

## CHAPTER 452

## REAL ESTATE EXAMINING BOARD

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**452.01 Definitions.** As used in this chapter:

(1) "Examining board" means the real estate examining board.

(2) "Real estate broker" means any person not excluded by sub. (6), who:

(a) For another, and for commission, money or other thing of value, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of an interest or estate in real estate;

(b) Is engaged wholly or in part in the business of selling real estate to the extent that a pattern of real estate sales is established, whether or not such real estate is owned by such person; or

(c) Negotiates or offers or attempts to negotiate a loan, secured or to be secured by mortgage or other transfer of or encumbrance on real estate.

(d) For another and for commission, money or other thing of value, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of any business, its good will, inventory, fixtures or an interest therein; or

(e) Is engaged wholly or in part in the business of selling business opportunities or good will of an existing business or is engaged wholly or in part in the business of buying and selling, exchanging or renting of any business, its good will, inventory, fixtures or an interest therein.

(3) "Real estate salesman" means one who is employed by a real estate broker to perform any act authorized by this chapter to be performed by a real estate broker.

(6) "Real estate broker" does not include:

(a) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under the judgment or order of any court;

(b) Public officers while performing their official duties;

(c) Any bank, trust company, savings and loan association, or any land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law; or

(d) Employes of persons enumerated in pars. (a), (b), (c) and (f) when engaged in the specific performance of their duties as such employes.

(e) Any custodian, janitor, employe or agent of the owner or manager of a residential building who exhibits a residential unit therein to prospective tenants, accepts applications for leases and furnishes such prospective tenants with information relative to the rental of such unit, terms and conditions of leases required by the owner or manager, and similar information.

(f) Any credit union which negotiates loans secured by real estate mortgages or any licensee under ch. 138 which negotiates loans secured by real estate mortgages or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan, secured or to be secured by mortgage or other transfer of or encumbrance on real estate.

See note to 452.13, citing *Chapman Co. v. Service Broadcasting Corp* 52 W (2d) 32, 187 NW (2d) 794

Sale of units of interest in limited partnership are personalty and not real estate, and no real estate broker's license is required 60 Atty. Gen 254

**452.02 Cemeteries, cemetery brokers and salesmen.**

(1) Any cemetery association or corporation which pays any commission or other compensation to any person, including its officers, members or stockholders, for soliciting the sale of its lots or grave spaces on a commercially operated basis shall register under this chapter. Such cemetery association or

corporation shall register annually and pay an annual fee of \$25. Such registration shall be in writing and shall include the names of the officers of the cemetery association or corporation. Any cemetery association or corporation required to register hereunder which knowingly fails to register within 30 days after November 1, 1961 or by February 1 of any subsequent year shall be fined not more than \$100.

(2) Every such registered cemetery association or corporation shall designate a resident real estate broker licensed under this chapter as its broker and any resident licensed broker may be so designated.

(3) Every person engaging in or following the business or occupation of a cemetery salesman shall be registered annually upon the written request of any broker designated under sub. (2) and the payment of an annual fee of \$10. The broker shall in writing certify to the examining board that such salesman is trustworthy and competent to act as a cemetery salesman. Such person shall be registered by the examining board as a salesman and agent of the broker requesting same and of the cemetery association or corporation designating such broker.

(4) Within 10 days after the certification of any cemetery salesman under sub. (3) such salesman shall verify and furnish to the examining board, in such form as the examining board prescribes, the following information:

- (a) Name and address;
- (b) Educational qualifications;
- (c) Prior occupations;

(d) Such further information as the examining board may reasonably require to enable it to determine the trustworthiness and competency of such salesman to transact the business of a cemetery salesman in such manner as to safeguard the interest of the public.

(5) Every broker requesting the registration of any cemetery salesman shall be responsible for the acts of any and all such salesmen while acting as cemetery salesmen. The cemetery association or corporation designating such broker shall be equally responsible for the acts of such salesmen while acting as salesmen for such cemetery association or corporation.

(6) A person who is not registered shall not engage in or follow the business or occupation of, or advertise or hold himself out as or act temporarily or otherwise as a cemetery salesman.

(7) No cemetery organized, maintained and operated by towns, villages, cities, churches, fraternal and benevolent societies or by incorporated colleges of religious orders shall be required to register hereunder or be subject to this chapter.

