

STATE OF WISCONSIN
REAL ESTATE EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : REAL ESTATE EXAMINING BOARD
REAL ESTATE EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 16-042)

PROPOSED ORDER

An order of the Real Estate Examining Board to repeal REEB 15.03, 17.02, 17.025, 17.03 (1), 17.04 to 17.12, 18.02 (2) and 24.02 (2); to renumber REEB 11.02 (1); to renumber and amend REEB 15.04, and 24.02 (6) and (9); to amend REEB 11.02 (2), (3) and (6), 12.011 (1), ch. REED 15 (title), REEB 15.02 (1), (2) (intro.) and (3), 16.02 (1m), and (2e) to (5), 16.03 (1) (intro.), (d) and (e), 16.04 (2), 16.06 (1) (c), (4) (a) and (8), 17.03 (title), (2) and (4), 18.02 (6) (intro.) and (g), 18.031 (1) (intro.) and (a), (2), (3) and (5) (b), 18.032 to 18.07, 18.09 (1) (intro.), (2) and (3), 18.10, 18.11, 18.13 (intro.), (1) (intro.), (2) to (5) and (6) (intro.) and (e), 18.14, 23.03, 23.04, 24.01 (3), 24.02 (3), (5), and (13m), 24.04 (2) (a) and (b), (3) and (4), 24.05 (1) (a), (2), (4) and (5) (a) 3., 24.07 (1) (b) (title), (c), (3), (8) (a) 1. to 1r. and 2. (intro.), a. and c. and (b), (d) and (e), 24.10, 24.13 (2) (a), (3) (b), (4) and (5), 24.16 and 24.17 (1); to repeal and recreate ch. REEB 17 (title) and REEB 17.03 (3); and to create REEB 11.02 (1d), (1h), (1p), (5g) and (6m), 12.011 (1) (am) and (1m), 15.02 (4) and 15.04 (2), relating to real estate practice.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Chapter 452, Stats.

Statutory authority: ss. 15.08(5) (b) and 452.07, Stats.

Explanation of agency authority:

Each examining board shall promulgate rules for its own guidance and for the guidance of the profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession. [s. 15.08 (5) (b), Stats.]

The board shall promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice.

The board may promulgate rules regarding the supervisory responsibilities of brokers under s. 452.132, Stats.

The board may promulgate rules establishing a procedure that allows an individual who does not possess a broker's or salesperson's license to, without submitting a full application and without paying the fees applicable to applicants, apply to the board for a determination of whether the

individual would be disqualified from obtaining a license due to his or her criminal record...The board may require a fee to be paid to the department for a determination issued under this subsection of an amount necessary to cover the cost of making the determination. [s. 452.07, Stats.]

Related statute or rule: N/A

Plain language analysis:

This rule updates the real estate code chapters to reflect current real estate practice as provided in 2015 Act 258 including: terminology, provisions relating to independent contractor relationship, duties of licensees, supervision of licensees, use of unlicensed personal assistants, business representations, inactive license references, fees for predeterminations on criminal records, electronic records retention, use of forms and elimination of timeshare credential references.

SECTIONS 1 to 7 create definitions for three new terms defined in statute: “associated with a firm”, “associated with a subagent”, and “firm” by referring to the same definition as the statute. These sections also create definitions for “agency agreement” referring to the statutory definition, client and customer. The sections create a definition for “member of the licensee’s immediate family” which clarifies a previous definition for “immediate family”. Lastly the sections update to current drafting language, specifically remove “under” and replace with “given in”.

SECTIONS 8 and 9 remove the reference to timeshare salespersons due to Act 258 removing the requirement for credentialing of timeshare salespersons. These sections also create a \$68.00 fee for the binding determination as to whether the individual’s criminal record would disqualify the individual from obtaining a license prior to the individual submitting an application for the license. This provision allows an applicant who receives a favorable determination to credit the amount toward the application fee if the person applies within 1 year of the determination. Act 258 permits the Real Estate Examining Board (Board) to charge a fee for the cost of making this determination.

SECTIONS 10, 18, 20, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 42, 43, 45, and 46 update terminology.

SECTION 11 clarifies any documents prepared or received by the licensee in addition to utilized shall be promptly provided to any person who signed the document. The section also includes rental agreements and clarifies the lease or rental agreement shall be provided upon execution of the lease or rental agreement.

SECTIONS 12 clarifies a broker or salesperson shall promptly distribute a copy of an agency agreement that has been accepted and signed by all parties to the client when the client signs an agency agreement.

SECTION 13 repeals the obsolete provision relating to closing statements. Closing statements are no longer prepared by the broker.

SECTION 14 updates terminology and clarifies the record retention period in transactions without a date of closing or consummation begins from the date the listing contract or agency agreement is terminated. In addition, this section clarifies electronic or digital record retention may be utilized.

SECTION 15 creates a provision requiring brokers and salespersons to submit documents to the firm in a timely manner so that the firm can be in compliance with the record retention requirements.

