



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 110
[2017 Senate Bill 455]

**Various Changes Relating to Real
Estate Practice**

2017 Wisconsin Act 110 makes various changes, described below, relating to real estate practice.

COOPERATIVE AGREEMENTS WITH OUT-OF-STATE BROKERS

Prior law allowed an out-of-state broker to act as a broker in Wisconsin if the out-of-state broker is licensed, in good standing, in another state and enters into a cooperative agreement with a Wisconsin broker.

The Act clarifies that such a cooperative agreement must be entered into with the **listing** Wisconsin broker and prohibits an out-of-state broker from entering into a cooperative agreement with a person who does not have a relevant Wisconsin real estate license. The Act also clarifies that out-of-state brokers who enter into cooperative agreements are not required to be licensed in Wisconsin but are otherwise treated as licensees.

In addition, the Act creates a new option for out-of-state brokers who represent a person seeking to buy or rent property in Wisconsin as part of a commercial transaction.¹ Specifically, the Act authorizes an out-of-state broker to represent such a person in Wisconsin if the out-of-state broker does all of the following:

- Enters into a cooperative agreement with a broker licensed in Wisconsin and cooperates with the Wisconsin broker. The agreement must specify a type of property, type of function, geographic area, or other criteria specified in the commercial buyer's

¹ The Act defines "commercial transaction" to mean a transaction concerning any real property, other than real property containing one to four dwelling units or real property zoned for agricultural use. "Commercial transaction" does not include a transaction concerning a dwelling unit that is part of real property containing more than four dwelling units and that is being sold on a unit-by-unit basis.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

or tenant's search parameters. A separate cooperative agreement is required for each type of property.

- Submits to the Wisconsin broker evidence that the out-of-state broker is licensed in good standing to engage in real estate in another state.
- Enters into an agency agreement with the prospective buyer or tenant. (Alternatively, the Wisconsin broker may enter into an agency agreement with the prospective buyer or tenant.)

The Act prohibits an out-of-state broker acting under that new authority from taking any of the following actions, unless authorized to do so by the cooperative agreement:

- Negotiating with a seller or landlord.
- Viewing or showing commercial property in Wisconsin without the Wisconsin broker (or an associated broker) being present.
- Having contact with another broker or another broker's seller or landlord.

ADVERTISING BY LICENSED REAL ESTATE BROKERS

The Act creates new statutory requirements and prohibitions relating to advertising by licensed real estate brokers. With some exceptions, the new provisions are similar to provisions in an administrative rule promulgated by the Real Estate Examining Board.

The Act prohibits a firm² and any licensed brokers associated with the firm from advertising a property unless the firm is a listing firm for the property or the firm (or an associated broker) has obtained consent from the listing firm to advertise the property.

With a limited exception for occasional solicitations, the Act also generally requires a licensed real estate broker to do all of the following in any advertisement:

- Disclose the broker's firm's name exactly as printed on the broker's license, or disclose a trade name previously filed by the firm.
- Indicate that the firm is a business enterprise and not a private party.
- With the exception of real estate owned by the broker, advertise under the supervision of and in the name of the broker's firm.

In addition, the Act prohibits a licensed broker from advertising property at a price other than that agreed upon with the property owner.

Finally, the Act specifies that if the Real Estate Examining Board promulgates a rule regarding advertising by brokers, the rule must not conflict with the provisions of the Act.

² In this context, "firm" means a licensed individual broker acting as a sole proprietorship or a licensed broker that is an organization or enterprise other than a sole proprietorship.

IMPACT OF A CRIMINAL CONVICTION

Prior law prohibited persons who had been convicted of a felony from obtaining a license as a real estate broker or salesperson, and authorized the Real Estate Examining Board to revoke, suspend, or limit the license of any licensed real estate broker who had been convicted of a felony.

The Act narrows the application of the general limitation regarding felony convictions to make it applicable only to an **initial** broker's or salesperson's license. In addition, the Act authorizes the Real Estate Examining Board to revoke, suspend, or limit a broker's or salesperson's license based on a criminal conviction only if the person is convicted of any offense for which the circumstances substantially relate to real estate practice.

MISCELLANEOUS CHANGES RELATING TO REAL ESTATE PRACTICE

The Act makes the following other changes regarding real estate practice:

- Amends the definition of "broker" to clarify that the definition includes a person who **indirectly** negotiates or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate, and to add to the definition a person who issues a written non-appraisal report of property value.
- Creates a definition of "listing firm," defined to mean a firm that has entered into an agency agreement with a seller or landlord pursuant to which the firm lists property for sale or lease.
- Amends the Real Estate Examining Board's authority to allow the board to create only one Council on Forms, rather than one or more such councils under prior law, and authorizes the board to direct the Council on Forms to create or modify a form relating to real estate practice and submit the form to the board for approval.
- Authorizes the Real Estate Examining Board to solicit comments relating to the forms used in real estate practice from the Council on Forms or from a professional trade association whose members consist primarily of licensees actively engaged in real estate practice.
- Prohibits a licensed broker, in providing brokerage service, from negotiating the sale, exchange, purchase, or rental of personal property, unless such action is related to the real estate transaction.

Effective date: Provisions of the Act relating to cooperative agreements with out-of-state brokers take effect on March 1, 2018. Other provisions of the Act took effect on December 2, 2017.

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