#### 452.03 Brokers and salesmen licensed.

No person shall engage in or follow the business or occupation of, or advertise or hold himself out as or act temporarily or otherwise as a real estate broker or salesman without a license. Licenses shall be granted only to persons who are trustworthy and competent to transact such businesses in such manner as to safeguard the interests of the public, and only after satisfactory proof thereof has been presented to the examining board. If a cemetery salesman engages in the sale of real estate other than cemetery lots or grave spaces, he shall first obtain a real estate salesman's license.

Officer of corporation or partners or a partnership can act for the corporation or partnership in rental of real estate owned by such entity without being licensed as a real estate broker. 60 Atty Gen. 1.

Actions of tenants union on behalf of members may require license as real estate broker 60 Atty Gen 118.

**452.04 Duties of board.** (1) The examining board shall grant licenses to real estate brokers and salesmen which shall be issued by the department. The examining board shall administer this chapter.

(2) The examining board may prepare letters and bulletins, and conduct clinics disseminating information to its licensees. The department shall publish such letters and bulletins.

(3) The examining board may expend moneys for research and educational projects for its licensees and the protection of the public, including the publication or revision of real estate study manuals.

#### 452.05 Application for license, contents.

(1) **FORM OF APPLICATION.** Any person desiring to act as a real estate broker or salesman shall submit to the examining board an application for a license. Said application shall be in such form as the examining board prescribes and shall set forth:

- (a) The kind of license desired;
- (b) The name and address of the applicant; if the applicant is a partnership, the name and address of each member; if the applicant is a corporation, the name and address of each of its officers;
- (c) The place or places, including the town, village or city, street number and county, where the business is to be conducted, and the manner in which the place of business is designated;
- (d) The business or occupation theretofore engaged in by the applicant, or if a partnership, by each member, or if a corporation, by each officer, for a period of at least 2 years immediately preceding the date of the application;

(e) Such further information as the examining board may reasonably require to enable it to

determine the trustworthiness and competency of each applicant, including each member of the partnership, or each officer of the corporation, to transact the business of a real estate broker or salesman in such manner as to safeguard the interests of the public.

**(2) COMPETENCY OF APPLICANT.** (a) In determining competency, the examining board shall require proof that the applicant for a real estate broker's or salesman's license has a fair knowledge of the English language, a fair understanding of the general purposes and general legal effect of deeds, mortgages, land contracts of sale, leases, bills of sale, chattel mortgages, conditional sales contracts, the provisions of the bulk sales law and a general and fair understanding of the obligations between principal and agent, as well as of this chapter.

(b) The examining board shall determine competency under par. (a) by means of an oral examination alone for any applicant who is unable to write because of a physical handicap.

**(3) APPRENTICESHIPS.** Any person who is a resident of this state and a citizen of the United States, 18 years of age or over, may upon application filed in accordance with sub. (1) be indentured to a licensed resident broker in accordance with rules promulgated by the examining board. These rules shall be drawn so as to protect the public and may limit the real estate sales and brokerage activity of the apprentice. The examining board further may require a preliminary examination covering general knowledge and prescribe the character and extent of his work during his apprenticeship. The examining board may issue a temporary salesman's permit to said individual for a period of not to exceed one year upon payment of a \$15 fee. This temporary permit shall not be renewable.

History: 1973 c 12, 203

**452.06 Applications, verification, fees, exceptions.** (1) Such application shall be verified by the applicant; if made by a partnership it shall be verified by at least 2 members; if made by a corporation it shall be verified by the president and secretary. Application for license as real estate broker shall be accompanied by the affidavit of 2 persons who are citizens and real estate owners in the county in which the applicant resides or has his place of business, certifying that the applicant is trustworthy and competent. Application for license as real estate salesman shall be accompanied by the affidavit of his employer, if employed, certifying that the applicant is trustworthy and competent.

**(2)** (a) Each new application for a real estate broker's license or for a real estate salesman's

license or cemetery registration shall be for the remainder of the calendar year. Each new applicant shall receive a free copy of the current study manual.

(b) Each renewal application shall be for the ensuing calendar year.

(c) Unless an application is withdrawn in writing before the examining board has made any investigation thereon, no part of the fee shall be returned.

**(3)** The examining board may by rule establish fees which shall accompany applications for new and renewal licenses, but such fees shall not exceed the following:

(a) For a new real estate broker's license, \$30; and for a new real estate salesman's license, \$25.

(b) For renewal of a real estate broker's license, \$25; and of a real estate salesman's license, \$20.

**(4)** (a) Any licensed real estate salesman may at any time during the calendar year for which he is licensed make application upon forms prescribed by the examining board and provided by the department for transfer to the employment of another licensed broker. The fee for transfer by a real estate salesman is \$5, payable at the time the application is filed.

