

CHAPTER 452

REAL ESTATE PRACTICE

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452.01 Definitions. In this chapter:

- (1) "Board" means real estate board.
- (2) "Broker" means any person not excluded by sub. (3), 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;
- (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 goodwill, inventory, fixtures or an interest therein; or
- (e) Is engaged wholly or in part in the business of selling business opportunities or goodwill 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 goodwill, inventory, fixtures or an interest therein.
- (f) For another, and for commission, money or other thing of value, sells, exchanges or buys, or offers or attempts to negotiate a sale, exchange or purchase of a time share.
- (g) Is engaged wholly or in part in the business of selling time shares to the extent that a pattern of sales is established, whether or not the time shares are owned by such person.
- (3) "Broker" does not include any of the following:
- (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, insurance company, 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.
- (d) Employes of persons enumerated in pars. (a) to (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.
- (g) A person registered as a mortgage banker under s. 440.72 who does not engage in activities described under sub. (2).
- (4) "Disciplinary proceeding" means a proceeding against one or more licensees or registrants in which the board may revoke, suspend or limit a license or registration, reprimand a licensee or registrant, issue a private letter of warning to a licensee or registrant, or assess a forfeiture or require education or training under s. 452.14 (4m).
- (4d) "Employ", when used in reference to a broker employing another broker, a salesperson or a time-share salesperson, includes engaging the services of another broker, a salesperson or a time-share salesperson who provides services to the broker as an independent contractor.
- (4h) "Employe", when used in reference to an employe of a broker, includes another broker, a salesperson or a time-share salesperson who provides services to the broker as an independent contractor.
- (4p) "Employer", when used in reference to a broker who is the employer of another broker, a salesperson or a time-share salesperson, includes a broker who engages the services of another broker, a salesperson or a time-share salesperson who provides services to the broker as an independent contractor.
- (4t) "Employment", when used in reference to a broker's employment of another broker, a salesperson or a time-share salesperson, includes the state of providing services to the broker by the other broker, the salesperson or the time-share salesperson as an independent contractor.
- (5) "Licensee" means any person licensed or registered under this chapter, other than an inactive licensee registered under s. 452.12 (6).
- (6) "Real estate practice" means engaging in conduct which requires a license under this chapter.
- (7) "Salesperson" means any person other than a broker who is employed by a broker to perform any act authorized by this chapter to be performed by a broker.
- (8) "Time share" has the meaning given in s. 707.02 (24).
- (9) "Time-share salesperson" means a person, other than a person licensed under s. 452.09, who is employed by a licensed broker to sell or offer or attempt to negotiate an

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initial sale or purchase of a time share but who may not perform any other acts authorized by this chapter to be performed by a broker or salesperson.

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341.

See note to 452.20, citing *Chapman Co v. Service Broadcasting Corp.* 52 W (2d) 32, 187 NW (2d) 794 (1971).

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 (1971).

452.02 Cemetery associations and corporations and cemetery salespersons. (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. The cemetery association or corporation shall register biennially and pay the fee specified in s. 440.05 (8). The 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 under this subsection which knowingly fails to register shall be fined not more than \$100.

(3) Every person engaging in or following the business or occupation of a cemetery salesperson shall be registered upon the written request of any cemetery association or corporation and the payment of the fee specified in s. 440.05 (1). The cemetery association or corporation shall certify in writing to the department that the salesperson is competent to act as a cemetery salesperson. The person shall be registered by the department as a salesperson and agent of the cemetery association or corporation.

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

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

(d) Any other information which the department may reasonably require to enable it to determine the competency of the salesperson to transact the business of a cemetery salesperson in a manner which safeguards the interest of the public.

(5) Every cemetery association or corporation requesting the registration of any cemetery salesperson shall be responsible for the acts of that salesperson while acting as a cemetery salesperson.

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

(7) No cemetery organized, maintained and operated by a town, village, city, church, fraternal or benevolent society, or by an incorporated college of a religious order may be required to register under or be subject to this chapter, except as provided in s. 452.022.

(8) No cemetery salesperson's license may be required of any person soliciting the sale of lots or grave spaces in a cemetery organized, maintained and operated by towns, villages, cities, churches, fraternal and benevolent societies, or incorporated colleges of religious orders.

History: 1981 c. 94, 391; 1985 a. 305; 1989 a. 95, 307.

NOTE: This section is renumbered 440.91 and amended by 1989 Wis. Act 307, eff. 11-1-91.

452.022 Cemetery monuments. (1) DEFINITIONS. In this section:

(a) "Cemetery authority" means any person owning or operating any cemetery specified in s. 157.065 (1).

(b) "Installed" means permanently affixed to a cemetery lot.

(c) "Monument" means any object made of granite, bronze, marble, stone, cement or other permanent material that is installed or intended to be installed to identify or memorialize human remains.

(d) "Vendor" means a person who sells, delivers, installs or cares for a monument, other than the cemetery authority of the cemetery in which the monument is installed.

