

Report From Agency

STATE OF WISCONSIN REAL ESTATE EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE REAL : REAL ESTATE EXAMINING BOARD
ESTATE EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 10-136)

PROPOSED ORDER

An order of the Real Estate Examining Board to repeal the Note following RL 24.02 (3), 24.02 (8) and (17), 24.025, 24.05 (3) (title), 24.07 (8) (a) 4., and the Note following 25.02 (2) (g) 7. b.; to renumber and amend RL 24.05 (1) and (3); to amend RL 24.02 (2), (3), (4), (5) and (13), 24.05 (title) and (1) (title), (2) and (5) (b), 24.07 (8) (a) 2. (intro.), 3., (b) (title), 1., 2., (c) (title) and (c), 24.09, 24.13 (title), (1), (2) (title), (b), (3) (title), (a), (4) (title), (4), (5) and the Note following (5), 24.16, 24.17 (1) and 25.02 (2) (intro.) and (g) 7. b.; to repeal and recreate RL 24.05 (4), 24.07 (8) (a) 1., (d) and (e); and to create RL 24.02 (13m) and (19), 24.07 (8) (a) 1g. and 1r., and 24.17 (5), relating to definitions, duties of brokers, broker disclosure requirements, written proposals, ethical requirements, and educational requirements.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 452.01, 452.133, 452.134, 452.135, 452.139 and 452.14, Stats.

Statutory authority:

Sections 227.11 (2), 452.04 (2) and 452.07, Stats.

Explanation of agency authority:

The Real Estate Examining Board is granted the authority under s. 452.07, Stats., to promulgate rules to define professional conduct and unethical practices and to establish guidance for the real estate profession.

Related statute or rule:

There are no other statutes or rules other than those listed above.

Plain language analysis: the ability to retain records in an electronic format

This proposed rule-making order updates and clarifies the rules to reflect statutory changes and clarifies licensees' duties. This proposed rule-making order also updates the rules for conduct and ethical practices for real estate licensees, creates discipline for licensees who do not respond

to information requests from the board or department and increases the number of education hours required to obtain licensure as a real estate broker.

SECTION 1 clarifies the definition of “agency agreement.” Additionally, the statutory reference included in “brokerage service” is amended.

SECTION 2 repeals a note at the end of a section.

SECTION 3 amends the definition of “builder.” Additionally, “buyer’s broker” is clarified.

SECTION 4 repeals the definition of “contract home.”

SECTION 5 amends the definition of “party.”

SECTION 6 creates a definition for “principal broker.”

SECTION 7 repeals the definition of “speculation home.”

SECTION 8 creates a definition for “written proposal.”

SECTION 9 repeals a provision about a licensee’s duties to clients.

SECTION 10 amends the title of s. RL 24.05 The title to subs. (1) is also amended.

SECTION 11 includes broker-employer to the list of whom a licensee may accept a fee or compensation from.

SECTION 12 Mandates that licensees acting on their own behalf, on behalf of family or related entities receive prior written consent.

SECTION 13 removes the title of a provision.

SECTION 14 renumbers a provision and adds a writing requirement for licensees. It also clarifies statutory authority.

SECTION 15 repeals and recreates a provision to emphasize the need for prior written consent in certain situations, and clarifies standards for licensees.

SECTION 16 includes a writing requirement to disclosures.

SECTION 17 repeals and recreates a provision to provide clarity. The provision also creates an ethical requirement for brokers.

SECTION 18 adds two standards for brokers in providing services to clients.

SECTION 19 changes terms.

SECTION 20 repeals a provision that is moved elsewhere in the rule.

SECTION 21 amends certain provisions, imposes a requirement concerning acts performed as a subagent and clarifies the duty of the licensee.

SECTION 22 repeals two sections and recreates them to clarify the requirements for listing brokers and licensees.

SECTION 23 amends a provision to expand the licensee's ethical requirements. It also expands "listing contract" to an "agency agreement," an amended definition of which is included in the proposed rules.

SECTION 24 amends five provisions and the Note at the end of the rule.

SECTION 25 amends a provision to allow rules of the department to be "readily available."

SECTION 26 amends a provision requiring a licensee to report offenses.

SECTION 27 creates a provision requiring the licensees to respond to departmental requests for information.

SECTION 28 amends a provision relating to the educational programs for applicants for licenses and updates a reference to a rule.

