to more than one client in a multiple representation transaction 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 in the transaction the duties specified in s. 452.133 (2) to each client but (1) and (2). An employee of the broker may not place the~~

Accessible on menu pick

plain

1 interests of any client ahead of the interests of another client during negotiations if
2 any of the broker's clients in the transaction has declined to receive negotiation
3 services from the broker as described in s. 452.133 (2m) (a), or if the employee is
4 negotiating on behalf of more than one of the broker's clients in the transaction.

History: 1993 a. 127; 1997 a. 263.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1387/4dn
CTS:.....

Wlj

Representative Wieckert:

This is a redraft of LRB-1387/3. Please review it carefully to ensure it is consistent with your intent, and note the following:

1. Throughout the draft, I have used the term "employee," rather than "salesperson" or "licensee employed by a broker." This draft, like the previous version, defines "employee" as a broker, salesperson, or time-share salesperson who provides brokerage services to a broker's clients on behalf of the broker and under the broker's supervision. Is this okay?

2. Regarding s. 452.01 (2) (am), I have included the phrase "based on criteria provided by the other person" per the drafting instructions, but I am uncertain as to the purpose of this language. If a broker provides advice or opinions based on criteria provided by someone else, is such a broker providing a regulated brokerage service? Do you intend to require a broker to base the broker's advice on criteria provided by a customer or client? If so, the language should not be contained in a definition, but in a substantive provision elsewhere in the draft.

Also, par. (am) retains the phrase "required under s. 452.09 (2) (a) and (3) (a)". The drafting instructions had substituted the phrase "required for licensure under this chapter," but I assumed this was unintentional. Is this correct? If you wish to use "required for licensure under this chapter," it should also be used in proposed ss. 452.01 (5m) (intro.) and 452.133 (2) (am).

3. Regarding proposed s. 452.01 (2) (b), for consistency, I have changed "business opportunities" to "businesses, including businesses' goodwill, inventory, or fixtures." Is this okay?

4. I have changed the term "multiple representation relationship," contained in the drafting instructions, to "multiple representation transaction." If I understand the instructions correctly, this is a more accurate description of the situation you contemplate. Is this okay?

5. This draft does not create the term "designated agency." Instead, I have created a substantive provision based on definition included in the drafting instructions. Does proposed s. 452.133 (2m) (a) accurately describe this arrangement?

- 6 50 With respect to proposed s. 452.133 (2m) (b), is designated agency the only instance in which a broker's employee in a multiple representation transaction may 1) place the interests of a client ahead of the interests of another client in negotiations; or 2) provide to the client on whose behalf the employee is negotiating information, opinions, or advice that favor the interests of that client over the interests of another client of the broker? If so, subsection (2m) should be simplified.
- 7 60 In proposed s. 452.133 (4) (a), should "parties" be changed to "persons in the transaction"?
- 8 70 I have rewritten proposed s. 452.135 (1) for clarity and to conform to LRB drafting conventions. Have I correctly interpreted the instructions with respect to agency disclosures by a subagent?
- 9 80 I have added subsection citations in the last sentence of each of the disclosure forms. For accuracy, I have also changed the word "you" in the last sentence of each form to "a customer" and "a client." Okay?
- 10 90 I have removed the references to "you" and "your" from the first part of the client disclosure form. The first sentence of the form indicates that a broker owes certain duties to all persons in a transaction, and it seemed inconsistent to phrase these duties in terms of "you" and "yours." Is this okay?
- 11 100 Regarding the "check-off" for opting out of designated agency, I wonder if the client disclosure form is the best location. Putting the check-off in the disclosure form would seem to require that the client return the form to the broker after deciding whether to opt out. Is this your intent?
- 12 110 Is the check-off and accompanying text in the client disclosure form sufficient to meet a broker's obligation under proposed s. 452.133 (2m) (a) to give written notice of a client's right to decline designated agency? If so, it seems unnecessary for the draft to both require the language about designated agency in the disclosure form and require a broker's to give written notice of the right to decline designated agency. Do you agree?