SECTIONS 16 and 19 update terminology and requires forms to be filled out based upon a party's instruction rather than a party's intent.

SECTION 17 updates terminology and adds quasi-governmental and tribal agencies to the form exception in order to provide clarification to the profession.

SECTION 21 repeals the definitions which are no longer necessary. It also repeals the section which states for the purposes of this chapter a business representative is not an employee of the business entity because it no longer applies with the new business structure.

SECTIONS 22, 23, 24, 25, and 26 update terminology in provisions for persons associated with a firm and change the references from code references to statutory references.

SECTION 27 repeals the obsolete sections relating to notice of employment requirements and unlicensed personal assistants.

SECTION 28 repeals the obsolete definition of "cooperating broker".

SECTION 38 repeals the "agency agreement" definition.

SECTION 41 updates terminology and clarifies family member language in order to be clear the code means a member of the family and not family as a unit.

SECTION 44 updates terminology and clarifies a pending written proposal or offer is one being negotiated.

Summary of, and comparison with, existing or proposed federal regulation: None

Comparison with rules in adjacent states:

Illinois: Illinois does not have a predetermination process regarding criminal convictions. Illinois also does not use terminology relating to firm.

Iowa: Iowa does not have a predetermination process regarding criminal convictions. Iowa also does not use terminology relating to firm.

Michigan: Michigan does not have a predetermination process regarding criminal convictions. Michigan also does not use terminology relating to firm.

Minnesota: Minnesota does not have a predetermination process regarding criminal convictions. Minnesota also does not use terminology relating to firm.

Summary of factual data and analytical methodologies:

The Board reviewed all of the REEB chapters to implement the 2015 Act 258 changes.

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

This rule was posted for economic comments for 14 days and none were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Jeff.Weigand@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

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

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8366, or by email to Sharon.Henes@wisconsin.gov. Comments must be received at or before the hearing to be held on August 18, 2016 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. REEB 11.02 (1) is renumbered to 11.02 (1t)

SECTION 2. REEB 11.02 (1d), (1h), and (1p) are created to read:

REEB 11.02 (1d) “Agency agreement” has the meaning given in s. 452.01 (1m), Stats.
(1h) “Associated with a firm” has the meaning given in s. 452.01 (1o), Stats.
(1p) “Associated with a subagent” has the meaning given in s. 452.01 (1p), Stats.

SECTION 3. REEB 11.02 (2) and (3) are amended to read:

REEB 11.02 (2) “Business entity” has the meaning ~~under~~ given in s. 452.01 (3j), Stats.
(3) “Business representative” has the meaning ~~under~~ given in s. 452.01 (3k), Stats.

SECTION 4. REEB 24.02 (6) and (9) are renumbered REEB 11.02 (3m) and (4m), and amended to read:

REEB 11.02 (3m) “Client” means a party to a transaction who has an agency agreement with a ~~broker firm~~ for brokerage services.
(4m) “Customer” means a party to a transaction who is provided brokerage services by a ~~broker firm~~ but who is not a client.

SECTION 5. REEB 11.02 (5g) is created to read:

(5g) “Firm” has the meaning given in s. 452.01 (4w), Stats.

SECTION 6. REEB 11.02 (6) is amended to read:

REEB 11.02 (6) “Licensee” has the meaning ~~under~~ given in s. 452.01 (5), Stats.

SECTION 7. REEB 11.02 (6m) is created to read:

REEB 11.02 (6m) “Member of the licensee’s immediate family” means any of the following:
(a) A parent, stepparent, grandparent, foster parent, child, stepchild, grandchild, foster child, brother, sister, aunt, or uncle of the licensee.
(b) The spouse or domestic partner of the licensee or of any person listed in par. (a).

SECTION 8. REEB 12.011 (1) is amended to read:

(1) An individual who does not possess a broker’s or salesperson’s license ~~or a time share salesperson’s certificate~~ may apply to the board, without submitting a full application ~~and payment of application fee~~, for a determination of whether the individual would be disqualified from obtaining a license or certificate based upon a criminal conviction by submitting all of the following:-

SECTION 9. REEB 12.011 (1) (am) and (1m) is created to read:

REEB 12.011 (1) (am) A fee in the amount of \$68.00.
(1m) The fee under sub. (1) (am) may be applied to the application fee under s. REEB 12.01 (4) if the individual applies for a real estate broker or salesperson license within 1 year of the determination decision.

SECTION 10. Chapter REEB 15 (title) is amended to read:

CHAPTER REEB 15
~~BROKER'S OBLIGATION TO FURNISH COPIES AND MAINTAIN RECORDS~~

SECTION 11. REEB 15.02 (1), (2) (intro.) and (3) are amended to read:

REEB 15.02 Copies of documents (1) A ~~broker or salesperson~~ licensee shall promptly provide an exact and complete copy of any document utilized, prepared, or received by the licensee in real estate practice to any person who has signed the document.

