

Clearinghouse Rule 23-075

STATE OF WISCONSIN
REAL ESTATE EXAMINING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : REAL ESTATE EXAMINING BOARD
REAL ESTATE EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Real Estate Examining Board to repeal and recreate REEB 12.01 (3) (Note); amend REEB 12.01 (5), 12.017(3) (a) (intro.) and (d), 12.025 (2) and (3), 12.04 (1) (a), (2m) (b) 3., and (c) 4., 25.023 (2) (c) 1. to 10., (6) (d), (7) (d) (intro.), (7) (f) 1., (g) 1., and (g) 2., 25.028 (intro.), (1) (g), (2) (a) 3. e. to g., and i. to L., (d) 2. and 4.(intro.), (e) 2., and (i) 7., 25.033 (3) (h), (i), (8) (f) 5. and 6., and 11. to 14., (13) (b) 2., and 4. (intro.), and (17) (b), 25.055 (1) (c), and 25.068 (1) (a), (c) and (2) (k); and repeal REEB 25.023 (7) (h), (g) 1. (Note) and (g) 2. (Note), relating to license renewal and continuing education.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 452.12, 452.132, 452.133, 452.136, Stats.

Statutory authority: ss. 15.08 (5) (b), 227.11 (2), 452.05 (2) (c), 452.05 (2) (d), 452.07 (1), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., states that “The board shall promulgate rules for its own guidance and for the guidance of the trade or 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.”

Section 227.11 (2) (a), Stats., states that “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...”

Section 452.05 (2) (c), Stats., states that “[the board ... shall] After consultation with the council on real estate curriculum and examinations, promulgate rules establishing criteria for the approval of educational programs and training sessions under s. 452.09 (2) and approve such programs and sessions in accordance with the established criteria.”

Section 452.05 (2) (d), Stats., states that “[the board ... shall] After consultation with the council on real estate curriculum and examinations, brokers and salespersons licensed under this chapter, and interested members of the public, establish criteria for the approval of continuing educational programs and courses in real estate related subjects required for renewal under s. 452.12 (5) (c).”

Section 452.07 (1), Stats., states that “The board shall promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice.”

Related statute or rule: Chapter REEB 17, ch. REEB 23, s. 452.132, Stats., s. 452.133, Stats., s. 452.136, Stats.

Plain language analysis: The objective of the proposed rule is to update and clarify provisions relating to original, renewal and expired real estate broker and salesperson licenses. Additionally, the rule seeks to update and clarify provisions relating to continuing education and requirements for real estate brokers and real estate salespersons.

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

None.

Comparison with rules in adjacent states:

Illinois: The Illinois Department of Financial and Professional Regulation is responsible for the licensure and regulation of residential leasing agents and brokers in Illinois. Illinois requires an applicant for a broker’s license to be at least 18 years of age, graduated from high school or equivalent, complete 15 hours of specified education or be admitted to practice law in Illinois and pass an examination. An applicant for a managing broker’s license is required to be at least 20 years of age, graduated from high school or equivalent, complete 165 credit hours of specified education or be admitted to practice law in Illinois, be actively licensed for 2 of the last 3 years and pass an examination. An out of state applicant who holds a license in a state with standards substantially equivalent to Illinois is required to take an Illinois specific real estate brokerage laws exam. Illinois residential leasing agents, brokers, and managing brokers are required to complete 8, 12, and 18 hours of continuing education, respectively during their term. Reciprocity is granted to brokers and managing brokers who hold an active managing broker license, or its equivalent, by examination in a state with a reciprocal agreement with the Department, the broker has been actively engaged in licensed activities as a broker during the preceding 2 years in the state of licensure, and the broker’s licensing standards are substantially equivalent to or greater than the minimum standards in Illinois [225 ILCS 454].

Iowa: The Iowa Real Estate Commission is responsible for the licensure and regulation of real estate salespeople and brokers in Iowa. Iowa requires an applicant for a salesperson’s license to be at least 18 years of age, complete 96 hours of specified education and pass an examination. An applicant for a broker’s license is required to complete 60 hours of live instruction in addition to the required salesperson’s education,

have engaged in real estate practice for a period of at least 24 months and pass an examination. Iowa licensees shall complete 36 hours of continuing education approved programs, courses or activities. Reciprocity may be achieved by conforming to the prevailing licensing rules issued for real estate salespersons and brokers [IA 193E-3.1-193E5.12 (543B)].