SECTION 29 repeals the Note following s. RL 25.02 (2) (g) 7. b.

SECTION 30 provides the effective date of this proposed rule-making.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois:

Conduct and Ethical Practices for Real Estate Licensees: (bureau director) Subparts De, E, and F of Section 1450 of the Illinois Real Estate License Act cover the conduct and ethical practices for real estate licensees.

<http://www.ilga.gov/commission/jcar/admincode/068/06801450sections.html>

Broker Pre-License Education: Section 1450.60 Educational Requirements to Obtain a Broker's or Salesperson's License: 120 credit hours of instruction in approved courses or a baccalaureate degree including courses involving real estate or related material are required for broker applicants. <http://www.ilga.gov/commission/jcar/admincode/068/068014500/C00600R.html>

Iowa:

Conduct and Ethical Practices for Real Estate Licensees: The various regulations of professional and business conduct are found in section 193E of the Iowa Administrative rules, chapters 6, 8, 10, 15 and 19. <http://www.state.ia.us.government/com/prof/sales/PDFs/193EMarch2010/pdf>

Broker Pre-License Education: 54315(8) and 193E-sub rule 16.3(1), an applicant for licensure as a real estate broker shall complete at least 72 classroom hours of commission-approved real estate education within 24 months prior to taking the broker examination. This education shall be in addition to the required salesperson pre-license course (60 hours).

http://www.legis.state.ia.us/ACO/IAChtml/193e.htm#rule_193e_4_1

Michigan:

Conduct and Ethical Practice for Real Estate Licensees: The various regulations of professional practice and conduct are found in Administrative Rules for Real Estate Brokers and Salespersons, Occupational Code, Article 25, Parts 3 and 4.

http://www.michigan.gov/documents/dleg/rebook_217577_7.pdf

Broker Pre-License Education: Rule 203. (1) An applicant for a broker or associate broker license shall have completed 90 clock hours of qualifying pre-licensure education of which 9 clock hours shall be on civil rights law and fair housing law, as defined in section 2504(1) of the code. The broker pre-licensure education shall be completed not more than 36 months before the date of application, unless the applicant has held a license as a salesperson for that intervening period.

http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33922101&Dpt=LG&RngHigh=

Minnesota:

Conduct and Ethical Practice for Real Estate Licensees: The regulation of professional conduct is found in section 82.48 of the Minnesota Statutes.

<https://www.revisor.mn.gov/statutes/?year=2006&id=82.48>

Broker Pre-License Education: 82.29 Sub.8(b) An applicant for a broker's license must successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner, of which three hours shall consist of training in state and federal fair housing laws, regulations, and rules. The course must have been completed within 12 months prior to the date of application for the broker's license.

<https://www.revisor.leg.state.mn.us/statutes/?id=82.29>

Summary of factual data and analytical methodologies:

The information received from the states listed in this analysis was obtained directly from a review of the applicable regulations and rules.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

Data was obtained from the department's credentialing division regarding the number of licensees that would be affected by this regulatory change. As of June 15, 2010, there are 47,823 licensed real estate salespersons and 52,465 licensed real estate brokers. There are 8,539 licensed real estate business entities. The majority of real estate licensees work in small business environments; however, the change in rules regarding professional conduct of licensees will not have a significant impact on their cost of doing business. The rule change seeks to clarify current ethical practices that already exist within the Wisconsin real estate industry.

This rule-making proposal was submitted to the Wisconsin Legislative Clearinghouse before June 8, 2011, the effective date of 2011 Wis. Act 21, and thus, is not subject to the provisions of that act. The version of s. 227.137, Stats., in effect when this proposal was submitted to the clearinghouse required an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the legislative clearinghouse. However, the Department of Safety and Professional Services, then known as the Department of Regulation and Licensing, was not included as an "agency" within the meaning of former s. 227.137, Stats.

Anticipated costs incurred by private sector:

The board finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

The department estimates that this rule will have costs of \$128 to create forms and update the department's website.

Effect on small business:

These proposed rules were reviewed by the department's Small Business Review Advisory Committee, and it was determined that the proposed rules will not have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at john.murray@drl.state.wi.us, or by calling (608) 266-8608.