(2) A ~~broker or salesperson~~ licensee shall promptly distribute to the following persons exact and complete copies of offers to purchase, amendments to contracts of sale, counter-offers, exchange agreements, or grants of option which have been accepted and signed by all the parties:

(3) A broker or salesperson shall promptly distribute an exact and complete copy of a lease or rental agreement which has been accepted and signed by all parties to the tenant upon execution of the lease or rental agreement when the tenant leases the property and to the landlord upon the landlord's request.

SECTION 12. REEB 15.02 (4) is created to read:

REEB 15.02 (4) A broker or salesperson shall promptly distribute an exact and complete copy of a listing contract or agency agreement that has been accepted and signed by all parties to the client when the client signs an agency agreement.

SECTION 13. REEB 15.03 is repealed.

SECTION 14. REEB 15.04 is renumbered 15.04 (1) and amended to read:

REEB 15.04 Retention of records.

(1) A broker firm shall retain for at least 3 2 years, unless required by federal law or there is an active or ongoing investigation by the Board, exact and complete copies of all listing contracts, agency agreements, offers to purchase, leases, closing statements, deposit receipts, cancelled checks, trust account records and other documents or correspondence utilized, received or prepared by the broker in connection with any transaction. The retention period shall run from the date of closing of the transaction or, if the transaction has not been consummated, from the date of the listing contract or the agency agreement is terminated. The broker shall make these records available for inspection and copying by the board. If the records are retained outside this state, the broker shall, upon request of the board, promptly send exact and complete copies to the department without charge to the department or board. The board may not require copies to be submitted beyond the retention period. Electronic or digital means may be used to retain records.

SECTION 15. REEB 15.04 (2) is created to read:

REEB 15.04 (2) A licensee associated with a firm shall submit documents and records related to transactions that are utilized, prepared, or receive by the licensee to the firm in a timely manner.

SECTION 16. REEB 16.02 (1m) (2e) to (5) are amended to read:

REEB 16.02 (1m) “Buyer agency/tenant representation agreement” means a written agency agreement authorizing a ~~broker~~ firm to provide brokerage services to the client for the procurement of an interest in property and providing the terms whereby the ~~broker~~ firm may earn a commission.

(2e) “Exclusive right to locate buyer agency/tenant representation agreement” means a written buyer agency/tenant representation agreement giving the ~~broker~~ firm the exclusive right to locate an interest in property for the client.

(2m) “Exclusive right to locate and negotiate buyer agency/tenant representation agreement” means a written buyer agency/tenant representation agreement giving the ~~broker~~ firm the exclusive right to locate an interest in property and to negotiate the procurement of an interest in property for the client.

(2s) “Exclusive right to negotiate buyer agency/tenant representation agreement” means a written buyer agency/tenant representation agreement giving the ~~broker~~ firm the exclusive right to negotiate the procurement of an interest in a property for the client.

(3) “Exclusive right to sell listing” means a written listing contract making a ~~broker~~ firm the exclusive agent for the sale of property for a specific period of time, and which entitles the listing ~~broker~~ firm to a commission if the property is sold by the owner, by the ~~broker~~ firm, or by anyone else.

(3m) “Listing contract” means a written agency agreement authorizing a ~~broker~~ firm to provide brokerage services to the client for the sale or rental of property and providing the terms whereby the broker may earn a commission.

(4) “Open listing” means a written listing agreement, which may be given to any number of ~~brokers~~ firms, with the first ~~broker~~ firm to secure a buyer under the terms of the listing agreement earning the commission.

(4m) “One-party listing” means a written listing contract containing all of the elements of an exclusive right to sell listing, except that listing ~~broker~~ firm is entitled to a commission only if the property is sold by the owner, by the ~~broker~~ firm, or by anyone else to a specific party or parties identified in the written listing contract.

(5) “Use a form” means to complete a contractual or conveyance form by filling in the blanks or modifying printed provisions on a form for the purpose of accomplishing the ~~intent~~ instruction of a party in a specific real estate transaction.

SECTION 17. REEB 16.03 (1) (intro.), (d) and (e) are amended to read:

REEB 16.03 (1) In addition to forms prepared and approved by the board pursuant to s. 452.05

(1) (b), Stats., the board approves the following forms for use by ~~brokers~~ licensees:

(d) Forms prepared by governmental, quasi-governmental, and tribal agencies for use in programs administered by them under authority provided by law.

(e) Forms to be used for a property management agreement between a ~~broker~~ firm and a landlord, prepared by the broker entering into the agreement, an attorney, or the landlord, that contain provisions relating to leasing, managing, marketing, and overall management of the landlord’s property.

SECTION 18. REEB 16.04 (2) is amended to read:

REEB 16.04 (2) For those kinds of real estate or business opportunity transactions for which the board has not approved contractual forms, a licensee, when acting as an agent or a party, may use contractual forms drafted by a party or an attorney, if the name of the drafter is imprinted on the form before use by a licensee. For the purpose of this subsection, a listing ~~broker~~ firm is a party to the listing contract transaction.