Michigan: The Michigan Department of Licensing and Regulatory Affairs is responsible for the licensure and regulation of real estate salespersons and brokers in Michigan. Michigan requires an applicant for a salesperson's license to complete 40 hours of education and pass an examination. An applicant for a broker's license must complete 90 hours of education (a law degree counts towards 60 hours and a master's degree in business administration counts as 60 hours of education, respectively), have real estate experience and pass an examination. Michigan real estate salespersons and brokers must complete 18 hours of continuing education approved programs, courses or activities. Reciprocity may be achieved by conforming to the prevailing licensing rules issued for real estate salespersons and brokers [MCL 339.2502-339.2514].

Minnesota: The Minnesota Department of Commerce is responsible for the licensure and regulation of real estate salespersons and brokers in Minnesota. Minnesota requires an applicant for a real estate salesperson to be at least 18 years of age, complete 30 hours of instruction prior to passing an examination and an additional 60 hours of education after passing the examination. An applicant for a broker's license is required to complete 30 hours of education and 3 years of experience as a licensed salesperson. All real estate salespersons and brokers are required to complete 30 hours of real estate continuing education during the licensing period and each successive 24-month period. Real estate salespersons and brokers seeking license reciprocity with the State of Minnesota may be granted provided (1) there is a written reciprocal licensing agreement in effect between the commissioner and the licensing officials of that jurisdiction, (2) the individual is licensed and in good standing in that jurisdiction, and (3) the licensing requirements of that jurisdiction are substantially similar to existing Minnesota provisions [Minnesota Statutes 2022, section 82].

Summary of factual data and analytical methodologies: The proposed rule was developed by conducting a comprehensive review of the provisions of ch. REEB 12 and 25, reviewing real estate broker provisions from surrounding states, updating language to correspond with statutory references, and obtaining input and feedback from the Real Estate Examining Board.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis: The proposed rules were posted for 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments 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 Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-6795.

Agency contact person:

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-267-7139; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing, held on a date to be determined, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. REEB 12.01 (3) (Note) is repealed and recreated to read:

REEB 12.01 (3) Note: Instructions for applications can be found on the department of safety and professional services' website at <http://dsps.wi.gov>.

SECTION 2. REEB 12.01 (5) is amended to read:

REEB 12.01 (5) PREVIOUSLY LICENSED BROKERS AND SALESPERSONS. No action shall be taken on any new application of an applicant who has previously been licensed by the board until the applicant furnishes sufficient proof to the board that the applicant has not acted as a salesperson or broker since the expiration of ~~his or her~~ the applicant's license. The board may in its discretion waive this requirement.

SECTION 3. REEB 12.017 (3) (a) (intro.) and (d) are amended to read:

REEB 12.017 (3) (a) (intro.) Each individual applicant for a real estate broker's license shall submit evidence satisfactory to the board that the applicant has practiced as a licensed salesperson under the direct supervision of a licensed broker for at least 2 years within the last 4 years preceding the date of the application. Except as provided in pars. (b) to (d), the evidence shall demonstrate that the applicant's experience as a licensed salesperson qualifies the applicant for a total of at least 40 points based on the following point system:

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12.017 (3) (d) Except as provided in a reciprocal agreement under s. 452.05 (3), Stats., ~~A~~ a nonresident applicant may satisfy the requirement under par. (a) by submitting to the board evidence satisfactory to the board that the applicant has been a licensed broker under the laws of another state for at least 2 years within the last 4 years preceding the date of the applicant's application.

SECTION 4. REEB 12.025 (2) and (3) are amended to read:

REEB 12.025 (2) REVIEW. All applicants who obtain a failing ~~grade~~ score shall receive a report detailing the results of the applicant's examination in the major content areas of the examination.

12.025 (3) CHEATING ON EXAMINATION. An applicant may not give or receive unauthorized assistance during an examination, violate the rules of conduct of the examination, or otherwise act dishonestly. The action taken by the board for a violation of this section shall be related to the seriousness of the offense. An action may include withholding the score of the applicant, entering a failing ~~grade~~ score for the applicant, and suspending the ability of the applicant to sit for the next scheduled examination after the examination at which the conduct occurred.