(b) Suspension or revocation of a license issued to a broker shall automatically suspend the license of every salesman employed by the broker at the time of the suspension or revocation of the broker's license. The salesman may apply for transfer to some other licensed broker by complying with this chapter, provided the salesman is not a party to the activities causing the suspension or revocation of the license of his broker.

**(5)** Sections 452.09, 452.10, 452.11, 452.12, 452.15, 452.16, 452.17, 452.18, 452.19 and 452.20, as they apply to real estate salesmen, shall apply with equal effect to cemetery salesmen.

**(6)** In the case of applications for renewals of licenses the examining board may dispense with such matters contained in s. 452.05 (1) as it deems unnecessary in view of prior applications.

**452.07 License, of whom not required.** No cemetery salesman's license shall be required of any person soliciting the sale of lots or grave spaces in a cemetery organized, maintained and operated by towns, villages and cities, by churches, by fraternal and benevolent societies, or by incorporated colleges of religious orders.

**452.08 Licenses.** (1) **EXPIRATION.** A license granted by the examining board entitles the holder:

(a) To act as a real estate broker or salesman, as the case may be, up to and including December 31 following issuance of the license.

**(2) CORPORATIONS; PARTNERSHIPS.** If the licensee is a corporation, the license issued to it entitles the president thereof or such other officer as is designated by such corporation to act as a broker. For each other officer who desires to act as a broker in behalf of such corporation, an additional license shall be obtained, the annual fee for which is \$30 for a new real estate broker's license or \$25 for a renewal real estate broker's license or for the issuance of a license where the individual is already licensed as an individual real estate broker. No license as a real estate salesman shall be issued to any officer of a corporation or member of a partnership to which a license was issued as a broker. If the licensee is a partnership, the license issued to it entitles one member to act as a broker, and for each other member who desires to act as a broker an additional license shall be obtained, the annual fee for which is \$30 for a new real estate broker's license or \$25 for a renewal real estate broker's license or for the issuance of a license to an individual who is already licensed as an individual broker.

**(3) BROKER'S LIABILITY FOR ACTS OF EMPLOYEES.** (a) Each broker shall be responsible for the acts of any and all of his salesmen while acting as his agents.

(b) If a real estate broker maintains any branch offices within this state, each branch office must be under the direct full-time supervision of a licensed real estate broker who is also a licensed salesman of employer licensee and who resides in the county in which said branch office is located. The employer-broker shall be responsible for the acts and conduct of all licensed employes of the branch office, including the broker who is supervisor of the branch office. The annual fee for a branch office shall be \$10.

**(4) ROSTER OF BROKERS.** The examining board shall prepare and the department shall publish in convenient form the register compiled under s. 15.40 (2) (e). The names of all brokers and salesmen whose licenses have been revoked at any time within one year prior to the issue thereof shall also be included in the publication.

**(5) RENEWAL.** Renewal applications for all licenses for the ensuing year shall be submitted with the required fee on or before August 31 of the current year. If a renewal application is filed with the department after August 31 it shall be accompanied by a late filing fee of \$10 in addition to the required renewal fee. If an application for renewal is not filed with the department on or before December 31 of the current license year, the applicant shall be prohibited from engaging in any of the activities

covered by such license until his license is renewed or a new license issued. The examining board shall accept renewal applications at any time during the year after the license expired upon payment of the renewal fee and penalty. The examining board shall not thereafter grant a license until the applicant passes the required written examination.

**452.09 Trust accounts.** All down payments, earnest money deposits or other trust funds received by a broker or salesman on behalf of his principal or any other person, shall be deposited in a common trust account, maintained by said broker for such purpose in a bank designated by the broker, pending the consummation or termination of the transaction, except as such moneys may be paid to one of the parties pursuant to such contract or option. The name of said bank shall at all times be registered with the examining board, along with a letter authorizing the examining board to examine and audit said trust account when said examining board deems it necessary.

Security deposits by a tenant usually create a debtor-creditor relationship. A broker retaining such deposits should deposit them in his trust account. 60 Atty Gen. 1

Federal National Mortgage Association is exempt from the requirements of this section, but private mortgage bankers or mortgage brokers licensed as real estate brokers under ch. 452, and servicing mortgages for FNMA must deposit loan, insurance and tax escrow moneys in authorized trust account in a bank located in Wisconsin and subject to audit by the board. 60 Atty Gen. 514.