SECTION 19. REEB 16.06 (1) (c), (4) (a) and (8) are amended to read:

REEB 16.06 (1) (c) Shall indicate that the form is reproduced by the licensee's firm, stating its address and telephone number at an appropriate place on the form.

(4) (a) The addendum has been prepared by the ~~broker~~ firm or an attorney who is identified on the addendum.

(8) A licensee shall use approved forms and prepare addenda in such a manner as to adequately accomplish the contractual ~~intent~~ instruction of the person for whom the licensee uses the forms and prepares the addenda.

SECTION 20. Chapter REEB 17 (title) is repealed and recreated to read:

CHAPTER REEB 17
LICENSEES ASSOCIATED WITH A FIRM

SECTION 21. REEB 17.02 and 17.025 are repealed.

SECTION 22. REEB 17.03 (title) is amended to read:

REEB 17.03 Limitations on ~~employees of a broker~~ licensees associated with a firm.

SECTION 23. REEB 17.03 (1) is repealed.

SECTION 24. REEB 17.03 (2) is amended to read:

REEB 17.03 (2) A licensee ~~who is employed by a broker-employer~~ associated with a firm may personally employ or engage as independent contractors licensed persons only as unlicensed personal assistants within the meaning of s. ~~REEB 17.02 (5)~~ 452.34(1), Stats., subject to the provisions in s. ~~REEB 17.12~~ 452.34, Stats.

SECTION 25. REEB 17.03 (3) is repealed and recreated to read:

REEB 17.03 (3) A broker shall be associated with only one firm unless the broker is engaging in independent practice under s. 452.30 (6) (a) or acting as business representative for a licensed business entity under s. 452.12 (2) (a).

SECTION 26. REEB 17.03 (4) is amended to read:

REEB 17.03 (4) A salesperson ~~or time share salesperson~~ may engage in real estate practice only when ~~employed by a broker~~ associated with a firm.

SECTION 27. REEB 17.04 to 17.12 are repealed.

SECTION 28. REEB 18.02 (2) is repealed.

SECTION 29. REEB 18.02 (6) (intro.) and (g) are amended to read:

REEB 18.02 (6) (intro.) “Real estate trust funds” means any cash, checks, share drafts, drafts, or notes received by a ~~broker or a broker’s salesperson or time share salespersons~~ firm or licensee on behalf of a principal or any other person including any of the following:

(g) Initial and additional earnest money downpayments and other funds received in connection with offers to purchase, options, and exchanges, even if the broker, or salesperson, ~~or time share salesperson~~ receives the downpayments or funds when negotiating the sale of real estate or a business opportunity which the broker, or salesperson, ~~or time share salesperson~~ owns in whole or in part, or when negotiating the purchase of real estate or a business opportunity for ownership in whole or in part by the broker, or salesperson, ~~or time share salesperson~~.

SECTION 30. REEB 18.031 (1) (intro.) and (a), (2), (3) and (5) (b) are amended to read:

REEB 18.031 (1) (intro.) TIME OF DEPOSIT. A ~~broker~~ firm shall deposit all real estate trust funds received by the ~~broker or broker’s salespersons or time share salespersons~~ firm or licensees associated with the firm in a real estate trust account within 48 hours of receipt of the trust funds. If funds are received on a day prior to a holiday or other day when the depository institution is closed, the ~~broker~~ firm shall deposit the funds within the next 2 business days. If a ~~broker~~ firm receives funds which cannot be deposited by the ~~broker~~ firm, the ~~broker~~ firm shall, no later than one business day after receipt, either:

(a) Forward the funds to the payee, if someone other than the ~~broker~~ firm.

(2) DUTY OF SALESPERSON LICENSEES. A ~~salesperson or time share salesperson~~ licensee who receives real estate trust funds shall promptly submit the funds to the ~~employer~~ broker firm of the ~~salesperson or time share salesperson~~ licensee.

(3) INTEREST-BEARING ACCOUNTS.

(a) Client funds shall be deposited in an interest-bearing common trust account and the department of administration shall be the beneficial owner of the interest accruing to the account, minus any service charges. At no time may the ~~broker~~ firm remove or use the interest earned on such accounts.

(b) Real estate trust funds, other than client funds, may be deposited in an interest-bearing account if the ~~broker~~ firm obtains from the persons for whom the funds are being held written authorization to deposit the funds in an interest-bearing account and if the authorization specifies how and to whom the interest will be disbursed. None of the interest earned on the funds deposited into an interest-bearing account may inure to the benefit of the ~~broker~~ firm.

(5) (b) A ~~broker~~ firm may directly deposit into an owner’s account rental application deposits, rents and security deposits which may have been made payable to one or more owners. The

broker firm or licensee associated with the firm may be designated as a signatory on the owner's account and may make disbursements from that account to the extent authorized by the owner in writing.

SECTION 31. REEB 18.032 to 18.07 are amended to read:

REEB 18.032 Number of real estate trust accounts. A broker firm may maintain more than one real estate trust account, including more than one interest-bearing common trust account for client funds, if the broker firm notifies the department of these accounts, as required in s. REEB 18.035.