(2) CEMETERY AUTHORITY POWERS. A cemetery authority may do any of the following:

(a) Adopt regulations, consistent with this section and with standards that the cemetery authority uses for its own monument installations, prescribing requirements and procedures for the sale, delivery, installation or care of monuments, including requirements that each vendor provide reasonable advance notice to the cemetery authority of the date on which the vendor desires to install a monument; that each vendor carry worker's compensation insurance and a minimum amount of comprehensive general liability insurance, such minimum amount not to exceed \$300,000; and that each owner of a lot pay all fees and other amounts due the cemetery authority to satisfy any encumbrances pertaining to the lot before a monument is installed.

(b) Assist a vendor in marking the location for a monument and inspect the installation of the monument to ensure that it is properly installed by the vendor.

(c) Charge either the owner of a lot or a vendor a reasonable fee to cover the cemetery authority's labor costs. In this paragraph, "labor costs" means the amount, calculated in accordance with generally accepted accounting principles and practices, that is payable to employees of the cemetery authority for wages and fringe benefits for the period that the employees were engaged in marking the location for and inspecting the installation of the monument to ensure that it was properly installed, and may include any general administrative or overhead costs of the cemetery authority or any other costs that are directly related to marking the location for and inspecting the installation of the monument to ensure that it was properly installed.

(3) DISCLOSURE OF INFORMATION TO CONSUMERS. (a) Every cemetery authority shall keep on file and make available for inspection and copying to owners and prospective purchasers of lots in the cemetery and to other interested persons all of the following information:

1. An itemized list of the amounts charged for any services provided by the cemetery authority relating to the finishing, installation or care of monuments.

2. Any regulations adopted under sub. (2) (a).

(b) Upon the request of any person who is interested in purchasing a monument from a cemetery authority or a vendor, the cemetery authority or vendor shall provide the person with an itemized list of the amount charged for each finished monument in which the person is interested and for any services that may be provided by the cemetery authority or vendor relating to the installation or care of the monument.

(4) PROHIBITED CONDUCT. (a) A cemetery authority may not do any of the following:

1. Require the owner or purchaser of a lot to purchase a monument or services related to the installation of a monument from the cemetery authority.

2. Restrict the right of the owner or purchaser of a lot to purchase a monument or services related to the installation of a monument from the vendor of his or her choice.

3. Except as provided in sub. (2) (c), charge the owner or purchaser of a lot a fee for purchasing a monument or

services related to the installation of a monument from a vendor, or charge a vendor a fee for delivering or installing the monument. Nothing in this subdivision shall be construed to prohibit a cemetery authority from charging the owner or purchaser of a lot a reasonable fee for services relating to the care of a monument.

4. Discriminate against any owner or purchaser of a lot who has purchased a monument or services related to the installation of a monument from a vendor.

(b) A vendor may not falsely represent to any person any regulations adopted by a cemetery authority under sub. (2) (a) or falsely represent to any person the vendor's relationship with a cemetery authority.

(6) PENALTIES. (a) Any cemetery authority or vendor that fails to disclose information to consumers in violation of sub. (3) may be required to forfeit not more than \$200.

(b) Any cemetery authority or vendor that violates sub. (4) may be required to forfeit not more than \$200 for the first offense and may be required to forfeit not more than \$500 for the 2nd or any later offense within a year. The period shall be measured by using the dates of the offenses that resulted in convictions.

(7) ENFORCEMENT. (a) If the department has reason to believe that any person is violating this section and that the continuation of that activity might cause injury to the public interest, the department may investigate.

(b) The department of justice or any district attorney, upon informing the department of justice, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this section. The court may, prior to entry of final judgment, make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action, if proof of such loss is submitted to the satisfaction of the court. The department of justice may subpoena persons and require the production of books and other documents, and may request the department of regulation and licensing to exercise its authority under par. (a) to aid in the investigation of alleged violations of this section.

(c) In lieu of instituting or continuing an action under this subsection, the department of justice may accept a written assurance of discontinuance of any act or practice alleged to be a violation of this section from the person who has engaged in the act or practice. An assurance entered into under this paragraph shall not be considered evidence of a violation of this section, but a violation of the assurance shall be treated as a violation of this section.

History: 1989 a. 95, 307.

NOTE: This section is renumbered 440.945 and 440.95 (6) and amended by 1989 Wis. Act 307, eff. 11-1-91.

452.025 Time-share salespersons. (1) (a) A person desiring to act as a time-share salesperson shall submit to the department an application for a certificate of registration.

(b) The application for registration as a time-share salesperson shall be in the form prescribed by the department and shall include all of the following:

1. The name and address of the applicant.
2. The prior occupations of the applicant.
3. Certification from the licensed broker employing the applicant that the applicant is competent to act as a time-share salesperson.

4. Any other information which the department reasonably requires to enable it to determine the competency of the person to transact business as a time-share salesperson in a manner which safeguards the interests of the public.

(c) Each application for registration as a time-share salesperson shall be accompanied by an initial fee specified in s. 440.05 (1) or a renewal fee specified in s. 440.05 (3) (p) 4, whichever is appropriate.

(2) A person shall not engage in the business or occupation of, or advertise or hold himself or herself out as, a time-share salesperson unless the person is registered under this section or licensed under s. 452.09.

(3) (a) A time-share salesperson registered under this section may act as a time-share salesperson only when employed by a licensed broker.

