

Chapter REB 3

PUBLIC INSPECTION OF RECORDS

History: Chapter REB 3 as it existed on April 30, 1972, was repealed and a new chapter REB 3 was created. Register, April, 1972, No. 196, effective May 1, 1972.

Note: Sections REB 3.01, 3.02, 3.03, 3.04 and 3.05 were repealed, Register, May, 1979, No. 281, eff. 6-1-79. For rules of procedure for the examining board see chapter RL 2, department of regulation and licensing.

REB 3.015 Public inspection of records. (1) PURPOSE. The purpose of this rule is to specify the scope of availability and procedure for public inspection, duplication or copying of the records of the Wisconsin real estate examining board.

(2) **DEFINITIONS.** As used in this rule:

(a) "Board" means the real estate examining board;

(b) "Records" means all books, papers, maps, photographs, films, recordings or other documentary materials or any copy thereof, regardless of physical form or characteristics, made or received by the board, its members, or any employe in connection with any business or matter pertaining to the board or its activities which items are in the lawful possession and control of the legal custodian;

(c) "Legal Custodian" of the board's records is the executive secretary of the board;

(d) "Person" is any member of the public, representing himself, other individual(s), or entity;

(e) "Request" means expressed communication from a person to inspect, duplicate or copy board record(s).

(3) **LIMITATION ON PUBLIC INSPECTION AND COPYING.** (a) *Procedure.* Requests for inspection, duplication or copying of board records may be made by mail or in person at the office of the board during business hours on at least 24 hours notice and in such a manner as not to interfere with the efficient and orderly operation of the board's office.

(b) *Requester disclosure.* The full name, current mailing address and phone number of the person requesting any record(s) must be supplied by such person before any record(s) are provided. Such information along with a description of the record(s) provided and a list of fees paid in accordance with section REB 3.015 (3) (c) must be retained by the board.

(c) *Fees; certification; method of payment.* 1. **Fees.** Fees established by the board sufficient to cover the actual cost of equipment operation, supplies, personnel time and mailing, together with all taxes shall be paid, if copies or duplication are requested the minimum fee for any copy or duplication shall be 15¢ per page, unless such records are normally available as a public information service or for sale, in which case that fee shall not apply.

2. Certification. On request, copies or duplications of the inspected, duplicated or copied records (s) shall be certified by the legal custodian in accordance with s. 889.08, Stats., for an additional fee of \$1.00 per certified copy.

3. Method of payment. Payment in cash or check must be received in advance or accompany record (s) request. Any termination of request, once duplication or copying of such record (s) has begun, entitles the board to the original payment plus attorney fees or other costs to procure payment, unless the requester can prove the termination was in good faith.

(d) *Other limitations.* Subject to the limitations set forth in section REB 3.015 (3) (a), (b), (c), s. 943.38 and 946.72, Stats., and such orders or regulations as the legal custodian prescribes, any person may inspect, duplicate or copy any board record except:

1. Communications; oral, written, electronically taped, etc. between the board and its attorney concerning the legal rights and duties of the board with regard to pending matters within the board's jurisdiction;

2. Records containing financial, medical, social or personal histories, disciplinary data, hearsay, suspicious or inconclusive statements, which would unduly damage the reputation of the person (s) to whom they relate so as to outweigh the public benefit to be gained from inspection, duplication or copying of such records. However, the name, address, license number, date of license, type of license, reprimands, suspensions, revocations, whether the license has currently renewed, the nature and result of any disciplinary action against the licensee, pleadings, briefs, exhibits, and transcripts of disciplinary action may be revealed upon request. Complete copies of hearing transcripts are to be obtained directly from the court reporter who prepared the transcript;

3. Records of statements made during or deliberations after a quasi-judicial hearing which bear a proper relationship to the issues;

4. Any record which is a part of an existing investigation which may result in administrative, civil or criminal action or which relates to such a pending action, if the disclosure of such record would substantially impede or frustrate such investigation or action unless the person charged, investigated or otherwise under discussion requests public availability of such record;

5. Personnel files of the board members and staff;

6. Records obtained under a clear pledge of confidentiality, if the pledge was made in order to obtain the information contained in them and the legal custodian has determined that the harm to the public interest that would result from permitting inspection outweighs the public interest in full inspection, duplication and copying of public records, unless the requester has specific statutory or judicial authority to require disclosure.

(4) JUSTIFICATION FOR REFUSING INSPECTION, DUPLICATION, COPYING.

(a) Whenever the legal custodian of the board records, determines that the public interest in withholding full inspection exceeds the public benefit to be gained by granting inspection, full inspection, duplication or copying of board records may be denied. In each case the legal custodian must provide specific sufficient reasons for refusing the request. The legal custodian may delegate to another his authority to permit access to

public records, yet retain the right to be promptly notified when questionable requests arise and require in such case that the requested record(s) be delivered to him so that he can determine, at that time, whether or not there are any specific sufficient reasons to deny inspection, duplication or copying of the record. A request may not be denied solely because the person making the request refuses to identify the other person or entity being represented or is unwilling to state the reasons for making the request or has no special interest in the subject matter of the document. Mere statements that the records are "confidential" or that disclosure of them would be "contrary to public policy" are insufficient to deny inspection, duplication or copying of board records.

(b) *Review relief.* A person may institute a mandamus action to compel access to board records if the legal custodian or other person delegated authority in accordance with section REB 3.015 (4) (a), when tendered the appropriate fee and requested to permit inspection, duplication or copying of board records, refuses to allow such a request for reasons which the requester alleges are legally insufficient pursuant to section REB 3.015 (4) (a).

(5) **EXCEPTIONS.** Nothing contained herein shall prevent the board from furnishing a record(s) when required to do so by a court, or when requested to do so by a public officer in the official discharge of his duties, or pursuant to any statutory provision, under such safeguards as may be appropriate.

(6) **RECORDS; LOCATION, DISPOSITION.** All records of the board, or its members, shall be filed and maintained in the board office and handled in accordance with s. 16.80, Stats.

History: Cr. Register, November, 1976, No. 251, eff. 12-1-76.