REEB 18.033 Opening and closing real estate trust accounts. (1) OPENING AN ACCOUNT. A broker firm shall open a real estate trust account if the broker firm receives real estate trust funds.

(2) CLOSING AN ACCOUNT. A broker firm may close a real estate trust account if no real estate trust funds remain in the account or for reasons specified in s. REEB 18.035.

REEB 18.034 Account designation. (1) NAME ON TRUST ACCOUNT. A broker firm shall name the broker's firm's real estate trust account with the name appearing on the broker's license or with a trade name submitted to the department under s. REEB 23.03 and shall include the words "trust account" in the name of the account.

(2) NAME ON CHECKS. A broker firm shall imprint the name of the real estate trust account on real estate trust account checks, share drafts or drafts.

REEB 18.035 Duty to notify the department. (1) OPENING AN ACCOUNT. No later than 10 days after opening any real estate trust account a broker firm shall provide the department with the name and number of the account, with the name of the depository institution in which the broker firm holds the account and with information concerning whether the account is for client funds or for real estate trust funds other than client funds. The information shall be provided on a form, as required in s. REEB 18.037.

(2) CHANGING OR CLOSING AN ACCOUNT. A broker firm shall notify the department no later than 10 days after a broker firm changes a real estate trust account name or number, changes the real estate trust account from one depository institution to another, closes a real estate trust account or changes a real estate trust account to or from an interest-bearing common trust account established for client's funds. The notification shall be provided on a form, as required in s. REEB 18.037. When closing a real estate trust account, a broker firm may inform the board by letter.

REEB 18.036 Authorization to examine real estate trust accounts and records.

(1) BROKER'S FIRM'S AUTHORIZATION. No later than 10 days after opening a real estate trust account a broker firm shall furnish the department authorization for the department to examine and audit all of the broker's firm's real estate trust account records and authorization for the department of administration to examine all of the broker's firm's interest-bearing common trust accounts maintained for client funds. The authorization shall be provided on a form, as required in s. REEB 18.037.

(2) DEPOSITORY INSTITUTION'S CERTIFICATION. No later than 10 days after opening a real estate trust account a ~~broker firm~~ shall obtain the certification of every depository institution in which the ~~broker firm~~ maintains a real estate trust account attesting to the existence of the account and consenting to the examination and audit of the account by a duly authorized representative of the department or, in the case of interest-bearing common trust accounts maintained for client funds, the department of administration. The certification shall be provided to the department on a form, as required in s. REEB 18.037.

REEB 18.037 Form for notification and authorization. A ~~broker firm~~ shall provide the information and authorization as specified in ss. REEB 18.035 and 18.036 on a form provided by the department. This form shall be designated "consent to examine and audit trust account."

REEB 18.04 Authorization to sign trust account checks. A ~~broker firm~~ may authorize other persons to sign real estate trust account checks, share drafts or drafts drawn on the ~~broker's firm's~~ real estate trust account if the person is at least 18 years of age.

REEB 18.05 Receipt for earnest money received by the ~~broker licensee~~. A ~~broker licensee~~ shall indicate on the offer to purchase the receipt of earnest money received from a buyer at the time the offer is drafted.

REEB 18.06 Escrow agreement for earnest money not held by the ~~broker firm~~. If the parties to a transaction do not desire that the ~~broker firm~~ hold the earnest money in the ~~broker's firm's~~ real estate trust account, and wish to designate an escrow agent other than the ~~broker firm~~, the ~~broker licensee~~ may not draft the escrow agreement. The escrow agreement shall be drafted by the parties or an attorney. The ~~broker firm~~ may not hold the funds in the ~~firm's~~ real estate trust account, nor may the ~~broker firm~~ act in any way as custodian of the funds for the parties. The funds, pursuant to the escrow agreement, shall be held by a party other than the ~~broker firm~~, such as: a bank, a savings and loan association, a credit union, or an attorney.

REEB 18.07 After closing escrow agreements. (1) BY SEPARATE AGREEMENT. If the parties to a contract wish, or are required, to place funds in escrow which are to be held after closing by the ~~broker firm~~ in the ~~broker's firm's~~ trust account or by another person until some future occurrence, an agreement to that effect shall be prepared by the parties or an attorney. If the ~~broker firm~~ holds these funds, the ~~broker firm~~ shall place them in the ~~broker's firm's~~ real estate trust account. The ~~broker licensee~~ may draft the escrow agreement if a form for this purpose has been approved by the board for use by licensees pursuant to s. REEB 16.03.

(2) ON CLOSING STATEMENT. A ~~broker firm~~ may hold in the ~~broker's firm's~~ trust account without a separate escrow agreement occupancy or possession escrows, escrows for final proration of taxes, and escrows for charges incurred by a seller but not yet billed, provided that the closing statement shows that the ~~broker firm~~ is holding the funds.