SECTION 5. REEB 12.04 (1) (a), (2m) (b) 3., and (c) 4. are amended to read:

REEB 12.04 (1) (a) If a licensee renews ~~his or her~~ their real estate license less than 5 years after the renewal date, as defined in s. 440.01 (1) (dm), Stats., the licensee shall pay the applicable renewal fee and late renewal fee specified in s. 440.08, Stats., and provide evidence of having satisfied the continuing education required by s. 452.12 (5), Stats., during the biennium preceding the date of renewal of the license.

12.04 (2m) (b) 3. 'Continuing education.' Completion of the continuing education required by s. 452.12, Stats., for the biennium preceding the date of renewal of the license. A licensee completing education under subs. 1. a. ~~and~~ or c. meets the continuing education requirement.

(c) 4. 'Continuing education.' Completion of the continuing education required by s. 452.12, Stats., for the biennium preceding the date of renewal of the license. A licensee completing education under subs. 1. a. ~~and~~ or c. meets the continuing education requirement.

SECTION 6. REEB 25.023 (2) (c) 1. to 10., (6) (d) and (7) (d) (intro.) are amended to read:

REEB 25.023 (2) (c) 1. Listing ~~eontraet~~ contracts for sale.

2. ~~Offer~~ Offers.

3. ~~Counteroffer~~ Counter-offers.

4. ~~Amendment~~ Amendments.

5. Buyer agency ~~agreement~~ agreements.

6. Listing ~~eontraet~~ contracts for lease.

7. ~~Option~~ Options.
8. ~~Bill~~ Bills of sale.
9. ~~Exchange~~ Exchanges.
10. Cancellation agreement and mutual ~~release~~ releases.

REEB 25.023 (6) (d) Licensure and supervision of ~~employees~~ licensees associated with a firm under s. 452.132, Stats., and ch. REEB 17.

REEB 25.023 (7) (d) (intro.) Disclosure of compensation and interest under s. REEB 24.05 and s. 452.133., Stats., including all of the following:

SECTION 7. REEB 25.023 (7) (h) is repealed.

SECTION 8. REEB 25.023 (7) (f) 1. And (g) 1. are amended to read:

REEB 25.023 (7) (f) 1. Negotiations through a listing ~~broker~~ firm under s. REEB 24.13 (5).

REEB 25.023 (7) (g) 1. Licensee supervision under s. ~~REEB 17.08~~ 452.132, Stats.

SECTION 9. REEB 25.023 (7) (g) 1. (Note) is repealed.

SECTION 10. REEB 25.023 (7) (g) 2. is amended to read:

REEB 25.023 (7) (g) 2. Office supervision under s. ~~REEB 17.08~~ 452.132, Stats.

SECTION 11. REEB 25.023 (7) (g) 2. (Note) is repealed.

SECTION 12. REEB 25.028 (intro.), (1) (g), (2) (a) 3. e. to g., and i. to L., (d) 2. and 4. (intro.), (e) 2., and (i) 7. are amended to read:

REEB 25.028 (intro.) Nonresident broker education equivalency. An applicant who has held an active real estate broker's license in another licensing jurisdiction within the 2 year period prior to filing an application for a real estate broker's license in this state is deemed to have met the equivalency to the business management and salesperson program education based upon ~~his or her~~ the applicant's education required to obtain a license in the other licensing jurisdiction and the completion of Wisconsin specific education consisting of all of the following:

25.028 (1) (g) Licensees associated with a firm under ch. REEB 17 and s. 452.132., Stats.

25.028 (2) (a) 3. e. ~~Counter offers~~ Counter-offers.

f. Multiple ~~counter proposals~~ counter-proposals.

g. ~~Amendment~~ Amendments.

25.028 (2) (a) 3. i. ~~Option~~ Options.

j. ~~Bill~~ Bills of sale.

k. ~~Exchange~~ Exchanges.

L. Cancellation agreement and mutual ~~release~~ releases.

25.028 (2) (d) 2. Advertising under s. REEB 24.04 and s. 452.136., Stats.