Christopher T. Sundberg
 Legislative Attorney
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 E-mail: christopher.sundberg@legis.state.wi.us

repeal and recreation of

This draft repeals

130 In this draft, I have repealed the current definition of "agency agreement," because the proposed amendment to s. 452.135 (1) eliminates the current formal requirements for such an agreement. If you believe a definition of "agency agreement" is necessary, please contact me.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1387/4dn
CTS:wlj:rs

August 18, 2005

Representative Wieckert:

This is a redraft of LRB-1387/3. Please review it carefully to ensure it is consistent with your intent, and note the following:

1. Throughout the draft, I have used the term "employee," rather than "salesperson" or "licensee employed by a broker." This draft, like the previous version, defines "employee" as a broker, salesperson, or time-share salesperson who provides brokerage services to a broker's clients on behalf of the broker and under the broker's supervision. Is this okay?

2. Regarding s. 452.01 (2) (am), I have included the phrase "based on criteria provided by the other person" per the drafting instructions, but I am uncertain as to the purpose of this language. If a broker provides advice or opinions based on criteria provided by someone else, is such a broker providing a regulated brokerage service? Do you intend to require a broker to base the broker's advice on criteria provided by a customer or client? If so, the language should not be contained in a definition, but in a substantive provision elsewhere in the draft.

Also, par. (am) retains the phrase "required under s. 452.09 (2) (a) and (3) (a)." The drafting instructions had substituted the phrase "required for licensure under this chapter," but I assumed this was unintentional. Is this correct? If you wish to use "required for licensure under this chapter," it should also be used in proposed ss. 452.01 (5m) (intro.) and 452.133 (2) (am).

3. Regarding proposed s. 452.01 (2) (b), for consistency, I have changed "business opportunities" to "businesses, including businesses' goodwill, inventory, or fixtures." Is this okay?

4. I have changed the term "multiple representation relationship," contained in the drafting instructions, to "multiple representation transaction." If I understand the instructions correctly, this is a more accurate description of the situation you contemplate. Is this okay?

5. This draft does not create the term "designated agency." Instead, I have created a substantive provision based on definition included in the drafting instructions. Does proposed s. 452.133 (2m) (a) accurately describe this arrangement?

6. With respect to proposed s. 452.133 (2m) (b), is designated agency the only instance in which a broker's employee in a multiple representation transaction may 1) place the interests of a client ahead of the interests of another client in negotiations; or 2) provide to the client on whose behalf the employee is negotiating information, opinions, or advice that favor the interests of that client over the interests of another client of the broker? If so, subsection (2m) should be simplified.
7. In proposed s. 452.133 (4) (a), should "parties" be changed to "persons in the transaction"?
8. I have rewritten proposed s. 452.135 (1) for clarity and to conform to LRB drafting conventions. Have I correctly interpreted the instructions with respect to agency disclosures by a subagent?
9. I have added subsection citations in the last sentence of each of the disclosure forms. For accuracy, I have also changed the word "you" in the last sentence of each form to "a customer" and "a client." Okay?
10. I have removed the references to "you" and "your" from the first part of the client disclosure form. The first sentence of the form indicates that a broker owes certain duties to all persons in a transaction, and it seemed inconsistent to phrase these duties in terms of "you" and "yours." Is this okay?
11. Regarding the "check-off" for opting out of designated agency, I wonder if the client disclosure form is the best location. Putting the check-off in the disclosure form would seem to require that the client return the form to the broker after deciding whether to opt out. Is this your intent?
12. Is the check-off and accompanying text in the client disclosure form sufficient to meet a broker's obligation under proposed s. 452.133 (2m) (a) to give written notice of a client's right to decline designated agency? If so, it seems unnecessary for the draft to both require the language about designated agency in the disclosure form and require a broker to give written notice of the right to decline designated agency. Do you agree?
13. This draft repeals the current definition of "agency agreement," because the proposed repeal and recreation of s. 452.135 (1) eliminates the current formal requirements for such an agreement. If you believe a definition of "agency agreement" is necessary, please contact me.

Christopher T. Sundberg
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9/12/05
Instructions from Rick Staff
of WRA

**RESPONSE TO DRAFTER'S NOTE - AUGUST 18, 2005 DRAFT
LRB-1387/4DN**

Drafter's Note #1

1. Throughout the draft, I have used the term "employee," rather than "salesperson" or "licensee employed by a broker." This draft, like the previous version, defines "employee" as a broker, salesperson, or time-share salesperson who provides brokerage services to a broker's clients on behalf of the broker and under the broker's supervision. Is this okay?