SECTION 32. REEB 18.09 (1) (intro.), (2), and (3) are amended to read:

REEB 18.09 Disbursement of trust funds. (1) PROPER DISBURSEMENT. A ~~broker firm~~ who disburses trust funds from the ~~broker's firm's~~ real estate trust account under any of the following circumstances shall not be deemed to have violated s. 452.14 (3) (i), Stats.:

(2) NOTIFICATION OF DISBURSEMENT. Prior to making a disbursement of trust funds under sub. (1) (a) where the ~~broker~~ firm has knowledge that not all parties agree that the rejection or withdrawal occurred prior to binding acceptance, and prior to making a disbursement under sub. (1) (e), (f) and (g) where the ~~broker~~ firm has knowledge that either party disagrees with the disbursement, the ~~broker~~ firm shall attempt to notify all parties in writing of the intent to disburse. The notice shall be delivered by certified mail to the parties' last known addresses and shall state to whom and when the disbursement will be made. The disbursement may not occur until 30 days after the date on which the notice is sent.

(3) WITHDRAWAL OF COMMISSIONS. (a) A ~~broker~~ firm shall withdraw commissions or fees earned by the ~~broker~~ firm from real estate trust accounts maintained by the ~~broker~~ firm within 24 hours after transactions are consummated or terminated, or after the commissions or fees are earned in accordance with the contract involved.

(b) A ~~broker~~ firm providing property management services shall disburse the fee earned for providing property management services as a regular monthly basis unless otherwise agreed in a written property management agreement signed by the parties to that agreement.

SECTION 33. REEB 18.10 and 18.11 are amended to read:

REEB 18.10 Comingling funds prohibited. (1) DEPOSITABLE FUNDS. A ~~broker~~ firm shall deposit only real estate trust funds in the ~~broker's~~ firm's real estate trust account.

(a) Except for sub. (b), a ~~broker~~ firm shall not commingle ~~the broker's~~ personal funds or other funds in the real estate trust account.

(b) A ~~broker~~ firm may deposit and maintain a sum not to exceed \$300.00 from ~~the broker's~~ personal funds in any real estate trust account. Such sum shall be specifically identified and deposited to cover service charges relating to the real estate trust account.

(2) ADDITIONAL FUNDS. A ~~broker~~ firm shall deposit additional personal funds in sums consistent with sub. (1) (b) in the ~~broker's~~ firm's real estate trust account within 10 business days following receipt of a statement or other notification from a depository institution that a service charge has been made against the account for which insufficient personal funds are available in the real estate account.

REEB 18.11 Non-depositable items. A ~~broker~~ firm shall not hold any instrument, equity or thing of value which is not depositable in a real estate trust account. Non-depositable items shall be held by one of the parties to a transaction or some other party, subject to an escrow agreement prepared by the parties or an attorney.

SECTION 34. REEB 18.13 (intro.), (1) (intro), (2) to (5), and (6) (intro) and (e) are amended to read:

REEB 18.13 Bookkeeping system. Each ~~broker~~ firm shall maintain and be responsible for a bookkeeping system in the ~~broker's~~ firm's office consisting of at least the following:

(1) CASH JOURNAL. A ~~broker~~ firm shall maintain a record, called a journal showing the chronological sequence in which real estate trust funds are received and disbursed as follows:

(2) LEDGER. A ~~broker~~ firm shall maintain a record including the receipts and the disbursements as they affect each particular transaction, including transactions between buyer and seller,

landlord and tenant, etc. The ledger entry shall include the names of all parties to a transaction, the dates and the amounts received and the name of the party or parties providing the money if different from the buyer. Ledger entries shall include at least the date, payee, number of the check, share draft or draft and amount when funds are disbursed. The ledger shall include a running balance and segregate each transaction. The ~~broker~~ firm shall maintain a separate ledger or separate section of the ledger for each of the various kinds of real estate transactions, including sales, rental collections, or mortgage and land contract collections.

(3) ACCOUNT RECONCILIATION. The ~~broker~~ firm or a person designated by the ~~broker~~ firm shall reconcile the real estate trust account or accounts in writing each month except in the case where there has been no activity during the month. The written reconciliation shall include at least the ending account statement balance, the date and amounts of the deposits in transit, the number of the check, share draft, or draft, and amount of checks, share drafts, or drafts written but not paid by the depository institution as of the ending date shown on the account statement to be reconciled, and the reconciled account statement ending balance.

(4) TRIAL BALANCE. The ~~broker~~ firm shall prepare or have prepared, in conjunction with sub. (3), a written listing of all open items in the real estate trust account. The written listing shall be referred to as the "trial balance". The listing shall include at least the names of all parties to the transaction and the amount held in trust for the parties at the time corresponding to the account reconciliation. The ~~broker~~ firm may in lieu of the names of the parties to the transaction substitute the ledger page number or other means of identification from the ledger to label the funds in the trial balance.

(5) VALIDATION. The ~~broker~~ firm or a person designated by the ~~broker~~ firm shall review the reconciled account statement balance, the open ledger account listing, and the journal running balance to ensure that all of these records are valid and in agreement as of the date the account statement has been reconciled.