Agency contact person:

Kris Anderson, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-2385; email at Kristine1.Anderson@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Kris Anderson, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708-8935, or by email to Kristine1.Anderson@wisconsin.gov. Comments must be received on or before February 22, 2011 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. RL 24.02 (2) and (3) are amended to read:

RL 24.02 (2) “Agency agreement” means a written agreement between a broker and a client ~~under s. 452.135 (1), Stats. in which the client authorizes the broker to provide brokerage services to the client.~~

(3) “Brokerage service” means any service described under s. 452.01 (2) ~~(a) to (g)~~, Stats., provided by a broker to another person.

SECTION 2. The Note following RL 24.02 (3) is repealed.

SECTION 3. RL 24.02 (4) and (5) are amended to read:

RL 24.02 (4) “Builder” means any person engaged in the business of constructing ~~speculation homes without a buyer under contract or constructing homes under a contract~~ homes with the buyer.

(5) “~~Buyer~~Buyer’s broker” means a licensee ~~having an agency relationship who has an agency agreement~~ with a buyer ~~in relation to a particular transaction.~~

SECTION 4. RL 24.02 (8) is repealed.

SECTION 5. RL 24.02 (13) is amended to read:

RL 24.02 (13) “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 6. RL 24.02 (13m) is created to read:

RL 24.02 (13m) “Principal broker” means a broker who engages a subagent to provide brokerage services in a transaction.

SECTION 7. RL 24.02 (17) is repealed.

SECTION 8. RL 24.02 (19) is created to read:

RL 24.02 (19) "Written proposal" means any written document provided by one party to another during the course of a transaction, including but not limited to notices, offers, counteroffers, options, exchanges, rental agreements and amendments.

SECTION 9. RL 24.025 is repealed.

SECTION 10. RL 24.05 (title) and (1) (title) are amended to read:

RL 24.05 Self-dealing Disclosure of compensation and interests. (1)
~~DUAL~~COMPENSATION.

SECTION 11. RL 24.05 (1) is renumbered RL 24.05 (1) (a) and is amended to read:

RL 24.05 (1) (a) A licensee acting as an agent in a real estate or business opportunity transaction may not accept any fee or compensation related to the transaction from any person, other than the licensee's client, principal broker, or broker-employer without prior written consent from all parties to the transaction.

SECTION 12. RL 24.05 (2) is amended to read:

RL 24.05 (2) DISCLOSURE OF INTEREST. A licensee acting as an agent in a real estate or business opportunity transaction may not act in the transaction on the licensee's own behalf, on behalf of the licensee's immediate family or firm, or on behalf of any other organization or business entity in which the licensee has an interest without the prior written consent of all parties to the transaction. For the purpose of this subsection, a licensee ~~may~~ shall obtain the written consent in the offer to purchase, option, lease or other transaction contract.

SECTION 13. RL 24.05 (3) (title) is repealed.

SECTION 14. RL 24.05 (3) is renumbered RL 24.05 (1) (b) and is amended to read:

RL 24.05 (1) (b) A licensee acting as an agent in a real estate or business opportunity transaction may not recommend or suggest to a party to the transaction the services of another individual or entity from which the licensee may receive compensation for a referral or in which the licensee has an interest, ~~other than referrals to other licensees for real estate services under s. 452.19, Stats.,~~ unless the licensee, prior to or at the time of the referral, discloses to the party in writing the fact that he or she may receive compensation for the referral or that he or she has an interest in the individual or entity providing the services. This paragraph does not apply when the licensee makes a referral to another licensee for real estate services under s. 452.19, Stats.

SECTION 15. RL 24.05 (4) is repealed and recreated to read:

RL 24.05 (4) DISCLOSURE TO SELLER. A listing broker may not pay any compensation or incentive to a licensee who is acting as a buyer in a transaction without prior written consent from the seller.

SECTION 16. RL 24.05 (5) (b) is amended to read:

RL 24.05 (5) (b) The disclosure under this subsection shall be made in writing to the other party in a transaction or to an agent representing the other party.

SECTION 17. RL 24.07 (8) (a) 1. is repealed and recreated to read:

RL 24.07 (8) (a) 1. A broker may not negotiate on behalf of a party who is not the broker's client unless the broker provides to the party a copy of the broker disclosure to customers required under s. 452.135 (1), Stats. If the brokerage services are related to real estate primarily intended for use as a residential property containing one to 4 dwelling units, the broker shall request the party's signed acknowledgement that the party has received a copy of the written disclosure statement.

