

CR 94-174

CERTIFICATE

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Marlene A. Cummings, Secretary, Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department of Regulation and Licensing, hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 8th day of March, 1995.

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

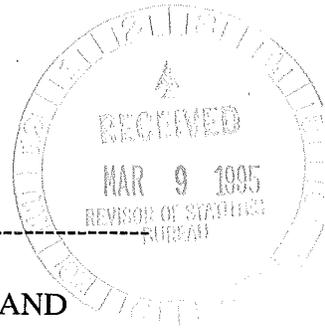


IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin this 8th day of March, 1995.

Marlene A. Cummings

**Marlene A. Cummings, Secretary
Department of Regulation and
Licensing**

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING



IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION : LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 94-174)

ORDER

An order of the Department of Regulation and Licensing to repeal RL 24.02 (5), 24.07 (1) (c) and (7); to renumber RL 24.02 (2), (3), (4), (6), (7) and (9) and 24.07 (6); to renumber and amend RL 24.02 (8) and 24.07 (1) (a) and (b); to amend RL 24.01, 24.04 (2) (c), 24.05 (1), (2), (3) and (5), 24.07 (1) (title), (1) and (1) (d), to repeal and recreate RL 24.02 (1), 24.025, 24.07 (4) and 24.09; and to create RL 24.02 (2), (3), (6), (9), (12), (13), (14), (15), (16) and (18) and 24.07 (6) and (8) relating to definitions, responsibilities and duties, self-dealing, inspections and disclosure requirements for real estate licensees.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2) and 452.07, Stats.

Statutes interpreted: ss. 452.133, 452.135, 452.137, 452.138, 452.139, 452.14 and 452.33, Stats.

SECTION 1 lists new statutory sections which provide authority for Chapter RL 24. Note, too, that several references in the rules refer to statutory sections which were created by 1993 Wisconsin Act 127. This SECTION also removes a reference to "cemetery salespersons" and adds a reference to "time-share salespersons," in order to bring the rules in this chapter into conformity with other statutory changes in the past few years.

SECTIONS 2 to 8 add nine more definitions to the nine definitions in the current rule. Most of the new definitions have been taken from 1993 Wisconsin Act 127. Some of the current definitions are also amended.

SECTION 9 modifies the current rule, relating to the responsibilities owed by licensees to a principal and other persons. The proposed rule inserts language taken from 1993 Wisconsin Act 127.

SECTION 10 retains the current requirements concerning advertising by a licensee; however, the proposed amendment does not state the precise terms which must be used in the ad. The new rule simply states that the licensee must clearly identify himself, herself or itself as a real estate licensee.

SECTION 11 makes minor changes to 5 subsections in the current rules, relating to various forms of self-dealing.

SECTIONS 12 to 19 make minor changes to current provisions relating to the duties of licensees to inspect a property and disclose the existence of material adverse facts to interested parties. Changes have been made to differentiate between the inspection of structures on a property and vacant land. A sentence pertaining to vacant land has been added to two subsections, in order to clarify that a reasonably competent and diligent inspection of vacant land does not require an observation of the entire property, but must include, if a licensee is given access, an observation of the property from at least one point on or adjacent to the property. SECTIONS 12 to 19 also clarify that most inspection and disclosure requirements pertain to a licensee only when engaging in the practice of real estate and not for the occasional sale of his or her own property or business. "Real estate practice" is defined in s. 452.01 (6), Stats., and in this rule proposal. SECTION 16 removes the uncertainty of what is meant by the current requirement that licensees disclose material adverse facts "to all interested parties" and replaces "to all interested parties" with new language pertaining to disclosing to a lender the fact that the licensee has become aware that a party to the transaction has not disclosed that party's entire agreement regarding the transaction to that party's secured lender.

SECTION 20 makes major changes concerning the disclosure of agency. The revisions bring the current requirements into conformity with 1993 Wisconsin Act 127. SECTION 20 also moves to a new location in the rule, a provision pertaining to inconsistencies in information provided to or by one or other party.

SECTION 21 expands s. RL 24.09, so that a licensee is not only prohibited from misleading an owner with respect to the market value of a property when attempting to secure a listing, but also with respect to the benefits which might be realized through the use of the licensee's services.

TEXT OF RULE

SECTION 1. RL 24.01 is amended to read:

RL 24.01 AUTHORITY AND INTENT. (1) The rules in this chapter are adopted pursuant to ss. 227.11, 452.01, 452.07, 452.133, 452.138, 452.139 and 452.14, Stats.

(2) The intent of the department in adopting the rules in this chapter is to establish minimum standards of conduct for real estate licensees and to define that conduct which may result in board action to limit, suspend or revoke the license of a real estate broker, salesperson or cemetery salesperson, or to reprimand a real estate broker, salesperson or cemetery salesperson discipline pursuant to s. 452.14, Stats.

