

Chapter REB 15

CONDUCT AND ETHICAL PRACTICES FOR REAL ESTATE LICENSEES

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Note: Chapter REB 15 as it existed on February 29, 1980 was repealed and a new chapter REB 15 was created effective March 1, 1980.

REB 15.01 Authority, intent and general principles. (1) The rules in this chapter are adopted pursuant to ss. 15.03, 227.014 and ch. 452, Stats.

(2) The intent of the real estate examining board 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.

(3) If a licensee violates rules in this chapter, the licensee has demonstrated untrustworthiness or incompetency to act as a broker, salesperson or cemetery salesperson in such manner as to safeguard the interests of the public as those terms are used in s. 452.10 (2) (i), Stats. However, the terms "untrustworthiness" and "competency" are not limited in their meaning to violations of these rules.

(4) If a licensee violates the rules set forth in s. REB 15.075 of this chapter, the licensee has engaged in improper, fraudulent or dishonest dealing as those terms are used in s. 452.10 (2) (k), Stats. However, the terms "improper, fraudulent or dishonest dealing" are not limited in their meaning to violations of s. REB 15.075.

(5) The rules in this chapter are based upon the following general principles:

(a) Licensees have the responsibility to represent the interests of the principal as an agent. However, the responsibility owed the principal does not exempt the licensee from the obligation to treat fairly all parties to a transaction.

(b) Licensees must act to protect the public against fraud, misrepresentation and unethical practices.

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(c) Licensees must be knowledgeable regarding laws, public policies and current market conditions on real estate matters and assist, guide and advise the buying or selling public based upon these factors.

(d) Licensees must provide competent service in those areas in which the licensee practices.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80; renum. (3) to be (5), (3) renum. from REB 15.02 (2) and cr. (4), Register, December, 1980, No. 300, eff. 1-1-81.

REB 15.02 Definitions. (1) "Builder" means any person engaged in the business of constructing speculation homes or contract homes.

(2) "Commonly controlled corporation" means the same person or persons own stock in both corporations, possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of both corporations.

(3) "Contract home" means a home built by a builder under contract with a buyer.

(4) "Effectively controlled" means having the power or authority to cause the transfer of an interest in real estate for oneself or another but does not include the authority conferred by a real estate listing contract.

(5) "Licensee" means a person, partnership or corporation holding a license as a real estate broker, salesperson or cemetery salesperson.

(6) "Speculation home" means a home built by a builder to be placed on the market without a prior contract with a buyer.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80; renum. (1) to be (5), renum. (2) to be REB 15.01 (3), cr. (1) to (4) and (6), Register, December, 1980, No. 300, eff. 1-1-81.

REB 15.03 Competent services. (1) **DISCRIMINATION PROHIBITED.** Licensees shall not discriminate against, nor deny equal services to, nor be a party to any plan or agreement to discriminate against any person because of sex, race, color, physical condition, developmental disability as defined in s. 51.01 (5), Stats., religion, national origin or ancestry.

(2) **COMPETENCE REQUIRED.** Licensees shall not provide services which the licensee is not competent to provide unless the licensee engages the assistance of one who is competent. Any person engaged to provide such assistance shall be identified and that person's contribution shall be described.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

REB 15.04 Advertising. (1) **FALSE ADVERTISING.** Licensees shall not advertise in a manner which is false, deceptive, or misleading.

(2) **DISCLOSURE OF NAME.** All advertising shall be under the supervision of the broker and disclose the broker's name exactly as licensed with the board.

(3) **ADVERTISING WITHOUT AUTHORITY PROHIBITED.** Brokers shall not advertise property without the consent of the owner.

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(4) **ADVERTISED PRICE.** Brokers shall not advertise property at a price other than that agreed upon with the owner.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

REB 15.05 Self-dealing. (1) **DISCLOSURE OF PROFITS.** Licensees shall not accept any commission, rebate, or profit on expenditures made for the owner without the owner's knowledge and consent.