(b) 1. Except as provided in subd. 2, a time-share salesperson registered under this section shall not draft or complete a purchase agreement, offer to purchase, or other contract or document related to the sale of a time share.

2. A time-share salesperson registered under this section may complete a form purchase agreement or offer to purchase, if the form purchase agreement or offer to purchase has been approved by the department and includes only the following:

- a. The name, address and telephone number of the purchaser.
- b. The name of the time-share project.
- c. Identification and price of the time share being purchased and the amount of the downpayment and where it will be held.
- d. Financing alternatives.
- e. Disclosures under subch. III of ch. 422 and the federal consumer credit protection act, 15 USC 1601 to 1693r.
- f. The date of closing.
- g. The signature of the time-share salesperson and the name of the employing broker.
- h. The date of execution.
- i. Information required under s. 707.46 to be included in a contract for the purchase of a time share.

(4) A time-share salesperson registered under this section may apply at any time to transfer employment to another licensed broker by submitting to the department an application in the form prescribed by the department and the transfer fee specified in s. 440.05 (7).

(5) (a) Certificates of registration granted by the department under this section expire on December 31 of even-numbered years following issuance of the certificates.

(b) An application to renew a certificate of registration granted under this section shall be submitted with the renewal fee on or before December 31 of the even-numbered years following issuance of the certificate, except that the department shall accept renewal applications at any time during the year after the registration expires upon payment of the renewal fee and penalty.

History: 1987 a. 399; 1989 a. 31.

452.03 Brokers and salespersons licensed. No person may engage in or follow the business or occupation of, or advertise or hold himself or herself out as, or act temporarily or otherwise as a broker or salesperson without a license. Licenses shall be granted only to persons who are competent to transact such businesses in a manner which safeguards the interests of the public, and only after satisfactory proof of the person's competence has been presented to the department. If a cemetery salesperson engages in the sale of real estate other than cemetery lots or grave spaces, the cemetery salesperson shall first obtain a salesperson's license.

NOTE: This section is amended by 1989 Wis. Act 307, eff. 11-1-91, to read: "452.03 BROKERS AND SALESPERSONS LICENSED. No person may engage in or follow the business or occupation of, or advertise or hold himself or herself out as, or act temporarily or otherwise as a broker or salesperson without a license. Licenses shall be granted only to persons who are competent to transact such businesses in a manner which safeguards the interests of the public, and

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only after satisfactory proof of the person's competence has been presented to the department."

History: 1981 c. 94, 391; 1989 a. 307.

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 (1971).

Actions of tenants union on behalf of members may require license as real estate broker. 60 Atty. Gen. 118 (1971).

Permitted limits of nonlicensed independent contractor agents discussed. 70 Atty. Gen. 23.

452.04 Duties of board. In addition to the other duties and responsibilities of the board under this chapter, the board shall:

(1) Advise the secretary on matters relating to real estate practice. The board may conduct public hearings on matters relating to the approval of forms used in real estate practice.

(2) Advise the secretary on rule making relating to licensees and relating to the board as provided by s. 452.07.

History: 1981 c. 94.

452.05 Duties and powers of department. (1) In addition to the other duties and responsibilities of the department under this chapter, the department shall:

(a) Grant and issue licenses to brokers and salespersons and registrations to time-share salespersons, cemetery associations and corporations and cemetery salespersons.

NOTE: Par. (a) is amended by 1989 Wis. Act 307, eff. 11-1-91, to read:

"(a) Grant and issue licenses to brokers and salespersons and registrations to time-share salespersons."

(b) Approve forms for use in real estate practice.

(c) After consultation with the council on real estate curriculum and examinations and subject to the procedure under s. 452.07, promulgate rules establishing criteria for the approval of educational programs and training sessions under s. 452.09 (2) and approve such programs and sessions in accordance with the established criteria.

(d) After consultation with the council on real estate curriculum and examinations, the board, brokers and salespersons licensed under this chapter and interested members of the public, establish the minimum number of hours of continuing education in each real estate related subject and establish criteria for the approval of continuing educational programs and courses required for renewal under s. 452.12 (5) (c) 1. The department may not require a broker or salesperson to successfully complete more than 12 classroom hours of continuing education in order to qualify for license renewal.

(e) After consultation with the council on real estate curriculum and examinations, prepare, develop and grade examinations under s. 452.12 (5) (c) 2.

(f) After consultation with the council on real estate curriculum and examinations, the university of Wisconsin system, other appropriate state governmental agencies and interested members of the public, publish a manual covering the information on which applicants for licenses under this chapter are examined and other matters relating to real estate practice. The department shall revise and publish a revised edition of the manual every 2 years.

(g) Approve continuing educational programs and courses in accordance with the criteria established under par. (d). In order to be approved, a continuing educational program or course must require brokers and salespersons who attend the program or course to pass an examination on the information presented at the program or course in order to successfully complete and receive continuing education credit for the program or course under s. 452.12 (5) (c) 1.

(2) The department may prepare letters and bulletins and conduct clinics disseminating information to its licensees.

History: 1981 c. 94, 391; 1985 a. 305 ss. 1t, 7; 1987 a. 399; 1989 a. 307, 341.
Corporation cannot be licensed as real estate salesperson. 71 Atty. Gen. 38.

