



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>2015 Senate Bill 375</b>	<b>Senate Amendments 1 and 2</b>
<i>Memo published:</i> February 16, 2016	<i>Contact:</i> Rachel E. Snyder, Staff Attorney (266-0922) David Moore, Staff Attorney (266-1946)

### **2015 SENATE BILL 375**

Senate Bill 375 makes a variety of changes to the law regulating the practice of real estate, including those discussed below.

#### **Terminology**

The bill updates the terminology used throughout ch. 452, Stats., to reflect current real estate licensing practice. Under current law, both an individual and a business entity may be licensed as a broker, but ch. 452, Stats., refers to both as “broker,” generally. The bill provides definitions for “licensed individual brokers” and for “licensed broker business entities” to clearly identify the two types of broker licenses. The bill defines a “firm” as both an individual broker acting as a sole proprietor and as a broker that is a business entity, and replaces most references to “broker” with “firm.”

The bill eliminates most references to the “employment” of licensees. Instead of being employed by a firm, a licensee may be “associated with a firm.” Under the bill, “association with a firm” means being employed by or serving as an independent contractor for a firm.

#### **Independent Contractor Relationship**

Under the bill, a real estate licensee may enter into a written agreement with a firm providing that the licensee will not be treated as an employee of the firm for federal or state tax purposes. If a licensee enters into such an agreement and at least 75% of the compensation paid to the licensee in a calendar year, pursuant to the written agreement, is directly related to the brokerage services performed by the licensee on behalf of the firm, then the licensee is an

independent contractor and is not considered an employee under any rule or law, including for the following purposes:

- Income tax withholding under ch. 71, Stats.
- Worker's compensation under ch. 102, Stats.
- Employment regulation under ch. 103, Stats.
- Minimum wage under ch. 104, Stats.
- Unemployment insurance under ch. 108, Stats.
- Wage payment claims and collection under ch. 109, Stats.
- Fair employment regulation under ch. 111, Stats.

The bill provides that a licensee may be both an independent contractor and an employee of the same firm at the same time. If this is the case, then the licensee is excluded from the definition of employee under any rule or law only in relation to the licensee's activities as an independent contractor. A licensee may claim employment-related benefits and protections for activities conducted as an employee.

### **Duties Owed by Licensees**

Under current law, brokers and subagents owe certain duties to parties to real estate transactions. The bill provides that the duties owed under current law are owed by firms and all associated licensees, as well as by subagents and licensees associated with those subagents.

### **Statute of Limitations**

Under current law, a person may bring certain claims against a real estate licensee for up to six years following the provision of brokerage services. Under the bill, a claim concerning an act or omission relating to the provision of brokerage services must be brought within two years after the first of the following occurs:

- A transaction is completed or closed.
- An agency agreement is terminated.
- An unconsummated transaction is terminated or expires.

### **Limited Practice of Law by Real Estate Licensees**

The bill codifies a Wisconsin Supreme Court decision which permits real estate licensees to engage in the limited practice of law by filling out, or otherwise using, Real Estate Examining Board-approved real estate forms. The bill specifically provides that licensees may not provide legal advice, although they may provide a general explanation of the provisions of each form.

### **SENATE AMENDMENT 1**

Senate Amendment 1 modifies the definition of "negotiate" to require that a licensee, if asked by a party to a real estate transaction, must complete Real Estate Examining Board-

approved forms according to the party's **instruction** rather than consistent with the party's intent.

The amendment clarifies that a licensee who is associated with a firm may be both an employee and an independent contractor, rather than just one or the other.

The amendment provides that the duties owed by a firm or subagent to parties to a real estate transaction extend only to those licensees associated with the firm or subagent who provide brokerage services to a party to a real estate transaction.

Finally, the amendment clarifies that the two-year statute of limitations on actions brought against licensees also applies to actions brought against a firm. The amendment also provides that the statute of limitations does not apply to disciplinary actions initiated against a licensee by the Real Estate Examining Board.

## **SENATE AMENDMENT 2**

The bill states that a real estate licensee is an independent contractor, not an employee, of a firm if the licensee enters into a written agreement with the firm that satisfies certain requirements. However, the bill does not amend the definitions of "employee" or "employment" in each statutory chapter related to the benefits or protections of employment.

Senate Amendment 2 modifies the relevant statutory chapters, described above, to explicitly exclude an independent contractor real estate licensee from the definitions of "employee" or "employment" found in each chapter.

Under the amendment, a firm may elect to consider an independent contractor real estate licensee an employee for worker's compensation purposes. A firm may do so by obtaining an endorsement on its worker's compensation insurance policy that covers the licensee, or, if the firm is self-insured, by filing a declaration with the Department of Workforce Development (DWD) naming the licensee as an employee for worker's compensation purposes. A declaration must satisfy specific requirements and may be revoked by the firm with written notification to the DWD.

The amendment also deletes references to real estate apprenticeships found in ch. 106, Stats., to reflect that real estate apprenticeships are eliminated under the bill.

## **BILL HISTORY**

Senator Lasee offered Senate Amendments 1 and 2 on January 20, 2016. On January 27, 2016, the Senate Committee on Insurance, Housing, and Trade voted unanimously to recommend adoption of Senate Amendments 1 and 2 and passage of Senate Bill 375, as amended.

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