25.028 (2) (d) 4. (intro.) Disclosure of compensation and interest under s. REEB 24.05 and s. 452.133, Stats., including all of the following:

25.028 (2) (e) 2. Inquiry by listing ~~broker~~ licensee under s. REEB 24.07 (1) (b).

25.028 (2) (i) 7. Licensure and supervision of ~~employees~~ licensees associated with firm under ch. REEB 17 and s. 452.132, Stats.

SECTION 13. REEB 25.033 (3) (h) and (i), (8) (f) 5. and 6., and 11. to 14., (13) (b) 2., and 4. (intro.), and (17) (b) are amended to read:

REEB 25.033 (3) (h) ~~Broker-to-broker~~ Firm-to-firm relationships.

(i) ~~Sales associate to sales associate~~ Licensee-to-licensee relationships.

25.033 (8) (f) 5. ~~Counter-offers~~ Counter-offers.

6. Multiple ~~counter-proposals~~ counter-proposals.

25.033 (8) (f) 11. Cancellation agreement and mutual ~~release agreements~~ releases.

12. ~~Option~~ Options.

13. ~~Bill~~ Bills of sale.

14. ~~Exchange~~ Exchanges.

25.033 (13) (b) 2. Advertising under s. REEB 24.04 and s. 452.136, Stats.

25.033 (13) (b) 4. (intro.) Disclosure of compensation and interest under s. REEB 24.05 and s. 452.133, Stats., including all of the following:

25.033 (17) (b) The ~~master~~ comprehensive plan.

SECTION 14. REEB 25.038 (intro.), (1) (c) 5. to 7., and 9. to 12., and (4) (b) and (d), are amended to read:

REEB 25.038 (intro). Nonresident salesperson education equivalency. An applicant who has held an active real estate salesperson's license in another licensing jurisdiction within the 2 year period prior to filing an application for a real estate salesperson's license in this state is deemed to have met the equivalency to the salesperson program education based upon ~~his or her~~ the applicant's education required to obtain a license in the other licensing jurisdiction and completion of Wisconsin specific education consisting of 13 hours and containing the following content:

25.038 (1) (c) 5. ~~Counter-offers~~ Counter-offers.

6. Multiple ~~counter-proposals~~ counter-proposals.

7. ~~Amendment~~ Amendments.

25.038 (1) (c) 9. ~~Option~~ Options.

10. ~~Bill~~ Bills of sale.

11. ~~Exchange~~ Exchanges.

12. Cancellation agreement and mutual ~~release~~ releases.

25.038 (4) (b) Advertising under s. REEB 24.04 and s. 452.136, Stats.

25.038 (4) (d) Disclosure of compensation and interest under s. REEB 24.05 and s. 452.133, Stats., including all of the following:

SECTION 15. REEB 25.055 (1) (c) is amended to read:

REEB 25.055 (1) (c) A school or organization may not discriminate against anyone on the basis of sex, race, color, sexual orientation ~~as defined in s. 111.32 (13m), Stats.,~~ handicap, disability, religion, age, ~~physical disability~~ or national origin in its education program or courses.

SECTION 16. REEB 25.068 (1) (a), (c) and (2) (k) are amended to read:

REEB 25.068 (1) (a) A school or organization shall conduct an examination at the end of each continuing education program or course consisting of at least ~~15~~ 5 multiple-choice questions for each hour of the continuing education program or course. The passing score shall be no less than 70%, unless the school or organization provides substantial justification to the board for a lower score and the board approves the lower passing score. A school or organization may not count examination time as part of the number of hours of the program or course.

25.068 (1) (c) A school or organization may not discriminate against anyone on the basis of sex, race, color, sexual orientation ~~as defined in s. 111.32 (13m), Stats.,~~ handicap, disability, religion, age, ~~physical disability~~ or national origin, in its education program or courses.

25.068 (1) (2) (k) A minimum of ~~15~~ 5 multiple-choice questions for each hour of the continuing education program or course, the answer to each question, the portion of the course outline to which the question relates and the passing score for the examination. The questions shall comply with reasonable standards of test development and relate to the substantive contents of the continuing education program or course.

SECTION 17. EFFECTIVE DATE. 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)