452.06 Councils and committees. (1) The secretary shall create a council on forms under s. 15.04 (1) (c) which shall meet on a regular basis, be chaired by a member of the board and report to the board and the secretary. Any proposed change in a form relating to real estate practice shall be referred to the council on forms for review before the form is approved.

(2) The council on real estate curriculum and examinations shall do all of the following:

(a) Advise the secretary on the promulgation of rules under s. 452.05 (1) (c), on establishing continuing education requirements under s. 452.05 (1) (d) and on preparing and revising the manual under s. 452.05 (1) (f).

(b) Periodically, but not less than annually, review subjects covered on examinations for licensure under this chapter and the qualifications for instructors of and performance evaluations for educational and continuing educational programs, training sessions and courses approved under this chapter.

(3) If the secretary creates any councils or committees under s. 15.04 (1) (c) to provide advice to the department or board on matters relating to real estate practice other than the council under sub. (1), such councils or committees shall be chaired by a member of the board, if available, and shall report to the board and the secretary.

(4) The secretary shall provide staff and other support required for the operation of councils and committees created under this section or under s. 15.04 (1) (c) to provide advice to the department or board, as appropriate, on matters relating to real estate practice.

History: 1981 c. 94; 1989 a. 341.

452.07 Rules; review of rules. (1) The department shall promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice.

(2) Before submitting any proposed rules relating to real estate practice to the legislative council staff under s. 227.15, the department shall submit the proposed rules to the board for comment. The board shall have 30 days to submit comments on the proposed rules to the secretary.

(3) When promulgating emergency rules under s. 227.24, the department shall provide a copy of the rules to the board prior to publication of the rules in the official state newspaper.

(4) The chairperson of the board, or his or her designee from the board, may cochair with the secretary, or the secretary's designee, any public hearing held by the department on proposed rules relating to licensees or the board.

(5) The department shall submit to the board a copy of the report required under s. 227.19 (2) on any proposed final rules relating to licensees or the board. The board may prepare a dissenting report stating its recommendations on the proposed final rules. Any dissenting report shall be prepared within 10 days from the date of receipt of the department's report, be attached to the department's report and be sent to the presiding officer of each house of the legislature and distributed under s. 227.19 (2). The department shall cause a statement to appear in the Wisconsin administrative register to the effect that a dissenting report of the board has been submitted to the presiding officer of each house of the legislature.

(6) The department shall provide staff to assist the board in the review of administrative rules and preparation of comments or dissenting reports.

(7) The board may petition the department under s. 227.12 for the adoption, amendment or repeal of rules relating to licensees or the board. This subsection does not limit the

rights of other persons to petition the department under s. 227.12.

History: 1981 c. 94; 1985 a. 182 s. 57; 1987 a. 403 s. 256.

452.08 Board receipt of proposed legislation. The secretary shall submit to the board in writing any legislation proposed by the department relating to licensees or the board prior to introduction in the legislature.

History: 1981 c. 94.

452.09 Application for license, contents. (1) FORM OF APPLICATION. Any person desiring to act as a broker or salesperson shall submit to the department an application for a license. The application shall be in such form as the department prescribes and shall include the following:

(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; and 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 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) Any other information which the department may reasonably require to enable it to determine the competency of each applicant, including each member of the partnership, or each officer of the corporation, to transact the business of a broker or salesperson in a manner which safeguards the interests of the public.

(2) EDUCATIONAL REQUIREMENTS FOR APPLICANTS FOR LICENSES. (a) Each applicant for a salesperson's license shall submit to the department evidence satisfactory to the department of successful completion of 72 classroom hours of educational programs approved for this purpose under s. 452.05 (1) (c). The department may waive the requirement under this paragraph upon proof that the applicant has received 10 academic credits in real estate or real estate related law courses from an accredited institution of higher education.

(c) Except as provided in par. (d), each applicant for a broker's license shall do all of the following:

1. Satisfy or obtain a waiver of the requirement under par. (a) or submit proof of licensure as a salesperson under this chapter.

2. Submit to the department evidence satisfactory to the department of successful completion of 36 classroom hours of educational programs in business management approved for this purpose under s. 452.05 (1) (c). No classroom hours applied to satisfy the requirement under subd. 1 may be applied to satisfy the requirement under this subdivision.

(d) The department may waive the requirements under par. (c) upon proof that the applicant has received 20 academic credits in real estate or real estate related law courses from an accredited institution of higher education or that the applicant is licensed to practice law in this state.

(3) COMPETENCY OF APPLICANT. (a) In determining competency, the department shall require proof that the applicant for a broker's or salesperson'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. An applicant receiving a failing grade, as established by rules of the department, on any examination given under this section shall be denied a license, but any applicant may review his or her examination results in a manner established by rules of the department.

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

(c) Examinations shall reliably measure an applicant's ability to competently engage in real estate practice.

(d) The department may not grant a broker's license to an applicant who does not hold a salesperson's license unless the applicant passes the salesperson's examination and the broker's examination.

(e) An applicant is not eligible for examination unless the applicant has satisfied the applicable requirements under sub. (2).