(6) USE OF COMPUTERS. A computerized system may be used to maintain the ~~broker's~~ firm's bookkeeping system if:

(e) All records ~~which are not maintained as written paper records are capable of being immediately converted to written paper records and immediately shall be~~ made available for inspection and copying by the department and exact and completed copies promptly sent to the department upon the request of the department without charge to the department or board for the purposes of an audit or investigation.

SECTION 35. REEB 18.14 is amended to read:

REEB 18.14 Violation of rules. A ~~broker~~ firm who fails to comply with the rules in this chapter shall be considered to have demonstrated incompetency to act as a ~~real estate broker licensed individual broker or a licensed broker business entity~~ in a manner as to safeguard the interests of the public, as specified in s. 452.14 (3), Stats.

SECTION 36. REEB 23.03 and 23.04 are amended to read:

REEB 23.03 Trade name. (1) DEFINITION. "Trade name" means the name other than the name appearing on the ~~broker's~~ license, under which the ~~broker~~ licensed individual broker or a licensed broker business entity advertises or does business.

(2) NOTIFICATION. A ~~licensed broker licensee~~, before doing business under any trade name, shall notify the department in writing of the trade name.

REEB 23.04 Change of form of business organization. (1) APPLICATION. A licensed broker business entity who intends to conduct business under a different ~~form of business entity type~~, shall apply for a new license. Upon payment of the fee specified in s. 440.05 (1), Stats., the ~~department board~~ shall issue to the applicant, ~~without examination~~, a license under the new ~~form of entity business type~~.

(2) NEW LICENSE REQUIRED. A broker business entity shall not engage in real estate activities under a different ~~form of business entity type~~ until a new license is issued.

SECTION 37. REEB 24.01 (3) is amended to read:

REEB 24.01 (3) If a licensee violates rules in this chapter, the licensee has demonstrated incompetency to act as a broker, ~~salesperson~~ or ~~time share~~ salesperson in such manner as to safeguard the interests of the public under s. 452.14 (3) (i), Stats. However, the term “incompetency” is not limited in its meaning to violations of this chapter.

SECTION 38. REEB 24.02 (2) is repealed.

SECTION 39. REEB 24.02 (3), (5), and (13m) are amended to read:

REEB 24.02 (3) “Brokerage service” means any service described under s. 452.01 (2), Stats., provided ~~by a broker to another~~ a person by a firm and any licensees associated with the firm.

(5) “Buyer’s ~~broker firm~~” means a licensee firm who has an agency agreement with a buyer.

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

SECTION 40. REEB 24.04 (2) (a) and (b), (3) and (4) are amended to read:

REEB 24.04 (2) DISCLOSURE OF NAME. (a) Except for advertisements for the rental of real estate owned by the ~~broker licensee~~, a broker licensee shall in all advertising disclose the ~~broker’s firm~~ name exactly as printed on the ~~broker’s licensed individual broker or the licensed broker business entity’s~~ license or disclose a trade name previously filed with the department, as required by s. REEB 23.03, and in either case clearly indicate that the ~~broker firm~~ is a business concern and not a private party.

(b) Except for advertisements for the rental of real estate owned by the licensee, a licensee ~~employed by a broker associated with a firm~~ shall advertise under the supervision of and in the name of the ~~employing broker firm~~.

(3) ADVERTISING WITHOUT AUTHORITY PROHIBITED. ~~Brokers Licensees~~ shall not advertise property without the consent of the owner.

(4) ADVERTISED PRICE. ~~Brokers Licensees~~ shall not advertise property at a price other than that agreed upon with the owner; however, the price may be stated as a range or in general terms if it reflects the agreed upon price.

SECTION 41. REEB 24.05 (1) (a), (2), (4) and (5) (a) 3. are amended to read:

REEB 24.05 (1) COMPENSATION. (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 firm~~, or ~~broker-employer firm~~ the licensee is associated with without prior written consent from all parties to the transaction.

(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~~, on behalf of any member of the licensee's immediate family or any combination of members of the licensee's immediate family, 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 shall obtain the written consent in the offer to purchase, option, lease or other transaction contract.

(4) DISCLOSURE TO SELLER. A listing ~~broker firm~~ 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.

(5)(a)3. Any other negotiation with the seller or the listing ~~broker firm~~.

SECTION 42. REEB 24.07 (1) (b) (title) and (c), (3), (8) (a) 1. to 1r., and 2 (intro.), a. and c., and (8) (b), (d) and (e) are amended to read:

REEB 24.07 (1) (b) *Listing broker firm.* When listing real estate and prior to execution of the listing contract, a licensee shall inspect the real estate as required by sub. (1), and shall make inquiries of the seller on the condition of the structure, mechanical systems and other relevant aspects of the property as applicable. The licensee shall request that the seller provide a written response to the licensee's inquiry.

(c) *Other licensees.* Licensees, other than listing ~~brokers firms~~, shall inspect the real estate as required by sub. (1) prior to or during the showing of the property, unless the licensee is not given access for a showing.

