

CR 85-104

CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF REGULATION AND LICENSING )

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Barbara Nichols, Secretary of the Department of Regulation and Licensing, and custodian of the official records of the department, do hereby certify that the annexed rules, relating to the use of contractual forms and provision of legal advice by real estate licensees, were duly approved and adopted by the department on January 21, 1986.

I further certify that the attached copy has been compared by me with the original on file in the department and that the same is a true copy thereof, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin, this 21<sup>st</sup> day of January, A.D. 1986.

Barbara Nichols  
Barbara Nichols, Secretary  
Department of Regulation and Licensing

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STATE OF WISCONSIN  
BEFORE THE  
DEPARTMENT OF REGULATION AND LICENSING

Revisor of Statutes  
Bureau

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IN THE MATTER OF RULEMAKING : ORDER OF THE DEPARTMENT OF  
 PROCEEDINGS BEFORE THE DEPARTMENT : REGULATION AND LICENSING REPEALING,  
 OF REGULATION AND LICENSING : AMENDING OR ADOPTING RULES

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AN ORDER to repeal and recreate Chapter RL 16 relating to rules concerning the use of contractual forms and provision of legal advice by real estate licensees.

Analysis prepared by the department of regulation and licensing.

ANALYSIS

In this proposal ch. RL 16 is repealed and recreated to rewrite, reorganize and clarify provisions pertaining to legal advice provided to clients by real estate licensees, the approval of contractual and conveyance forms used by licensees, and the conditions under which such forms may be used by real estate licensees. Specifically:

1. Section RL 16.01 indicates the statutory authority under which the rules are adopted.

2. Section RL 16.02 defines the terms "approved form", "licensee" and "use a form". These terms are necessary to understand provisions in the rules. This rule interprets ss. 452.05(1)(b) and 452.14(3)(m), Stats., relating to the approval and use of forms in real estate practice.

3. Section RL 16.03 lists contractual and conveyance forms prepared by agencies other than the department and grants approval to specific forms prepared by these persons. It also distinguishes between those forms which brokers may use and those which salespersons may use. This rule interprets s. 452.05(1)(b), Stats., relating to the approval and use of forms in real estate practice.

4. Section RL 16.04 clarifies when brokers and salespersons must use an approved form and when brokers and salespersons may use other forms which have been prepared by a client, a broker's attorney or a client's attorney. This rule interprets ss. 452.05(1)(b), and 452.14(3)(m), Stats., relating to the approval and use of forms in real estate practice.

5. Section RL 16.05 describes the limitations on the practice of law imposed on real estate licensees when advising clients and using approved forms. This rule interprets ss. 452.05(1)(6) and 452.14(3)(m), Stats., relating to the approval and use of forms in real estate practice.

6. Section RL 16.06 details requirements relating to the reproduction of approved forms and completion of approved forms with deletions and

addenda to bring about the intent of the parties to the transaction. The rule interprets ss. 452.05(1)(b) and 452.14(3)(m), Stats., relating to the approval and use of forms in real estate practice.

7. Section RL 16.07 details the consequences for violation of these rules. This rule interprets s. 452.14(3)(i), relating to competency of real estate licensees, and s. 452.14(3)(m), relating to failure to use an approved form.

#### ORDER

Pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.014(2) and 452.07, Stats., the Department of Regulation and Licensing hereby repeals and recreates rules interpreting ss. 452.04(1), 452.05(1)(b), 452.06(1), 452.14(3)(i) and (m), Stats., as follows:

SECTION 1. Ch. RL 16 is repealed and recreated to read:

#### Chapter RL 16

#### APPROVED FORMS AND LEGAL ADVICE

RL 16.01 AUTHORITY. The rules in this chapter are adopted pursuant to ss. 227.014(2), 452.05(1)(b), 452.07, and 452.14(3)(m), Stats.

RL 16.02 DEFINITION. (1) "Approved form" means a contractual or conveyance form which is either prepared and approved by the department, pursuant to s. 452.05(1)(b), Stats., or approved in s. RL 16.03.

(2) "Licensee" means any person licensed or registered under ch. 452, Stats.

(3) "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 of a party in a specific real estate transaction.

RL 16.03 APPROVED FORMS. (1) In addition to forms prepared and approved by the department pursuant to s. 452.05(1)(b), Stats., the department approves the following for use by brokers:

(a) Forms prepared and approved by the state bar of Wisconsin;

(b) Uniform commercial code forms: 1, 2, 3, 4, 11, 410, 411, 430, 445, 450 and 451;

(c) Contractual forms for the sale, purchase or rental of real estate or a business opportunity located in another state, if the contractual forms are those which licensees may legally and customarily

use for such transactions in the state where the real estate or business opportunity is located.

(2) In addition to forms prepared and approved by the department pursuant to s. 452.05(1)(b), Stats., the department grants approval of the forms in sub.(1)(c) for use by salespersons.

Note: Copies of most approved forms are available from various business supply stores and forms printers throughout the state of Wisconsin. Forms prepared by governmental agencies for use in programs administered by those agencies, and approved by the department, are available from those agencies. Contractual forms which have been prepared by the department and are currently approved by the department are the following:

- WB-1 Residential Listing Contract - Exclusive Right To Sell - 5/1/82
- WB-2 Farm Listing Contract - Exclusive Right To Sell - 5/1/82
- WB-3 Vacant Land Listing Contract - Exclusive Right to Sell - 5/1/82
- WB-4 Residential Condominium Listing Contract - Exclusive Right To Sell - 5/1/82
- WB-5 Commercial Listing Contract - Exclusive Right To Sell - 5/1/82
- WB-6 Business Listing Contract - Exclusive Right To Sell - optional use date 11/1/83; mandatory use date 5/1/84
- WB-11 Residential Offer To Purchase - 5/1/82
- WB-12 Farm Offer To Purchase - 5/1/82
- WB-13 Vacant Land Offer To Purchase - 5/1/82
- WB-14 Residential Condominium Offer To Purchase - 5/1/82
- WB-15 Commercial Offer To Purchase - 5/1/82
- WB-16 Business Offer To Purchase - optional use date 11/1/83; mandatory use date 5/1/84
- WB-18 House Lease - 5/8/80
- WB-20 Apartment Lease - 5/9/80
- WB-22 Standard Office Lease - 8/15/74
- WB-23 Standard Office Lease With Renewal Clause - 8/15/74
- WB-24 Grant of Option - optional use date 10/1/82; mandatory use date 3/1/83
- WB-25 Bill of Sale - optional use date 7/1/83; mandatory use date 11/1/83
- WB-35 Offer To Exchange Property With Acceptance - optional use date 10/1/82; mandatory use date 3/1/83
- WB-36 Exclusive Buyer Agency Contract - optional use date 10/1/85; mandatory use date 1/1/86
- WB-37 Exclusive Listing Contract For Rental of Property - undated
- WB-38 Exclusive Commission Contract With Buyer For Specific Property - undated (approved until 1/1/86)
- WB-39 Non-Exclusive Commission Contract With Buyer For Non-Specific Property - undated (approved until 1/1/86)
- WB-42 Amendment To Listing Contract - 5/1/82
- WB-43 Amendment To Contract Of Sale - 5/1/82
- WB-44 Counter-offer - 5/1/82
- WB-45 Cancellation Agreement and Mutual Release - 5/1/82

RL 16.04 WHEN TO UTILIZE APPROVED FORMS. (1) Except as provided in subs. (2) and (3), a licensee shall use approved forms when acting as an agent or a principal in a real estate transaction.

(2) For those kinds of real estate transactions for which the department has not approved contractual forms a licensee may, when acting as an agent, use contractual forms drafted by a client or a client's attorney, but only for that client's transactions, if the name of the drafter is imprinted on the form before use by a licensee.

(3) For those kinds of real estate transactions for which the department has not approved contractual forms a licensee may, when acting as a sole principal or one of several principals, use contractual forms drafted by the licensee's attorney, if the name of the drafter is imprinted on the form before use by the licensee.

(4) A licensee may in any real estate transaction where the licensee is acting as agent, negotiate an agreement and permit the parties or an attorney for one or other of the parties to draft or prepare a contractual agreement which embodies all of the negotiated terms and conditions.

RL 16.05 LEGAL ADVICE AND PRACTICE OF LAW. (1) A licensee may not give advice or opinions concerning the legal rights or obligations of parties to a transaction, the legal effect of a specific contract or conveyance, or the state of title to real estate.

(2) Notwithstanding sub. (1), a licensee may give a general explanation of the provisions in an approved form to the parties to a transaction at the time of completing the form or when delivering an approved form for the seller's or buyer's acceptance.

(3) A licensee may use approved forms only in those transactions in which the licensee is acting in a capacity as licensee or in which the licensee is a principal, and in either case the use of such forms is incidental to the real estate practice of the licensee.

(4) A licensee may not make a separate charge for completing an approved form in connection with a transaction.

RL 16.06 HOW TO USE APPROVED FORMS. (1) A licensee who reproduces or arranges for printing a contractual form prepared and approved by the department pursuant to s. 452.05(1)(b), Stats.:

(a) Shall assure that the numbering of lines and line contents are identical to those on the department's form.

(b) May not reproduce the form in such a manner that optional provisions are left out and blank spaces are filled in without any indication of where the optional provisions and blanks occur on the department's form.

(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.

(d) May add additional blank lines, provided that such lines remain unnumbered and the contents and line numbers on the department's form are not altered.

(e) Shall retain the department's approval statement and date in the upper left corner exactly as these appear on the department's form.

(2) A licensee who reproduces or arranges for printing a form under s. RL 16.03(1)(a) or (b) may not modify the form in any way.

(3) A licensee may cross out provisions on approved forms to reflect the agreement of a party to a transaction, provided that the deleted provisions remain legible.

(4) A licensee may set forth on attached pages provisions relating to the blanks on an approved form, if the licensee properly incorporates the attachment by reference into the approved form and relates the approved form and the attached pages to one another.

(5) A licensee may use a pre-prepared addendum which supplants or alters the printed provisions of an approved form only if:

(a) The addendum has been drafted by an attorney who is identified on the addendum;

(b) There are no optional or multiple choice provisions in the addendum;

(c) There are no blanks or fill-in provisions in the addendum except for spaces for the signatures of the parties and those items required under par. (d); and,

(d) The addendum is incorporated by reference into the approved form and the approved form and the addendum are properly related to one another.

(6) A licensee may alter an approved exclusive-right-to-sell listing contract to create an exclusive agency listing or an open listing.

(7) A licensee shall use the latest approved version of an approved form.

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

RL 16.07 VIOLATION OF THIS CHAPTER. A licensee who violates this chapter demonstrates incompetency to act as a real estate licensee in

a manner that, for purposes of s. 452.14(3)(i), Stats., safeguards the interests of the public and shall be in violation of s. 452.14(3)(m), Stats.

The rules repealed and recreated in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.026(1)(intro.), Stats.

Dated this 21<sup>st</sup> day of January, 1986.

By: Barbara Nichols  
Barbara Nichols, Secretary  
Department of Regulation & Licensing

FISCAL ESTIMATE

There is no anticipated statewide or local fiscal effect.

FINAL REGULATORY FLEXIBILITY ANALYSIS

The rules proposed will have no significant economic impact on small businesses, as defined in s. 227.016(1)(a), Stats.

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