(3) If a licensee violates rules in this chapter, the licensee has demonstrated incompetency to act as a broker, salesperson or ~~common~~ 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.

(4) If a licensee violates the rules set forth in s. RL 24.075, the licensee has engaged in improper, fraudulent or dishonest dealing as ~~these terms are~~ used in s. 452.14 (3) (k), Stats. However, the terms "improper, fraudulent or dishonest dealing" are not limited in their meaning to violations of s. RL 24.075.

SECTION 2. RL 24.02 (1) is repealed and recreated to read:

RL 24.02 DEFINITIONS. (1) "Adverse fact" means any of the following:

(a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

1. Significantly and adversely affecting the value of the property.
2. Significantly reducing the structural integrity of improvements to real estate.
3. Presenting a significant health risk to occupants of the property.

(b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations under a contract or agreement made concerning the transaction.

SECTION 3. RL 24.02 (2), (3) and (4) are renumbered 24.02 (4), (5) and (7).

SECTION 4. RL 24.02 (5) is repealed.

SECTION 5. RL 24.02 (6) and (7) are renumbered 24.02 (8) and (10).

SECTION 6. RL 24.02 (8) is renumbered 24.02 (11) and as renumbered amended to read:

RL 24.02 (11) "Licensee" means a person, partnership, corporation or other entity allowed to be licensed pursuant to s. 452.12, Stats., holding a license as a real estate broker, salesperson or ~~common~~ time-share salesperson.

SECTION 7. RL 24.02 (9) is renumbered 24.02 (17).

SECTION 8. RL 24.02 (2), (3), (6), (9), (12), (13), (14), (15), (16) and (18) are created to read:

RL 24.02 (2) "Agency agreement" means a written agreement between a broker and a client under s. 452.135 (1), Stats.

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

(6) "Client" means a party to a transaction who has an agency agreement with a broker for brokerage services.

(9) "Customer" means a party to a transaction who is provided brokerage services by a broker but who is not a client.

(12) "Material adverse fact" means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects or would affect the party's decision about the terms of such a contract or agreement.

(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.

(14) "Qualified third party" means a federal, state or local governmental agency, or any person whom the broker, salesperson or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the third party in order to prepare the written report described in s. 452.23 (2) (b), Stats.

(15) "Secured lender" means an individual or organization originating a loan in a real estate or business opportunity transaction secured by real estate or by the assets of a business or a business opportunity.

(16) "Real estate practice" means engaging in conduct which requires a license under ch. 452, Stats.

(18) "Transaction" means the sale, exchange, purchase or rental of, or the granting or acceptance of an option to sell, exchange, purchase or rent, an interest in real estate, a business or a business opportunity.

SECTION 9. RL 24.025 is repealed and recreated to read:

RL 24.025 AGENCY. (1) RESPONSIBILITIES RELATING TO A CLIENT AND OTHERS. Licensees shall represent the interests of their client as an agent. Licensees owe all parties the duties under s. 452.133 (1), Stats.

Note: Section 452.133, Stats., establishes a duty owed by licensees to all parties to keep confidential any information obtained by the licensee that he or she knows a reasonable party would want to be kept confidential, unless the information must be disclosed by law or disclosure is authorized by the affected party.

(2) AGREEMENTS. Licensees may not provide brokerage services to a client or a customer without an agency agreement authorizing those brokerage services. A licensee who acts as a subagent may do so under the agency agreement of the principal agent and the subagent is not required to have a separate agreement.

SECTION 10. RL 24.04 (2) (c) is amended to read:

RL 24.04 (2) (c) A licensee may advertise the occasional sale of real estate owned by the licensee or the solicitation of real estate for purchase by the licensee without complying with pars. (a) and (b), provided that the licensee ~~includes one of the following terms in the advertisement: "broker-owner", or "licensee-owner"~~ clearly identifies himself, herself or itself as a real estate licensee in the advertisement.

SECTION 11. RL 24.05 (1), (2), (3) and (5) are amended to read:

RL 24.05 SELF-DEALING. (1) DUAL COMPENSATION. A licensee acting as an agent in a real estate or business opportunity transaction ~~shall~~ may not accept any fee or ~~other valuable consideration~~ compensation related to the transaction from any person, other than the licensee's principal client, 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 ~~shall~~ may not ~~also act on behalf of his or her self, his or her immediate family,~~ 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 purposes of this subsection, a licensee may obtain the written consent in the offer to purchase, option, lease or other transaction contract.