Response

No, the drafting instructions reflect input of DRL legal staff that identified the use of "employee" as too generic in application. This is why the drafting instructions used "salesperson" or "licensee employed by a broker" depending on the application of the term. Note the limitations on time-share salespeople which cause many of the provisions using the term "employee" to be imprecise or inaccurate. One example are the numerous references to employees "negotiating." Time-share salespeople cannot negotiate. See 452.025 and the following definition: "Time-share salesperson" means a person, other than a person licensed under s. 452.09, who is employed by a licensed broker to sell or offer or attempt to negotiate an initial sale or purchase of a time share but who may not perform any other acts authorized by this chapter to be performed by a broker or salesperson.

where?

Drafter's Note #3

3. Regarding proposed s. 452.01 (2) (b), for consistency, I have changed "business opportunities" to "businesses, including businesses' goodwill, inventory, or fixtures." Is this okay?

Response

yes

Drafter's Note #4

4. I have changed the term "multiple representation relationship," contained in the drafting instructions, to "multiple representation transaction." If I understand the instructions correctly, this is a more accurate description of the situation you contemplate. Is this okay?

Response

No. the modification is a less accurate description of the relationship between a broker and certain parties in a transaction. If there are other parties in a transaction who are not the broker's clients it would not be accurate to describe the transaction as a multiple representation transaction."

Drafter's Note #5

5. This draft does not create the term "designated agency." Instead, I have created a substantive provision based on definition included in the drafting instructions. Does

proposed s. 452.133 (2m) (a) accurately describe this arrangement?

Response

There is no problem having a substantive statement of the relationship but the language used requires revisions (see proposed language below). The term "designated agency" should be defined per the drafting instructions as it is a significant alternative relationship which must be disclosed and consented to by the parties in multiple representation relationships.

Drafter's Note #6

6. With respect to proposed s. 452.133 (2m) (b), is designated agency the only instance in which a broker's employee in a multiple representation transaction may 1) place the interests of a client ahead of the interests of another client in negotiations; or 2) provide to the client on whose behalf the employee is negotiating information, opinions, or advice that favor the interests of that client over the interests of another client of the broker? If so, subsection (2m) should be simplified.

Response

Yes. See language proposed below.

Drafter's Note #7

7. In proposed s. 452.133 (4) (a), should "parties" be changed to "persons in the transaction"?

Response

No.

see notes from mtg last week

Drafter's Note #8

8. I have rewritten proposed s. 452.135 (1) for clarity and to conform to LRB drafting conventions. Have I correctly interpreted the instructions with respect to agency disclosures by a subagent?

Response

No, the draft is inadequate. It does not include core provisions such as the substantive provision overriding current administrative code provisions requiring an agency agreement prior to providing brokerage services. See the proposed language below.

Drafter's Note #9

9. I have added subsection citations in the last sentence of each of the disclosure forms. For accuracy, I have also changed the word "you" in the last sentence of each form to "a customer" and "a client." Okay?

Response

OK

No - go back to "you" per RS

Drafter's Note #10

10. I have removed the references to "you" and "your" from the first part of the client

disclosure form. The first sentence of the form indicates that a broker owes certain duties to all persons in a transaction, and it seemed inconsistent to phrase these duties in terms of "you" and "yours." Is this okay?

Response

Yes. *No - per RS*

Drafter's Note #13

13. This draft repeals the current definition of "agency agreement," because the proposed repeal and recreation of s. 452.135 (1) eliminates the current formal requirements for such an agreement. If you believe a definition of "agency agreement" is necessary, please contact me.

AA means an ag btwn a B + C with the B to provide BS to C.

Response

The definition under current law is required as set forth in the drafting instructions. The drafted uses the term agency agreement 10 times and it is an integral part of both disclosure and substantive provisions and should not be deleted.

AA must be in writing, and auth'g B to provide

WRA COMMENTS ON LRB-1387/4DN

The bill analysis includes some inaccurate statements.

1. The reference to the deleted second duty is at odds with the bill draft which indicates an amendment:

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.

SECTION 19. 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.

(g) The duty to present contract proposals in an objective and unbiased manner when negotiating on behalf of a party.

Comment: Add (g) back in as revised.

2. The following sentence needs to be broken into two statements, one duty is deleted the other is amended:

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.

3. The following statement is inaccurate as the draft requires a "client disclosure" which identifies the party as the broker's client.

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.

The required client disclosure provides: Because you have entered into an agency agreement with a broker, you are the broker's client.

4. This is only true for clients not for customers. Subagents practice under the authority of the agency agreement of the principle broker:

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.

without

**ADDITIONAL WRA/DRL COMMENTS ON LRB-1387/4DN –
NOTE: DRL COMMENTS NOT INCLUDED IN THIS SECTION
ARE PROVIDED AT THE END OF THIS DOCUMENT**

SECTION 1. 452.01 (1m) of the statutes is repealed.