(3) DISCLOSURE OF INFORMATION SUGGESTING MATERIAL ADVERSE FACTS. A licensee, when engaging in real estate practice, who becomes aware of information suggesting the possibility of material adverse facts to the transaction, shall be practicing competently if the licensee discloses to the parties the information suggesting the possibility of material adverse facts to the transaction in writing and in a timely fashion, recommends the parties obtain expert assistance to inspect or investigate for possible material adverse facts to the transaction, and, if directed by the parties, drafts appropriate inspection or investigation contingencies. This provision is not limited to the condition of the property, but includes other material adverse facts to the transaction, including but not limited to defects and conditions included within the report form under ~~s. ss.~~ 703.33 and 709.03, Stats. A licensee is not required to retain third party inspectors or investigators to perform investigations of information suggesting the possibility of a material adverse fact to the transaction.

(8) DISCLOSURE OF AGENCY. (a) *General requirements.* 1. A ~~broker firm~~ may not negotiate on behalf of a party who is not the ~~broker's firm's~~ client unless the ~~broker firm~~ 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 firm~~ shall request the party's signed acknowledgement that the party has received a copy of the written disclosure statement.

1g. A ~~broker firm~~ may not negotiate on behalf of a client unless the ~~broker firm~~ 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 firm~~ 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 firm~~ 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.

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 a listing ~~broker firm~~ the exclusive right to sell, shall notify the seller or the listing ~~broker firm~~, as applicable, of the licensee's buyer agency relationship at the earlier of all of the following:

a. The first contact with the seller or the listing ~~broker firm~~ where information regarding the seller or transaction is being exchanged.

c. Any other negotiation with the seller or the listing ~~broker firm~~.

(b) *Agency agreements.* 1. ~~Brokers or their salespeople~~ Firms and the licensees associated with the firm shall explain to their clients the responsibilities of seller's listing agents, buyer's agents, and subagents before entering into an agency agreement.

2. No ~~broker or broker's salesperson~~ firm or licensees associated with the firm may permit other ~~brokers firms~~ to act as subagents in a transaction unless the ~~broker's firm's~~ client has authorized the use of a subagent in the agency agreement.

(d) *Subagency arrangements.* 1. A listing ~~broker firm~~ 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 firm~~.

2. A buyer's ~~broker firm~~ 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 firm~~.

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 firm's~~ client.

4. A principal ~~broker firm~~ 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 43. REEB 24.10 is amended to read:

REEB 24.10 Net listing prohibited. Licensees shall not obtain, negotiate or attempt to obtain or negotiate any listing contract providing for a stipulated net price to the owner with the excess over the stipulated net price to be received by the ~~broker~~ firm as commission.

SECTION 44. REEB 24.13 (2) (a), (3) (b), (4) and (5) are amended to read:

REEB 24.13 (2) (a) Listing ~~brokers~~ firms shall permit access to listed property for showing purposes, to all buyers and persons assisting or advising buyers, without unreasonable delay, unless the buyer's or other person's access is contrary to specific written instructions of the seller.

(3) (b) A listing licensed individual broker acting as a sole proprietor or the listing broker's employee licensee associated with a listing firm may not submit his or her own personal written proposal or offer to purchase a property which the broker firm has listed if the broker or broker's employee licensee has knowledge of the terms of any pending offer, except that a ~~broker~~ firm may arrange for a guaranteed sale at the time of listing.

(4) NOTIFICATION OF ACTION ON WRITTEN PROPOSAL. Licensees shall promptly inform their clients and customers whether the other party has accepted, rejected, or countered their written proposal. A licensee shall immediately provide a written statement to the other party's ~~broker~~ firm 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~~ firm. A licensee shall immediately provide a written statement to the other party's ~~broker~~ firm that includes the date and time when the written proposal was rejected or had expired without acceptance when such a statement is requested by the other party or the other party's ~~broker~~ firm.

(5) NEGOTIATION THROUGH ~~BROKER FIRM~~. 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~~ firm holding the exclusive right to sell, lease, or negotiate, and not with the party, except with the consent of the ~~broker~~ firm or where the absence of the ~~broker~~ firm, or other similar circumstances, reasonably compels direct negotiation with the party. A listing ~~broker~~ firm has no duty to investigate whether a buyer has granted a buyer's agent an exclusive right to negotiate.

SECTION 45. REEB 24.16 is amended to read:

REEB 24.16 Availability of rules. ~~Brokers~~ Firms shall have the rules of the department readily available in all offices for the use of all licensees.

SECTION 46. REEB 24.17 (1) is amended to read:

REEB 24.17 (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~~ licensee. A licensee who has been convicted of a crime shall send to the board within 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 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~~ licensee, pursuant to s. 111.335 (1) (c), Stats.

SECTION 47. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

This Proposed Order of the Real Estate Examining Board is approved for submission to the Governor and Legislature.

Dated _____

Agency _____

Chair
Real Estate Examining Board