SECTION 18. RL 24.07 (8) (a) 1g. and 1r. are created to read:

RL 24.07 (8) (a) 1g. A broker may not negotiate on behalf of a client unless the broker gives the client a copy of the broker disclosure required under s. 452.135 (2), Stats.

1r. If a client enters into an agency agreement with a broker to receive brokerage services related to real estate primarily intended for use as a residential property containing one to 4 dwelling units, and the broker disclosure to clients is not incorporated into the agency agreement, the broker shall request the client's signed acknowledgement that the client has received a copy of the written disclosure statement required in s. 452.135 (2), Stats.

SECTION 19. RL 24.07 (8) (a) 2. (intro.) and 3. are amended to read:

RL 24.07 (8) (a) 2. Licensees acting as agents of potential buyers of real estate that is used or intended to be used principally for one to 4 family residential purposes, who are negotiating directly with the seller or who are aware that the owner of the real estate has granted ~~another licensee~~ a listing broker the exclusive right to sell, shall notify the seller or the listing broker, as applicable, of the licensee's buyer agency relationship at the earlier of all of the following:

3. ~~A change in a licensee's representation~~ When the nature of a licensee's representation of a client or customer changes such that it makes the initial disclosure that was provided under s. 452.135, Stats., incomplete, misleading or inaccurate—requires that, the licensee shall provide the customer or client with a new disclosure ~~be given~~, as required in s. 452.135, Stats.

SECTION 20. RL 24.07 (8) (a) 4. is repealed.

SECTION 21. RL 24.07 (8) (b) (title), 1., 2., (c) (title) and (c) are amended to read:

RL 24.07 (8) (b) ~~Listing contracts~~Agency agreements. 1. ~~Listing brokers~~Brokers or their salespeople shall explain to their clients the responsibilities of seller's agents, buyer's agents and subagents ~~to the seller~~ before entering into a ~~listing contract~~an agency agreement.

2. No ~~listing broker~~ or ~~listing broker's salesperson~~ may permit other brokers to act as subagents ~~in the sale of a property or business opportunity~~ a transaction unless the ~~listing broker or salesperson~~ has received the seller's authorization broker's client has authorized the use of a subagent ~~in the listing contract~~in the agency agreement.

(c) ~~Offers to purchase and option contracts~~ Written proposals. Licensees shall ~~reconfirm~~ state, in the offer to purchase ~~or option contract~~, the lease, the option to purchase or the exchange agreement, whom the licensee represents as an agent in a ~~real estate or business opportunity~~transaction.

SECTION 22. RL 24.07 (8) (d) and (e) are repealed and recreated to read:

RL 24.07 (8) (d) *Subagency arrangements*. 1. A listing broker shall provide a broker disclosure statement to a customer as required in s. 452.135 (1), Stats., to the buyer if negotiations are being conducted directly with the buyer and not through a buyer's broker.

2. A buyer's broker shall provide a broker disclosure statement to a customer as required in s. 452.135 (1), Stats., to a seller if negotiations are being conducted directly with the seller and not through a seller's broker.

3. A subagent shall provide a broker disclosure statement to a customer as required in s. 452.135 (1), Stats., with whom he or she is working but not to the principal broker's client.

4. A principal broker is not required to provide a broker disclosure statement to a customer as required in s. 452.135 (1), Stats., to a customer of their subagents.

(e) *Agency agreements for lease and property management contracts*. 1. A licensee who is entering into agency agreements for lease or property management contracts shall provide to his or her clients the broker disclosure statement as required in s. 452.135 (2), Stats.

2. A licensee shall provide to prospective tenants a broker disclosure statement as required in s. 452.135 (1), Stats., when negotiating the terms of a lease on behalf of the client.

SECTION 23. RL 24.09 is amended to read:

RL 24.09 Securing agency agreements. Licensees may not mislead a potential client regarding the benefits which might be realized through the use of the licensee's services ~~or~~. A licensee also may not mislead a potential client regarding the market value of real estate or a

business opportunity to be leased, rented, purchased, optioned or sold under a ~~listing contract~~ agency agreement.

SECTION 24. RL 24.13 (title), (1), (2) (title), (b), (3) (title), (a), (4) (title), (4), (5), and the Note following RL 24.13 (5) are amended to read:

RL 24.13 Drafting and submission of offers~~written proposals~~. (1) REFUSAL PROHIBITED. Licensees shall not refuse to draft or submit any ~~offer to purchase, exchange agreement or option contract proposal to the owner~~ written proposal unless the terms of the ~~offer, exchange agreement or option~~ written proposal would be contrary to specific instructions of the ~~owner~~ other party.