(3) REFERRAL OF SERVICES. A licensee acting as an agent in a real estate or business opportunity transaction ~~shall~~ may not recommend or suggest to a party to the transaction the use of services of another individual, ~~organization or business entity~~ in from which the licensee has an interest or from whom the licensee may receive a referral fee or other compensation for the referral, other than referrals to other licensees for real estate services under s. 452.19, Stats., without disclosing at the time of the recommendation or suggestion, his or her

~~interest or the fact that a referral fee may be received~~ 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 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.

(5) DISCLOSURE OF LICENSURE. A licensee acting as a principal in a real estate or business opportunity transaction shall disclose his, ~~or her~~ or its license status prior to entering into a binding purchase agreement, option, exchange agreement, lease or other contract creating an interest in the real estate or business opportunity.

SECTION 12. RL 24.07 (1) (title) and (1) are amended to read:

RL 24.07 INSPECTION AND DISCLOSURE DUTIES. (1) (title) INSPECTION OF REAL ESTATE. (a) General requirement. A licensee, ~~acting as an agent when engaging in a real estate or business opportunity transaction practice which involves real estate improved with a structure,~~ shall conduct a reasonably competent and diligent inspection of accessible areas of the structure and immediately surrounding areas of the property to detect observable, material adverse facts, ~~material to the transaction as follows:~~ A licensee, when engaging in real estate practice which involves vacant land, shall, if the vacant land is accessible, conduct a reasonably competent and diligent inspection of the vacant land to detect observable material adverse facts.

SECTION 13. RL 24.07 (1) (a) and (b) are renumbered (1) (b) and (c) and as renumbered amended to read:

RL 24.07 (1) (b) Listing broker. When listing ~~a property~~ real estate and prior to execution of the listing contract, a licensee shall ~~conduct a reasonably competent and diligent inspection of accessible areas of the property to detect observable, adverse facts material to the transaction;~~ 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. ~~When negotiating the sale of a property, and before~~ Licensees, other than listing brokers, shall inspect the real estate as required by sub. (1) prior to or during the showing of the property, ~~licensees shall, if given access, conduct a reasonably competent and diligent inspection of accessible areas of the property to detect observable, adverse facts material to the transaction unless the licensee is not given access for a showing.~~

SECTION 13. RL 24.07 (1) (c) is repealed.

SECTION 14. RL 24.07 (1) (d) is amended to read:

RL 24.07 (1) (d) Specific conduct regarding inspections. A reasonably competent and diligent inspection of real estate improved with a structure does not require the operation of

mechanical equipment; the opening of panels, doors or covers for access to mechanical systems; or the moving of furniture, boxes or other property; not does it require a licensee to observe areas of the property for which entry presents an unreasonable risk of injury or areas accessible only by ladder, by crawling or other equivalent means of access. A licensee is not required to retain third party inspectors or investigators to complete a reasonably competent and diligent inspection. A reasonably competent and diligent inspection of vacant land does not require an observation of the entire property, but shall include, if given access, an observation of the property from at least one point on or adjacent to the property.

SECTION 15. RL 24.07 (2) (title), (2), (3) (title) and (3) are amended to read:

RL 24.07 (2) (title) DISCLOSURE OF MATERIAL ADVERSE FACTS. A licensee shall ~~may~~ not exaggerate or misrepresent facts in the practice of real estate. A licensee, ~~acting as an agent in a real estate or business opportunity transaction~~ when engaging in real estate practice, shall disclose ~~any adverse facts material to the transaction, which the licensee becomes aware of through the licensee's inspection or through any other means, in writing and in a timely manner, to the buyer, seller or other interested parties to each party, in writing and in a timely fashion, all~~ material adverse facts that the licensee knows and that the party does not know or cannot discover through a reasonably vigilant observation, unless the disclosure of the material adverse fact is prohibited by law. This provision is not limited to the condition of the property, but includes other material adverse facts ~~material to in the transaction, including but not limited to defects and conditions included within the report form under s. 709.03, Stats.~~

(3) (title) DISCLOSURE OF INFORMATION SUGGESTING MATERIAL ADVERSE FACTS. A licensee, ~~in a real estate or business opportunity transaction~~ when engaging in real estate practice, who becomes aware of information suggesting the possibility of a 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 ~~material~~ 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 ~~material~~ 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 ~~material~~ to the transaction, including but not limited to defects and conditions included within the report form under s. 709.03, Stats. A licensee is not required to retain third party inspectors or investigators to perform investigations of information suggesting the possibility of ~~an a material~~ material adverse fact ~~material~~ to the transaction.

SECTION 16. RL 24.07 (4) is repealed and recreated to read:

RL 24.07 (4) DISCLOSURE OF SIDE AGREEMENTS. A licensee, when engaging in real estate practice, who becomes aware of the fact that a party to the transaction has not disclosed that party's entire agreement regarding the transaction to that party's secured lender, shall disclose this fact, in writing and in a timely manner, to the party's secured lender.