(2) **DISCLOSURE OF INTEREST.** Licensees shall not act on their own behalf, in acquiring or selling property, or on behalf of their immediate family, firm or any member thereof, or any entity in which they have an interest in acquiring or selling property, without disclosing their interest to all parties to the transaction.

(3) **DISCLOSURE OF FEES AND COMMISSIONS.** Licensees shall disclose to the buyer of any property owned or effectively controlled by them; a) the price of such property; b) any commissions or fees payable directly or indirectly to them as a result of the sale; and c) any requirement imposed by them as a condition to the sale of such property to the buyer and any commissions or fees payable directly or indirectly to them for imposing such requirement. This disclosure must be in writing and must be given before any agreement to purchase the property signed by the buyer is accepted.

(4) **REFERRAL OF SERVICES.** Licensees shall not recommend or suggest the use of services of another individual, organization or business entity in which the licensee has an interest without disclosing their interest at the time of the recommendation or suggestion.

(5) **DUAL COMPENSATION.** Licensees shall not accept compensation from more than one party without the full knowledge of all parties to the transaction.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80; renum. (3) and (4) to be (4) and (5), cr. (3), Register, December, 1980, No. 300, eff. 1-1-81.

REB 15.06 Unauthorized practice of law. (1) **UNAUTHORIZED PRACTICE OF LAW PROHIBITED.** Licensees shall not engage in activities that constitute the unauthorized practice of law.

(2) **LEGAL COUNSEL NOT TO BE DISCOURAGED.** Licensees shall not discourage any person from retaining an attorney.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

REB 15.07 Disclosure. (1) **DISCLOSURE OF MATERIAL FACTS.** Licensees shall avoid exaggeration, misrepresentation or concealment of material facts. Licensees have an affirmative obligation to discover adverse factors that a reasonably competent and diligent investigation would disclose and to disclose any adverse factors to the buyer or the seller or other interested parties.

(2) **LISTING BROKER TO CONFIRM GOVERNMENT NOTICES.** Brokers have an affirmative obligation in regard to any property listed for sale with the broker to ascertain in writing from the appropriate governmental agency whether said agency has served any notice requiring repairs, alterations or corrections of any existing conditions in regard to the listed property and whether there are any planned or commenced public improvements which may result in special assessments or otherwise materially affect the property. Licensees shall disclose said facts to the buyer

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or other interested parties. The duty of the listing broker under this rule does not relieve the selling agent from the obligation to disclose all material facts or adverse factors known to the selling agent.

(3) **FALSE INFORMATION.** Licensees shall not knowingly give false information about another licensee or property listed with another licensee.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80; emerg. r. (2), eff. 10-14-80; cr. (3), Register, December, 1980, No. 300, eff. 1-1-81.

REB 15.075 Tie-in arrangements. Licensees shall not:

(1) Condition the sale of real estate owned by the licensee or whose sale is effectively controlled by the licensee to a buyer upon the buyer's agreement to purchase another parcel or real estate.

(2) Condition the sale of real estate owned by the licensee or whose sale is effectively controlled by the licensee upon the buyer's agreement to list the real estate or other real estate owned by the buyer with the licensee.

Note: The following are 2 common examples of activities which would violate this subsection: (1) requiring a builder to list a speculation home with the licensee; and (2) requiring a buyer to list a present home with the licensee.

(3) Condition the sale of vacant real estate owned by the licensee or whose sale is effectively controlled by the licensee upon the buyer's agreement to employ one or more specific builders to make improvements on the real estate unless:

(a) The builder owns a bona fide interest in the real estate; and there is full disclosure as specified in s. REB 15.05 (3).

(b) The builder and the licensee or the builder and the owner of the real estate are the same person or are commonly controlled corporations and whose business is selling improved property and not vacant land; and there is full disclosure as in s. REB 15.05 (3).