**452.10 Investigations, revocation of license.** (1) The examining board may on its own motion make investigations and conduct hearings in regard to the action of any real estate broker, salesman or cemetery salesman, or any person who it has reason to believe is acting or has acted in either such capacity within this state, and may make findings, after a hearing held on 10 days' notice, whether such person has acted as a broker, salesman or cemetery salesman. The findings shall be subject to review under s. 452.17. In such review any additional material evidence presented may be considered.

**(1a)** In lieu of the procedure set forth in sub. (1), if the examining board has reason to believe that a person is acting as a broker or salesman without a license and that the continuation of such activity might cause injury to the public interest, the examining board or its staff counsel at the direction of the examining board may petition the circuit court for a temporary restraining order, an injunction or a writ of ne exeat as provided in ch. 268. Section 452.18 shall not apply to this subsection.

**(2)** The examining board may also on its own motion, or upon complaint in writing, duly signed and verified by the complainant, and upon not less than 10 days' notice to the broker or

salesman, suspend any broker's or salesman's license or registration if it has reason to believe, and may revoke such license or registration as provided hereafter, if it finds that the holder of such license or registration has:

(a) Made a material misstatement in the application for such license or in any information furnished to the examining board;

(b) Made any substantial misrepresentation with reference to a transaction injurious to a seller or purchaser wherein he acts as agent;

(c) Made any false promises of a character such as to influence, persuade or induce the seller or purchaser to his injury or damage;

(d) Pursued a continued and flagrant course of misrepresentation or made false promises through agents or salesmen or advertising;

(e) Acted for more than one party in a transaction without the knowledge of all parties for whom he acts;

(f) Accepted a commission or valuable consideration as a salesman for the performance of any act specified in this chapter from any person except his employer;

(g) Represented or attempted to represent a broker other than the employer, without the express knowledge and consent of the employer;

(h) Failed, within a reasonable time, to account for or remit any moneys coming into his possession which belong to another person;

(i) Demonstrated untrustworthiness or incompetency to act as a broker, salesman or cemetery salesman in such manner as to safeguard the interests of the public;

(j) Paid or offered to pay a commission or valuable consideration to any person for acts or services in violation of this chapter;

(k) Been guilty of any other conduct, whether of the same or a different character from that specified herein, which constitutes improper, fraudulent or dishonest dealing; or

(l) Violated any provision of this chapter.

(3) If a broker is a company it shall be sufficient cause for the suspension or revocation of a broker's license that any officer, director or trustee of the company, or any member of a partnership, or anyone who has financial interest in or is in any way connected with the operation of a brokerage business, has been guilty of any act or omission which would be cause for refusing a broker's license to such person as an individual.

(4) A copy of the complaint, together with notice of suspension of the license or registration, if ordered by the examining board, shall forthwith be served upon the broker, salesman or cemetery salesman complained against by personal service or by mailing same to his last known business address. If the complaint is against a salesman or a cemetery salesman a

copy of the complaint and notice shall also be served upon the broker for whom he is acting. The person so served shall file his answer with the examining board within 10 days after such service and serve a copy of his answer on the complainant. The examining board shall thereupon set the matter for hearing as promptly as possible and within 30 days after the date of filing the complaint. Either party may appear at the hearing in person or by attorney or agent.

The legislature has not authorized the board to revoke a license for racial discrimination nor to adopt a rule prohibiting it *Ford v Wisconsin Real Estate Examining Bd* 48 W (2d) 91, 179 NW (2d) 786.

#### 452.11 Denial or revocation of license or registration, procedure.

(1) No order denying or revoking a license or registration shall be made until after a public hearing held before the examining board, or before any member thereof, or before any duly authorized employe whose report the examining board has adopted. The hearing shall be held in the county wherein the applicant for a license or registration or the broker complained of or whose salesman is complained of has his place of business. If the broker, salesman or cemetery salesman is a nonresident the hearing shall be held at such place as the examining board designates.

(2) At least 10 days prior to the date of hearing the department shall send written notice prepared by the examining board of the time and place of the hearing to the applicant for a license or registration or to the complainant and to the party complained against and to their respective attorneys or agents of record by mailing same to the last known address of such persons. The testimony presented and proceedings had at the hearing shall be taken in shorthand and preserved as the records of the examining board. The examining board shall as soon thereafter as possible, and within 90 days after the date of filing of a complaint, make its findings and determination thereon and shall send a copy to each interested party.