(5) APPRENTICESHIPS. Any person who is a resident of this state and 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 department. These rules shall be promulgated so as to protect the public and may limit the real estate sales and brokerage activity of the apprentice. The department may require a preliminary examination covering general knowledge and prescribe the character and extent of his or her work during apprenticeship. The department may issue a temporary salesperson's permit to the individual for a period not to exceed one year upon payment of the fee under s. 440.05 (6). The temporary permit is not renewable.

History: 1981 c. 94, 391; 1983 a. 273; 1985 a. 305; 1989 a. 341.

452.10 Applications, verification, fees, exceptions. (1) An 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.

(2) (a) Each new application for a broker's or salesperson's license or cemetery registration shall be for the remainder of the biennial license period.

NOTE: Par. (a) is amended by 1989 Wis. Act 307, eff. 11-1-91, to read:

"(a) Each new application for a broker's or salesperson's license shall be for the remainder of the biennial license period."

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

(3) The fees for examinations and licenses granted or renewed under this chapter are specified in s. 440.05.

(4) (a) Any licensed salesperson or broker may transfer to the employment of a licensed broker and any registered cemetery salesperson may transfer to the employment of a registered cemetery association or corporation by first paying the transfer fee specified in s. 440.05 (7) and filing a transfer form with the department.

NOTE: Par. (a) is amended by 1989 Wis. Act 307, eff. 11-1-91, to read:

"(a) Any licensed salesperson or broker may transfer to the employment of a licensed broker by first paying the transfer fee specified in s. 440.05 (7) and filing a transfer form with the department."

(b) No salesperson, time-share salesperson or broker may be employed by a broker whose license has been suspended or revoked during the period of suspension or revocation. The salesperson, time-share salesperson or broker may apply for transfer to some other licensed broker by complying with this chapter, provided the salesperson, time-share salesperson or broker is not a party to the activities causing the suspension or revocation of the license of the broker.

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(5) Sections 452.13, 452.14, 452.15, 452.17, 452.18, 452.19, 452.21 and 452.22, as they apply to salespersons, apply with equal effect to cemetery salespersons.

NOTE: Sub. (5) is renumbered 440.91 (8) and amended by 1989 Wis. Act 307, eff. 11-1-91.

(6) In the case of applications for renewals of licenses the department may dispense with such matters contained in s. 452.09 (1) as it deems unnecessary in view of prior applications.

History: 1981 c. 94, 314, 391; 1983 a. 27, 273; 1985 a. 305; 1987 a. 264, 399; 1989 a. 307.

Real estate examining board cannot prescribe the name to be used on an application for real estate broker's license. 66 Atty Gen 21.

452.11 Nonresident brokers. (1) A nonresident may become a broker, salesperson or time-share salesperson by conforming to all the provisions of this chapter, except that a nonresident broker shall maintain an active place of business in the state in which the broker holds a license. Nonresident brokers may not employ brokers, salespersons or time-share salespersons in this state.

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

(3) Every nonresident applicant shall file an irrevocable consent that actions may be commenced against the applicant 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 department or any duly authorized employe. The consent shall stipulate and agree that such service is valid and binding as due service upon the 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 department or its duly authorized employe. One copy shall be filed with the department 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 may be taken unless it appears by affidavit of the secretary or any duly authorized employe that a copy of the process or pleading was mailed to the defendant as required in this subsection. No judgment by default may be taken in any action or proceeding within 20 days after the date of mailing the process or pleading to the nonresident defendant.

History: 1981 c. 94; 1983 a. 27; 1987 a. 399.

Sub. (1) violates privileges and immunities clause of U. S. Constitution. 77 Atty Gen 109.

452.12 Licenses. (1) EXPIRATION. A license granted by the department entitles the holder to act as a broker or salesperson, as the case may be, up to December 31 of even-numbered years following issuance of the license.

(2) CORPORATIONS; PARTNERSHIPS. (a) A license may be issued to a corporation if the corporation has at least one officer licensed as a broker. The license issued to the corporation entitles each officer of the corporation who is a licensed broker to act as a broker on behalf of the corporation.

(b) A license may be issued to a partnership if the partnership has at least one member who is a licensed broker. The license issued to the partnership entitles each member of the partnership who is a licensed broker to act as a broker on behalf of the partnership.

(c) Application for a corporate or partnership license shall be made on forms prescribed by the department, listing the names and addresses of all officers and partners, and shall be

accompanied by the fee specified in s. 440.05 (8). If there is a change in any of the officers or partners, the change shall be reported to the department, on the same form, within 30 days after the effective date of the change.

(3) BROKER'S LIABILITY FOR ACTS OF EMPLOYEES. (a) Each broker is responsible for the acts of any broker, salesperson or time-share salesperson employed by the broker.

(b) If a broker maintains any branch offices in this state, each branch office must be under the direct full-time supervision of a broker. The broker maintaining the branch office shall be responsible for the acts and conduct of all brokers, salespersons and time-share salespersons employed at the branch office.

(4) REGISTER OF BROKERS AND SALESPERSONS. The department shall maintain the register required by s. 440.035 (4). The names of all brokers and salespersons whose licenses have been revoked at any time within 2 years prior to the issuance thereof shall be included in the register. The register shall be available for purchase at cost.

