

Chapter REEB 16

APPROVED FORMS AND LEGAL ADVICE

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Note: Chapter RL 16 as it existed on March 31, 1986 was repealed and a new chapter RL 16 was created, effective April 1, 1986. Chapter RL 16 was renumbered chapter REEB 16 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

REEB 16.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 452.05 (1) (b), 452.07, and 452.14 (3) (m), Stats.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; correction made under s. 13.93 (2m) (b) 7, Stats., Register, May, 1988, No. 389.

REEB 16.02 Definitions. Definitions contained in s. REEB 11.02 shall also apply to this chapter. In this chapter:

(1) “Agency agreement” has the meaning given in s. 452.01 (1m), Stats.

Note: Section 452.01 (1m) reads: “Agency agreement” means a written agreement between a broker and a client under s. 452.135 (1).

(1e) “Approved form” means a contractual or conveyance form which is either prepared and approved by the board, pursuant to s. 452.05 (1) (b), Stats., or approved in s. REEB 16.03.

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

(2) “Exclusive agency listing” means a written listing agreement containing all of the elements of an exclusive right to sell listing, except that the owner retains the right to sell the property himself or herself without owing the listing broker a commission.

(2e) “Exclusive right to locate buyer agency/tenant representation agreement” means a written buyer agency/tenant representation agreement giving the broker 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 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 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 the exclusive agent for the sale of property for a specific period of time, and which entitles the listing broker to a commission if the property is sold by the owner, by the broker, or by anyone else.

(3m) “Listing contract” means a written agency agreement authorizing a broker 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, with the first broker 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 is entitled to a commission only if the

property is sold by the owner, by the broker, 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 of a party in a specific real estate transaction.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; r. (2), renum. (3) to be (5), cr. (2) to (4), Register, July, 1998, No. 511, eff. 8-1-98; correction in (1) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671; **CR 13-073: cr. (intro.), renum. (1) to (1e), cr. (1), (1m), (2e) to (2s), am. (3), cr. (3m), (4m) Register May 2014 No. 701, eff. 7-1-14; correction in (2s) made under s. 35.17, Stats., Register May 2014 No. 701.**

REEB 16.03 Approved forms. (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:

(a) Forms prepared and approved by the state bar of Wisconsin for deeds, mortgages, mortgage notes, truth-in-lending disclosures, land contracts, release of mortgage, satisfaction of mortgage, assignment of mortgage, and assignment of land contract.

(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.

(d) Forms prepared by governmental 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 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.

(2) In addition to forms prepared and approved by the board pursuant to s. 452.05 (1) (b), Stats., the board grants approval of the forms in sub. (1) (c), (d), and (e) for use by salespersons. Board-approved contractual forms for use in real estate practice may be used by licensees and shall be available on the department’s webpage.

Note: Copies of these forms are accessible for printing and downloading from the department’s webpage: <http://dps.wi.gov>. These forms, form numbers, and form titles are subject to change; for the most current listing refer to the department’s webpage. Copies of the board-approved contractual forms for use by real estate licensees are available upon request to the Department of Safety and Professional Services; Division of Professional Credentialing Processing; PO Box 8935; Madison, WI 53708-8935; phone (608) 262-2112.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; cr. (1) (d), am. (2), Register, June, 1988, No. 390, eff. 7-1-88; cr. (1) (e), am. (2), Register, January, 1992, No. 433, eff. 2-1-92; am. (1) (a), Register, July, 1992, No. 439, eff. 8-1-92; correction in (2) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671; **CR 13-073: am. (1) (intro.), (a), (b), (e), (2) Register May 2014 No. 701, eff. 7-1-14.**

REEB 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 party in a real estate or business opportunity transaction.

(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 is a party to the listing contract transaction.

(3) A licensee may in any transaction where the licensee is acting as an 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.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (1) to (3), cr. (2m) and (3m), Register, July, 1992, No. 439, eff. 8-1-92; am. (1) and (2), r. (2m) to (3m), renum. (4) to be (3) and am., Register, July, 1993, No. 451, eff. 8-1-93; correction in (2) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.

REEB 16.05 Legal advice and practice of law. (1) A licensee may not provide 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 provide 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.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; **CR 13-073: am. (1), (2) Register May 2014 No. 701, eff. 7-1-14.**

REEB 16.06 How to use approved forms. (1) When a licensee reproduces or arranges for printing a contractual form prepared and approved by the board pursuant to s. 452.05 (1) (b), Stats., the licensee shall comply with all of the following:

(a) Assure that the numbering of lines, line contents, and the lines appearing on each page are identical to those on the board-approved forms.

(b) [Not] reproduce the form in such a manner that optional provisions are omitted and blank lines are filled in without any indication of where the optional provisions and blank lines occur on the board-approved form.

Note: "Not" was included in the initial rule filed with the legislative council clearinghouse, but unintentionally omitted from the final draft submitted to the legislature. A correction will be made in subsequent rule-making.

(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 not add additional blank lines or add additional lines containing textual content, or alter the format of the form in any other manner. "Alter the format" does not include modifying margins or font size consistent with par. (a). To add textual content or additional provisions, a licensee shall only fill in blank lines provided for that purpose on a form or add addenda containing additional or altered provisions as provided in subs. (4) and (5).

(e) Retain the board's approval statement and date in the upper left corner exactly as these appear on the board-approved form.

(f) Assure that the formatting of the form is substantially identical to that on the board-approved form.

(2) A licensee who reproduces or arranges for printing a form under s. REEB 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) Except as provided in sub. (5), a licensee may use a pre-prepared addendum form and attach it to an approved form under all of the following circumstances:

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

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

(c) The addendum relates to the blanks on an approved form; or alters or supplants optional provisions within an approved form.

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

(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 blank lines or fill-in provisions in the addendum except for spaces for the signatures of the parties and those items required under par. (d).

(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, an open listing, or a one-party listing.

(7) A licensee shall use the latest approved version of a board-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.

(9) A licensee may alter an approved buyer agency/tenant representation agreement in order to create an exclusive right to negotiate, exclusive right to locate, or an exclusive right to locate and negotiate buyer agency/tenant representation agreement.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (4), Register, June, 1988, No. 390, eff. 7-1-88; am. (4), Register, July, 1993, No. 451, eff. 8-1-93; cr. (1) (f), Register, August, 1994, No. 464, eff. 9-1-94; r. and recr. (4), Register, July, 1998, No. 511, eff. 8-1-98; EmR0811: emerg. am. (1) (a), (b) and (d), eff. 4-16-08; CR 08-040: am. (1) (a), (b) and (d) Register October 2008 No. 634, eff. 11-1-08; correction in (1) (intro.), (2) made under s. 13.92 (4) (b) 6., 7., Stats., Register November 2011 No. 671; **CR 13-073: am. (1) (intro.), (a), (b), (e), (f), (4) (intro.), (a), (b), (5) (intro.), (a) to (c), (6), (7), cr. (9) Register May 2014 No. 701, eff. 7-1-14.**

REEB 16.07 Violation of this chapter. A licensee who violates this chapter demonstrates, for purposes of s. 452.14 (3) (i), Stats., incompetency to act as a real estate licensee in a manner that safeguards the interests of the public and violates s. 452.14 (3) (m), Stats.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. Register, July, 1998, No. 511, eff. 8-1-98.