452.12 **Fee-splitting.** No licensed broker or registered cemetery salesman shall pay a commission or any part thereof for performing any act specified in this chapter to any person who is not licensed or registered under this chapter or who is not regularly engaged in the real estate brokerage or cemetery sales business in another state.

452.13 **Limitation on actions for commissions.** No person engaged in the business or acting in the capacity of a real estate broker or salesman within this state shall bring or maintain an action in the courts of this state for the collection of a commission or compensation for

the performance of any act mentioned in this chapter without alleging and proving that he was a duly licensed broker or salesman at the time the alleged cause of action arose.

A foreign corporation which contracts to sell a radio station without being licensed in this state cannot sue for its commission. The licensing requirement is not an unlawful burden on interstate commerce. *Chapman Co. v. Service Broadcasting Corp.* 52 W (2d) 32, 187 NW (2d) 794

**452.14 Nonresident brokers.** (1) A nonresident of this state may become a real estate broker or salesman by conforming to all the provisions of this chapter, except that a nonresident real estate broker shall maintain an active place of business in the state in which he holds a license, and said nonresident real estate brokers shall not employ real estate salesmen in this state.

(2) The examining board may recognize in lieu of the affidavit required to accompany an application for license, the license issued to a nonresident broker or salesman in such other state, upon payment of a license fee and the filing of a certified copy of the license issued by such other state.

(3) Every nonresident applicant shall file an irrevocable consent that actions may be commenced against him in the proper court of any county of the state in which a cause of action arises or in which the plaintiff resides, by the service of any process or pleading authorized by the laws of this state on the examining board, any member thereof or any duly authorized employee. The consent shall stipulate and agree that such service is valid and binding as due service upon said applicant in all courts in this state. The consent shall be duly acknowledged and, if made by a corporation, shall be authenticated by the corporate seal.

(4) Duplicate copies of any process or pleading shall be served upon the examining board or its duly authorized employee. One copy shall be filed with the examining board and the other immediately forwarded by registered mail to the main office of the applicant against whom the process or pleading is directed. No default in any such proceeding or action shall be taken unless it appears by affidavit of the executive secretary of the examining board or any duly authorized employee that a copy of the process or pleading was mailed to the defendant as herein required. No judgment by default shall be taken in any action or proceeding within 20 days after the date of mailing the process or pleading to the nonresident defendant.

**452.15 Depositions; witnesses.** (1) The examining board may take depositions in the manner prescribed by law for taking depositions in actions in circuit court.

(2) Each witness who appears before the examining board pursuant to its subpoena, order or request shall be paid the fees and mileage provided by law for witnesses in courts of record. The fees and mileage of witnesses shall be paid by the party demanding their attendance.

**452.16 Ineligibility.** No license or registration shall be issued to any person whose license or registration has been revoked until the expiration of a period not to exceed 2 years from the date the revocation became finally effective, the period to be determined in each case by the examining board.

**452.17 Court review.** Orders of the examining board shall be subject to review as provided in ch. 227.

**452.18 Penalties.** (1) Any person who engages in or follows the business or occupation of, or advertises or holds himself out as or acts temporarily or otherwise as a real estate broker or salesman in this state without a license, or who otherwise violates any provision of this chapter, shall be prosecuted by the district attorney in the county where violation occurs and may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(3) Any person who is not registered who engages in or follows the business or occupation of, or advertises or holds himself out as or acts temporarily or otherwise as a cemetery salesman in this state or who otherwise violates any provision of this chapter, shall be prosecuted by the district attorney in the county where the violation occurs and may be fined not less than \$25 nor more than \$200 or imprisoned not less than 10 days nor more than 6 months or both.

**452.19 Compensation presumed.** In any prosecution for violation of this chapter proof that a person acted as a broker or agent or salesman is prima facie proof that compensation therefor was received or promised.

**452.20 Certifications as evidence.** (1) Copies of all documents, orders, resolutions and certificates made, executed or granted by the examining board, and of all examining board papers filed with the department when certified by the examining board's executive secretary or his assistant, under the official seal, shall be received in evidence in all cases the same as the originals.

(2) The certificate of the secretary or assistant secretary of the examining board to the effect that a specified individual, partnership or corporation is not or was not on a specified date the holder of a real estate broker's or salesman's

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license or registration, or that a specified license or registration was not in effect on a date specified, or as to the issuance, suspension or revocation of any license or registration, the

filing or withdrawal of any application or its existence or nonexistence, is prima facie evidence of the facts therein stated for all purposes in any action or proceedings.