(5) RENEWAL. (a) Renewal applications for all licenses shall be submitted with the required fee on or before December 31 of the even-numbered years following original licensure.

(b) If an application for renewal is not filed with the department on or before December 31 of the even-numbered years following licensure, the applicant shall be prohibited from engaging in any of the activities covered by the license until the license is renewed or a new license issued. The department shall accept renewal applications at any time during the year after the license expires upon payment of the renewal fee and penalty. The department shall not thereafter grant a license until the applicant passes the required written examination and pays the fee specified in s. 440.05 (1).

(c) 1. At the time of renewal, each broker or salesperson shall submit proof of attendance at and successful completion of continuing education programs or courses approved under s. 452.05 (1) (g) for the minimum number of hours and in those subjects required under s. 452.05 (1) (d), except as provided in subd. 2.

2. Not later than June 30 of each even-numbered year, the department shall conduct an examination on those subjects required for continuing education under s. 452.05 (1) (d). Any broker or salesperson who passes the examination under this subdivision is not required to comply with subd. 1.

(6) INACTIVE LICENSEES. (a) Any licensee, except a cemetery salesperson registered under s. 452.02 (3) or a time-share salesperson registered under s. 452.025, may apply for registration as an inactive licensee on or before December 31 of the even-numbered year in which the person's license is due to expire.

NOTE: Par. (a) is amended by 1989 Wis. Act 307, eff. 11-1-91, to read:

"(a) Any licensee, except a time-share salesperson registered under s. 452.025, may apply for registration as an inactive licensee on or before December 31 of the even-numbered year in which the person's license is due to expire."

(b) Unless an applicant's license has been revoked or suspended under s. 452.14 (3), the department may register the applicant under par. (a) as an inactive licensee upon payment of a \$15 fee.

(c) Inactive licensees may not engage in real estate practice.

(d) Except as provided under par. (e), the department shall reinstate an inactive licensee's original license if the person files a timely application, pays the fee under s. 440.05 (1), and has not been investigated or disciplined under s. 452.14 as an inactive licensee.

(e) The department shall not reinstate an applicant's original license unless the applicant furnishes the department with evidence of the following:

1. If the applicant has been an inactive licensee for less than 5 years, he or she shall demonstrate to the department that he

or she has a general and fair understanding of any changes that have occurred in this chapter or related rules during the time he or she was an inactive licensee.

2. If the applicant was an inactive licensee for 5 years or more, he or she shall demonstrate to the department that he or she still meets the competency standards required for original applicants under s. 452.09 (3).

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 264, 399; 1989 a. 307, 341.

452.13 Trust accounts. (1) Except as provided in sub. (2), all downpayments, earnest money deposits or other trust funds received by a broker, salesperson, time-share salesperson or cemetery salesperson on behalf of the broker's, salesperson's, time-share salesperson's or cemetery salesperson's principal or any other person shall be deposited in a common trust account maintained by the broker, salesperson, time-share salesperson or cemetery salesperson for that purpose in a bank, savings and loan association or credit union which is authorized to do business in this state and is designated by the broker, salesperson, time-share salesperson or cemetery salesperson pending the consummation or termination of the transaction, except that the money may be paid to one of the parties pursuant to the contract or option. The name of the bank, savings and loan association or credit union shall at all times be registered with the department, along with a letter authorizing the department to examine and audit the trust account when the department deems it necessary.

NOTE: Sub. (1) is amended by 1989 Wis. Act 307, eff. 11-1-91, to read:

"(1) Except as provided in sub. (2), all downpayments, earnest money deposits or other trust funds received by a broker, salesperson or time-share salesperson on behalf of the broker's, salesperson's or time-share salesperson's principal or any other person shall be deposited in a common trust account maintained by the broker, salesperson or time-share salesperson for that purpose in a bank, savings and loan association or credit union which is authorized to do business in this state and is designated by the broker, salesperson or time-share salesperson pending the consummation or termination of the transaction, except that the money may be paid to one of the parties pursuant to the contract or option. The name of the bank, savings and loan association or credit union shall at all times be registered with the department, along with a letter authorizing the department to examine and audit the trust account when the department deems it necessary."

(2) Deposits, as defined in s. 707.49 (1) (b), received by a broker, salesperson or time-share salesperson in connection with the sale of a time share shall be deposited as provided in s. 707.49 if an escrow account is established under that section.

History: 1981 c. 94, 391; 1985 a. 305; 1987 a. 399; 1989 a. 307.

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.

452.14 Investigation and discipline of licensees. (1) The department shall, upon motion of the board or upon its own determination, conduct investigations and, as appropriate, may hold hearings and make findings, if the department receives credible information that a broker, salesperson, time-share salesperson, cemetery association or corporation or cemetery salesperson has violated this chapter or any rule promulgated under this chapter.

NOTE: Sub. (1) is amended by 1989 Wis. Act 307, eff. 11-1-91, to read:

"(1) The department shall, upon motion of the board or upon its own determination, conduct investigations and, as appropriate, may hold hearings and make findings, if the department receives credible information that a broker, salesperson or time-share salesperson has violated this chapter or any rule promulgated under this chapter."