Comment- Reinstate

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

✓ 452.01 (2) (am) For another person, for commission, money, or other thing of value, and based on criteria provided by the person, provides advice or opinions 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).

Comment- Delete

✓ SECTION 4. 452.01 (2) (b)

Add: , whether or not the business includes real property.

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

✓ 452.01 (2) (bm) For another person, and for commission, money, or other thing of value shows real estate or a business or its inventory or fixtures, whether or not the business includes real property. This

✓ paragraph does not include ~~conducting an open house or~~ showing a property that is offered exclusively for rent.

Comment- Delete highlighted language.

ADD TO DEFINITIONS SECTION:

✓ "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. In a designated agency relationship a licensee employed by the broker may provide the client for whom they are negotiating information, opinions and advice which may favor the interests of the client for whom they are negotiating over the interests of other clients of the broker in the transaction.

Note: Highlighted section could be stated exclusively in substantive sections if preferred.

SECTION 16. 452.01 (5j) of the statutes is created to read:

452.01 (5j) "Multiple representation transaction" means a transaction in which more than one client of a broker is a party.

Comment- Delete and replace with the following

✓ "Multiple Representation Relationship" means a situation in which a broker has an agency agreement with more than one client who are parties in the same transaction and includes designated agency. If a designated agency relationship is not in effect neither the broker nor any of the broker's employed licensees in a multiple representation relationship may place the interests of any client ahead of the interests of another client during the negotiations.

Note: Highlighted section could be stated exclusively in substantive sections if preferred.

a rel. between a B and 2 or more of the B's clients

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

Comment- Revise per highlighted language.

SECTION 18. 452.01 (5m) (a) of the statutes is amended to read:
452.01 (5m) (a) ~~Facilitating~~ Acting as an intermediary by facilitating or participating in the parties' discussion of the terms of a contract or agreement concerning communications between parties related to the parties' interests in a transaction. In this paragraph, providing advice or opinions on matters that are material to a transaction in which a person is engaged or intends to engage or showing a party real estate does not, in and of itself, constitute acting as an intermediary by facilitating or participating in communications between parties.

Comment- No Change needed.

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 this Chapter s.452.09 (2) (a) and (3) (a).

Comment- Amend per highlighted language.

Deleted: These matters include the real estate market and contractual, legal, and regulatory issues.

Section 41 revisions

CREATE 452.134 Agency Relationships

(1) Agency Relationship Not Mandatory.

- (a) Other than as required in sub. (b) a broker may provide brokerage services to any person without an agency agreement.
- (b) When conducting negotiations on behalf of a party in a transaction the broker shall be acting under the authority of an agency agreement with a party in the transaction or a subagency relationship with a broker who has an agency agreement with a party in the transaction.

(2) Multiple Representation Relationship With Designated Agency

Relationship. Prior to entering into a designated agency relationship a broker shall have the written consent for designated agency from all of the broker's

* A B may not W
on behalf of a
P in a Transaction
1. P is a cl.
2. P is cl. of a P
P. broker to
whom the B is
prov. g
a subagent.

clients being represented by the broker in the transaction in the form provided for at s. 452.135 (3). 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 shall be given

redundant

written notice prior to the execution of the client's agency agreement of the client's ability to withdraw their consent to the designated agency relationship by written notice to the broker at any time.

Deleted: reject
Deleted: a

(3) MULTIPLE REPRESENTATION WITHOUT DESIGNATED AGENCY. Prior to entering into a multiple representation relationship a broker shall have the written consent for designated agency or multiple representation from all of the broker's clients being represented by the broker in the transaction in the form provided for at s. 452.135 (3) .

redundant

If at any time one or more clients in a transaction does not have a consent to a designated agency relationship in effect or if one or more licensees employed by a broker are negotiating on behalf of more than one of the broker's clients in a transaction neither the

Deleted: has rejected a

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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. Each client shall be

redundant

given written notice prior to the execution of the client's agency agreement of the client's ability to withdraw their consent to the multiple representation relationship by written notice to the broker at any time.

Deleted: reject

Deleted: a

(4) NO MULTIPLE REPRESENTATION RELATIONSHIP. If at any time one or more clients of a broker in a transaction does not have a consent to a designated agency or a multiple representation relationship in effect the broker cannot provide brokerage services to more than one client in the transaction.