(c) The agreement is a bona fide effort to maintain development quality or architectural uniformity and no consideration passes from contractor to licensee for soliciting this agreement.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

REB 15.08 Agreements to be in writing. Licensees shall put in writing all listing contracts, guaranteed sale agreements, offers to purchase, option contracts, financial obligations and any other commitments regarding transactions, expressing the exact agreement of the parties.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

REB 15.085 False portrayal of interest, prohibited. No licensee shall draft or use any document which the licensee knows falsely portrays an interest in real estate.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

REB 15.09 Market value estimates. Licensees shall not mislead the owner with respect to market value in attempting to secure a listing.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

REB 15.10 Net listing prohibited. Licensees shall not obtain, negotiate or attempt to obtain or negotiate any listing contract providing for

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a stipulated net price to the owner with the excess over the stipulated net price to be received by the broker as commission.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

REB 15.11 Disclosure of co-brokerage commission split. Licensees shall include a provision on every listing contract which states the amount or percentage of the listing broker's commission which the listing broker will share with another broker who procures a purchaser for the property.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

REB 15.12 Confidentiality of offers. Licensees shall not disclose any of the terms of a prospective buyer's offer to purchase, exchange agreement or option contract proposal, but shall encourage all prospective buyers to submit their highest and best offers.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

REB 15.13 Drafting and submission of offers. (1) **REFUSAL PROHIBITED.** Licensees shall not refuse to draft or submit any offer to purchase, exchange agreement or option contract proposal to the owner unless the terms of the offer, exchange agreement or option would be contrary to specific instructions of the owner.

(2) **WITHHOLDING OFFERS PROHIBITED.** Licensees shall present promptly all offers received to the owner for consideration. Licensees shall not withhold any offer from presentation pending the owner's action on an offer previously presented.

(3) **FAIR PRESENTATION OF OFFERS.** Licensees shall present each offer in an objective and unbiased manner. Licensees shall inform the owner of the advantages and disadvantages of all submitted offers to purchase, exchange agreements and option contract proposals.

(4) **NOTIFICATION OF ACTION TO BUYERS.** Licensees shall promptly inform prospective buyers whether the seller has accepted, rejected or countered their offer to purchase.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

REB 15.14 Supervision of personnel; records. (1) **SUPERVISION.** Brokers shall adequately supervise the activities of the broker's sales personnel and employes. Supervision includes but is not necessarily limited to the review of all listing contracts, offers to purchase and other documents related to transactions which are received by the licensee's office, and all trust account books and records. Brokers shall provide all sales personnel and employes with a written statement of procedures under which the office, sales personnel and employes shall operate with respect to the handling of listing contracts, offers to purchase and other documents relating to transactions.

(2) **RESPONSIBILITY FOR RECORDS.** Brokers shall be responsible for the preparation, custody, safety, and correctness of all entries on real estate forms and records, even though another person may be assigned these duties by the broker.

(3) **RETENTION OF RECORDS.** Brokers shall retain for at least three years copies of all listing contracts, offers to purchase, deposit receipts, cancelled checks, trust account records, and other documents or corre-

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spondence received or prepared by the licensee in connection with any transaction. The retention period shall run from the date of closing of the transaction or from the date of listing if the transaction is not consummated.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

REB 15.15 Adequate funds required. Licensees shall not issue checks upon business or trust accounts which contain insufficient funds.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

REB 15.16 Availability of rules. Brokers shall obtain a copy of these rules. Current rules shall be on file and available in all the licensed offices for the use of all licensees.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

REB 15.17 Miscellaneous requirements. (1) VIOLATIONS OF LAW. Licensees shall not violate, or aid or abet the violation of, any law the circumstances of which substantially relate to the practices of a real estate broker or salesperson.

(2) VIOLATION OF STATUTES, ADMINISTRATIVE CODE AND DISCIPLINARY ORDERS. Licensees shall not violate any provisions or terms or conditions of, or aid or abet the violation of ch. 452 of Wisconsin Statutes, chapters REB of the Wisconsin Administrative Code or any formal disciplinary order of the real estate examining board.

(3) IMPAIRED PRACTICE. Licensees shall not render services while the ability of the licensee to competently perform duties is impaired by mental or emotional disorder, drugs or alcohol.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80; am. (2), Register, December, 1980, No. 300, eff. 1-1-81.