(2) The department shall present the findings of any investigation of a licensee or registrant to the board for its consideration. The department shall upon motion of the board, and may, upon its own determination, commence

disciplinary proceedings on any matter under investigation concerning a licensee or registrant. No investigation of a licensee or registrant may be closed without motion of the board.

(3) Disciplinary proceedings shall be conducted by the board according to rules adopted under s. 440.03 (1). The board may revoke, suspend or limit any broker's, salesperson's or time-share salesperson's license or registration, or reprimand the holder of the license or registration, if it finds that the holder of the license or registration has:

(a) Made a material misstatement in the application for a license or registration, or in any information furnished to the board or department;

(b) Made any substantial misrepresentation with reference to a transaction injurious to a seller or purchaser in which the broker, salesperson or time-share salesperson acts as agent;

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

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

(e) Acted for more than one party in a transaction without the knowledge of all parties for whom the broker, salesperson or time-share salesperson acts;

(f) Accepted a commission or valuable consideration as a salesperson or time-share salesperson for the performance of any act specified in this chapter from any person except the salesperson's or time-share salesperson's 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 the broker's, salesperson's or time-share salesperson's possession which belong to another person;

(i) Demonstrated incompetency to act as a broker, salesperson, time-share salesperson or cemetery salesperson in a manner which safeguards the interests of the public;

NOTE: Par. (i) is amended by 1989 Wis. Act 307, eff. 11-1-91, to read:

"(i) Demonstrated incompetency to act as a broker, salesperson or time-share salesperson in a manner which safeguards 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;

(jm) Intentionally encouraged or discouraged any person from purchasing or renting real estate in a particular area on the basis of race. If the board finds that any broker, salesperson or time-share salesperson has violated this paragraph, the board shall, in addition to any temporary penalty imposed under this subsection, apply the penalty provided in s. 452.17 (4);

(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;

(L) Violated any provision of this chapter;

(m) Failed to use forms approved under s. 452.05 (1) (b); or

(n) Treated any person unequally solely because of sex, race, color, handicap, national origin, ancestry, marital status or lawful source of income.

(4) If a broker is a company it shall be sufficient cause for reprimand or for the limitation, 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 a 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.

452.14 REAL ESTATE PRACTICE

(4m) In addition to or in lieu of a reprimand, the issuance of a private letter of warning or a revocation, limitation or suspension of a license or certificate of registration under sub. (3), the board may do any of the following:

(a) Assess against a person who is licensed or registered under this chapter a forfeiture of not more than \$1,000 for each violation enumerated under sub. (3).

(b) Require a licensee to successfully complete education or training, in addition to any education or training required for licensure or registration or for renewal of a license or certificate under this chapter, as a condition of continued licensure or registration or reinstatement of a license or certificate.

(5) The department may seek judicial review under ch. 227 of any final decision of the board. The department shall be represented in such review proceedings by an attorney within the department. Upon request of the board, the attorney general may represent the board. If the attorney general does not represent the board, the board may retain special counsel which shall be paid for out of the appropriation under s. 20.165 (1) (g).

History: 1981 c. 94, 391; 1983 a. 27 s. 2202 (44); 1983 a. 354; 1985 a. 305; 1987 a. 399; 1989 a. 307, 341, 359.

Real estate brokers may engage in guaranteed sales plans if there is full disclosure and broker does not engage in fraud, misrepresentation or improper dealing. 61 Atty. Gen. 3.

Provisions in Executive Order 67 (1973), with respect to duty of real estate broker to advise prospective purchasers of floodplain zoning status of property, do not constitute new standard but suggest course of action real estate examining board might take. Action to be taken would depend on facts in each case. 63 Atty. Gen. 236.

Neither 440.20, 452.10 (2), 1977 stats., nor rules of department of regulation and licensing require board to hold hearing where citizen files verified complaint with board requesting institution of disciplinary proceedings against a licensee. 68 Atty. Gen. 30.

452.15 Ineligibility. No license or certificate of registration may be issued under this chapter to any person whose license or certificate under this chapter has been revoked until the expiration of a period determined in each case by the board or, in the case of revocation under s. 452.17 (4) (a) 2, a period determined in each case by the board of not less than 5 years from the date the revocation became finally effective.

History: 1981 c. 94; 1983 a. 354; 1989 a. 341.

452.16 Investigation of unlicensed practice. (1) The department shall, upon motion of the board or upon its own determination, conduct investigations and, as appropriate, may hold hearings and make findings, if the department receives credible information that a person has acted as a broker, salesperson, time-share salesperson, cemetery association or cemetery salesperson without a license or certificate required under this chapter. The findings shall be subject to review under ch. 227. If there is reason to believe that the continuation of such activity might cause injury to the public interest, the department may petition the circuit court for a temporary restraining order, an injunction or a writ of ne exeat as provided in ch. 813.

NOTE: Sub. (1) is amended by 1989 Wis. Acts 307, 341 and 359, eff. 11-1-91, to read:

"(1) The department shall, upon motion of the board or upon its own determination, conduct investigations and, as appropriate, may hold hearings and make findings, if the department receives credible information that a person has acted as a broker, salesperson or time-share salesperson without a license or certificate required under this chapter. The findings shall be subject to review under ch. 227. If there is reason to believe that the continuation of such activity might cause injury to the public interest, the department may petition the circuit court for a temporary restraining order, an injunction or a writ of ne exeat as provided in ch. 813."