(2) WITHHOLDING ~~OFFERS~~ WRITTEN PROPOSALS PROHIBITED. (b) Licensees shall promptly present ~~promptly~~ all ~~offers~~ written proposals received to the ~~seller or seller's agent for consideration~~ licensee's client or customer. Licensees shall not withhold any ~~offer~~ written proposal from presentation pending the ~~seller's~~ party's action on an ~~offer~~ written proposal previously presented.

(3) FAIR PRESENTATION OF ~~OFFERS~~ WRITTEN PROPOSALS. (a) Licensees shall present all written proposals in an objective and unbiased manner to their ~~principals~~ clients and customers. Licensees shall inform their ~~principals~~ clients and customers of the advantages and disadvantages of all submitted written proposals.

(4) NOTIFICATION OF ACTION TO ~~BUYER~~ ON WRITTEN PROPOSAL. Licensees shall promptly inform ~~prospective buyers~~ their clients and customers whether the ~~seller~~ other party has accepted, rejected or countered their written ~~offer to purchase, and~~ proposal. A licensee shall immediately provide a written statement to the other party's broker that includes the date and time when the written proposal was presented when such a statement is requested by the other party or the other party's broker. A licensee shall immediately provide a written statement concerning to the other party's broker that includes the date and time when an offer the written proposal was rejected or that an offer had expired without acceptance when such a statement is requested by a prospective buyer, a buyer's agent or a selling broker the other party or the other party's broker.

(5) NEGOTIATION THROUGH BROKER. A licensee may not negotiate a sale or lease of real estate directly with a party if the licensee knows that the party has an unexpired written contract in connection with the real estate which grants to another licensee an exclusive right to sell, lease or negotiate. All negotiations shall be conducted with the broker holding the exclusive right to sell, lease or negotiate, and not with the party, except with the consent of the broker or where the absence of the broker, or other similar circumstances, reasonably compels direct negotiation with the party. A listing broker has no duty to investigate whether a buyer has granted a buyer's agent an exclusive right to negotiate.

Note: The Department of Safety and Professional Services' approved form, ~~WB-38~~ WB-36, does not grant the buyer's agent an exclusive right to negotiate.

SECTION 25. RL 24.16 is amended to read:

RL 24.16 Availability of rules. Brokers shall ~~maintain a copy of the rules of the department on file~~ have the rules of the department readily available in all offices for the use of all licensees.

SECTION 26. RL 24.17 (1) is amended to read:

RL 24.17 Miscellaneous requirements. (1) VIOLATIONS OF LAW. Licensees may not violate, or aid or abet the violation of, any law the circumstances of which substantially relate to the practices of a real estate broker or salesperson. A licensee who has been convicted of a crime, ~~except motor vehicle offenses under chs. 341 to 349, Stats.,~~ shall send to the ~~department board~~ within 30 days/48 hours after the judgment of conviction a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction in order that the ~~department~~ board may determine whether the circumstances of the crime of which the licensee was convicted are substantially related to the practice of a real estate broker or salesperson, pursuant to s. 111.335 (1) (c), Stats.

SECTION 27. RL 24.17 (5) is created to read:

RL 24.17 (5) DUTY TO COOPERATE WITH THE BOARD AND THE DEPARTMENT. Licensees and applicants shall respond to the department and the board regarding any request for information within 30 days of the date of the request.

SECTION 28. RL 25.02 (2) (intro.) and (g) 7. b. are amended to read:

RL 25.02 (2) BROKER'S PRE-LICENSE PROGRAM. The educational program for applicants for an original real estate broker's license shall cover all of the following topics and shall be designed so that if the educational program were presented as classroom education, it would be presented in no less than ~~36~~72 hours:

(g) 7. b. Office supervision – s. RL ~~47.09~~17.08.

SECTION 29. The Note following RL 25.02 (2) (g) 7. b. is repealed.

SECTION 30. The rules adopted in this order shall take effect on July 1, 2012, as permitted by s. 227.22 (2) (b), Stats.

(END OF TEXT OF RULE)

Dated _____

Chairperson _____

Real Estate Examining Board

RL 24, 25 CR10-136 (Conduct, ethics) Final draft rule-making order 12-2-11