SECTION 17. RL 24.07 (5) is amended to read:

RL 24.07 (5) RELIANCE UPON THIRD PARTY INSPECTIONS AND INVESTIGATIONS. If a licensee or a party in a transaction engages the services of a ~~competent~~ qualified third party to conduct a property inspection or investigation of material facts, the licensee may rely on the results of the inspection or investigation providing the licensee obtains a written report of the inspection or investigation and delivers a copy of the report to all interested parties in a timely manner.

SECTION 18. RL 24.07 (6) is renumbered 24.07 (7).

SECTION 19. RL 24.07 (7) is repealed.

SECTION 20. RL 24.07 (6) and (8) are created to read:

RL 24.07 (6) INCONSISTENCIES. If a licensee's reasonably competent and diligent inspection reveals facts materially inconsistent with or materially contradictory to the seller's statements provided under sub. (1) (a), or the inspection or investigation report of a third party, the inconsistency shall be disclosed in writing and in a timely manner to the parties.

(8) DISCLOSURE OF AGENCY. (a) General requirements. 1. Prior to providing brokerage services to a party, each licensee shall provide a copy of the agency disclosure form required under s. 452.135, Stats. If the services are for the sale of real estate used or intended to be used principally for one to 4 family residential purposes, the licensee shall, at the time the disclosure is provided, request the party to acknowledge in writing the receipt of a copy of the disclosure form.

2. Licensees acting as agents of potential buyers of real estate used or intended to be used principally for one to 4 family residential purposes, who are aware that the owner of the real estate has granted another licensee the exclusive right to sell, shall notify the listing broker of the licensee's buyer agency relationship at the earlier of all of the following:

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

b. A showing of the property.

c. Any other negotiation with seller or listing broker.

3. A change in a licensee's representation that makes the initial disclosure incomplete, misleading or inaccurate requires that a new disclosure be given, as in s. 452.135, Stats.

4. Prior to offering subagency listing brokers or their salespeople shall request the seller's authorization to permit other brokers to act as subagents in the sale of property or business opportunity. This authorization shall be stated in the listing contract.

(b) Listing contracts. 1. Listing brokers or their salespeople shall explain the responsibilities of seller's agents, buyer's agents and subagents to the seller before entering into a listing contract.

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 unless the listing broker or salesperson has received the seller's authorization in the listing contract.

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

(d) Subagency arrangements. A listing broker shall provide an agency disclosure to the seller and to buyers if negotiations are being conducted directly with the buyer and not through a subagent or buyer's agent. Buyer's brokers shall provide an agency disclosure to the buyer and to the seller if negotiations are being conducted directly with the seller and not through a subagent or listing broker. Subagents of listing brokers and buyer's agents shall provide an agency disclosure to the customer they are working with but not to their client. Listing brokers and buyer's brokers are not required to provide an agency disclosure to the customers of their subagents.

(e) Listings for lease and property management contracts. Licensees entering into listings for lease or property management contracts with property owners shall provide to their clients the disclosure form required under s. 452.135, Stats. A licensee shall also provide an agency disclosure form to prospective tenants when the licensee is actually negotiating the terms of a lease on behalf of the owner. A licensee is not required to provide an agency disclosure form to a prospective tenant in situations when the licensee does not negotiate the terms of a lease, such as when the rental unit is only being shown to the prospective tenant or a completed and "non-negotiable" lease is presented to a prospective tenant.

SECTION 21. RL 24.09 is repealed and recreated 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 the market value of real estate or a business opportunity to be leased or sold under a listing contract.

(END OF TEXT OF RULE)

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.

Dated 3/8/95

Agency Marlene A. Cummings
Marlene A. Cummings, Secretary
Department of Regulation and Licensing



CORRESPONDENCE/MEMORANDUM

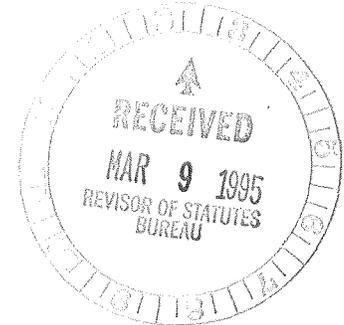
STATE OF WISCONSIN

DATE: March 9, 1995

TO: Gary Poulson
Assistant Revisor of Statutes

FROM: Pamela A. Haack, Rules Center Coordinator
Department of Regulation and Licensing
Office of Administrative Rules

SUBJECT: Final Rule-Making Order



Agency: DEPARTMENT OF REGULATION AND LICENSING

Clearinghouse Rule: 94-174

Attached is a copy and a certified copy of a final order adopting rules. Would you please publish these rules in the code.

Please stamp or sign a copy of this letter to acknowledge receipt.

Thank you.