(2) The department may close an investigation of a case involving a person who is not a licensee or registrant without approval of the board.

History: 1981 c. 94; 1987 a. 399; 1989 a. 307, 341, 359.

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

(2) Any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as a cemetery salesperson or time-share salesperson in this state without being registered with the department 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.

NOTE: Sub. (2) is amended by 1989 Wis. Act 307, eff. 11-1-91, to read:

"(2) Any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as, a time-share salesperson in this state without being registered with the department 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."

(3) Except as provided in s. 452.022 (6), any person who otherwise violates any provision of this chapter may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

NOTE: Sub. (3) is amended by 1989 Wis. Act 307, eff. 11-1-91, to read:

"(3) Any person who otherwise violates any provision of this chapter may be fined not more than \$1,000 or imprisoned for not more than 6 months or both."

(4) (a) If the board finds that any broker, salesperson or time-share salesperson has violated s. 452.14 (3) (jm), the board:

1. Shall, for the first offense, suspend the license or registration of the broker, salesperson or time-share salesperson for not less than 90 days.

2. Shall, for the 2nd offense, revoke the license or registration of the broker, salesperson or time-share salesperson.

(b) This penalty may be imposed in addition to any penalty imposed under this chapter or s. 66.432 or 101.22.

History: 1981 c. 94; 1983 a. 354; 1987 a. 399; 1989 a. 95, 307, 341.

452.18 Court review. Orders of the board and department shall be subject to review as provided in ch. 227.

History: 1981 c. 94.

452.19 Fee-splitting. No licensed broker, registered cemetery association or corporation or registered cemetery salesperson may pay a fee or a commission or any part thereof for performing any act specified in this chapter or as compensation for a referral or as a finder's fee to any person who is not licensed or registered under this chapter or who is not regularly and lawfully engaged in the real estate brokerage or cemetery sales business in another state, a territory or possession of the United States or a foreign country.

NOTE: This section is amended by 1989 Wis. Act 307, eff. 11-1-91, to read:

"452.19 FEE-SPLITTING. No licensed broker may pay a fee or a commission or any part thereof for performing any act specified in this chapter or as compensation for a referral or as a finder's fee to any person who is not licensed or registered under this chapter or who is not regularly and lawfully engaged in the real estate brokerage business in another state, a territory or possession of the United States or a foreign country."

History: 1981 c. 94; 1983 a. 464; 1985 a. 128; 1989 a. 307.

452.20 Limitation on actions for commissions. No person engaged in the business or acting in the capacity of a broker, salesperson or time-share salesperson within this state may 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 or she was a duly licensed broker,

salesperson or registered time-share salesperson at the time the alleged cause of action arose.

History: 1981 c. 94; 1987 a. 399; 1989 a. 56.

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.

This section not applicable since broker as owners' agent was not attempting to negotiate the lease when conferring with his alleged principal in Wisconsin and therefore was not acting in the capacity of a broker in Wisconsin. Negotiation of lease occurred when broker met and conferred with prospective lessee either in Illinois or Tennessee. *Paulson v. Shapiro*, 490 F (2d) 1.

452.21 Compensation presumed. In any prosecution for violation of this chapter, proof that a person acted as a broker, agent, salesperson or time-share salesperson is prima facie proof that compensation therefor was received or promised.

History: 1981 c. 94; 1987 a. 399.

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

(2) The certificate of the secretary or his or her designee to the effect that a specified individual, partnership or corporation is not or was not on a specified date the holder of a broker's, salesperson's or time-share salesperson's license or registration, or that a specified license or registration was not in effect on a date specified, or as to the issuance, limitation, suspension or revocation of any license or registration or the reprimand of any holder thereof, 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.

History: 1981 c. 94; 1987 a. 399.

452.23 Disclosures, investigations and inspections by brokers and salespersons. (1) A broker or salesperson may not disclose to any person in connection with the sale,

exchange, purchase or rental of real property information, the disclosure of which constitutes unlawful discrimination in housing under s. 101.22 or unlawful discrimination based on handicap under 42 USC 3604, 3605, 3606 or 3617.

(2) A broker or salesperson is not required to disclose any of the following to any person in connection with the sale, exchange, purchase or rental of real property:

(a) That the property was the site of a specific act or occurrence, if the act or occurrence had no effect on the physical condition of the property or any structures located on the property.

(b) Except as provided in sub. (3), information relating to the physical condition of the property or any other information relating to the real estate transaction, if a written report that discloses the information has been prepared by a qualified 3rd party and provided to the person. In this paragraph, "qualified 3rd party" means a federal, state or local governmental agency, or any person whom the broker, salesperson or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the 3rd party in order to prepare the written report.

(c) The location of any adult family home, as defined in s. 50.01 (1), community-based residential facility, as defined in s. 50.01 (1g), or nursing home, as defined in s. 50.01 (3), in relation to the location of the property.

(3) A broker or salesperson shall disclose to the parties to a real estate transaction any facts known by the broker or salesperson that contradict any information included in a written report described under sub. (2) (b).

(4) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a broker or salesperson shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson under this chapter.

History: 1989 a. 341.