SECTION 44. 452.135 of the statutes is repealed and recreated to read:

452.135 Disclosure Of Duties. (1) Disclosure of duties shall be given as follows:

- a) No later than the time a broker first negotiates on behalf of a party to a transaction who is not the broker's client the broker shall provide to the party the written disclosure of duties statement under sub. (2).
- b) If a subagent accepts an offer of subagency from a principal broker the subagent, if the written disclosure of duties statement under sub. (2) has not already been given, ^{the subagent} shall provide any non-client person receiving brokerage services within the scope of the subagency agreement the written disclosure of duties statement under sub. (2) prior to providing additional brokerage services to the person.
- c) No later than the time a broker enters into an agency agreement with a client the broker shall provide the client the written disclosure of duties statement under sub. (3). If the transaction involves real estate primarily intended for use as 1 to 4 family residential and the disclosure of duties statement has not been incorporated into the

as residential property cont'g
1 to 4 dwelling units

agency agreement the broker shall request that the client acknowledge receipt of the disclosure of duties statement by signature.

~~452.135 Providing brokerage services; disclosures. (1) Except as provided in sub. (2), a broker may provide brokerage services to any person.~~

~~(2) BROKER DISCLOSURE OF DUTIES TO CUSTOMERS~~

~~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 copy of the following written disclosure statement:~~

~~BROKER DISCLOSURE OF DUTIES TO CUSTOMERS~~

~~(g) The duty to present contract proposals in an objective and unbiased manner when negotiating on behalf of a party.~~

~~Comment: Add (g) back in as revised.~~

~~(3) A broker shall provide to a client a copy of the following written disclosure statement not later than the time a broker enters into an agency agreement with the client:~~

~~BROKER DISCLOSURE OF DUTIES TO CLIENTS~~

SECTION 44. 452.135 of the statutes is repealed and recreated to read:

Client disclosure-

Comment- Replace as follows:

DISCLOSURE OF DUTIES TO CLIENTS

452.135 (3)

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.

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.

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

add
452.133
(1) (2)
1
0

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.

Multiple Representation And Designated Agency

A multiple representation relationship exists if a broker has an agency agreement with more than one client who are parties in the same transaction. A multiple representation relationship can be a designated agency relationship if all of the broker's clients in the transaction consent to designated agency. In a designated agency relationship different salespersons employed by the broker will negotiate on behalf of you and the other client(s) in the transaction, and the broker's duties will remain the same. Each salesperson will provide the client they are negotiating for information, opinions and advice to assist the client they are negotiating for in the negotiations. Each client will be able to receive information, opinions and advice that will assist the client, even though this may give the client advantages in the negotiations relative to the other clients of the broker. At no time will any salesperson reveal any of your confidential information to another client party unless required to by law.

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Deleted: cannot be revealed

If a designated agency relationship is not in effect you may authorize or reject a multiple representation relationship. If you authorize a multiple representation relationship the broker may provide

brokerage services to more than one client in a transaction but neither the broker nor any of the broker's salepeople may assist any client with information, opinions and advice which may favor the interests of one client over any other client. If you do not consent to a multiple representation relationship the broker will not be allowed to provide brokerage services to more than one client in the transaction.

INITIAL ONLY ONE OF THE THREE LINES BELOW:

Client consents to designated agency relationships. _____

Client consents to multiple representation relationships. _____

Client rejects multiple representation relationships. _____

NOTE: YOU MAY WITHDRAW YOUR CONSENT TO A DESIGNATED AGENCY OR MULTIPLE REPRESENTATION RELATIONSHIP BY WRITTEN NOTICE TO THE BROKER AT ANY TIME.

YOUR BROKER IS REQUIRED TO DISCLOSE TO YOU IN YOUR AGENCY AGREEMENT THE COMMISSION FEES THAT YOU MAY OWE TO YOUR BROKER. IF YOU HAVE ANY QUESTIONS ABOUT THE COMMISSION FEES THAT YOU MAY OWE BASED UPON THE TYPE OF AGENCY RELATIONSHIP YOU SELECT WITH YOUR BROKER YOU SHOULD ASK YOUR BROKER PRIOR TO SIGNING THE AGENCY AGREEMENT.

SUBAGENCY

The broker may, with your authorization in the agency agreement, engage other brokers who assist your broker by providing brokerage services

"I"

is this in text 2

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.