

**CERTIFICATE**

**STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING**

**TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:**

*I, Marlene A. Cummings, Secretary, Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department of Regulation and Licensing, hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 30th day of April, 1996.*

*I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.*

**IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin this 30th day of April, 1996.**

  
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**Marlene A. Cummings, Secretary  
Department of Regulation and  
Licensing**

STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION	:	AND LICENSING ADOPTING RULES
AND LICENSING	:	(CLEARINGHOUSE RULE 95-205)

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ORDER

An order of the Department of Regulation and Licensing to create chapter RL 127 relating to the sale of real estate at an auction.

Analysis prepared by the Department of Regulation and Licensing.

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ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2) and 480.06, Stats.

Statutes interpreted: ss. 480.01, 480.02, 480.14 and 480.16, Stats.

In this proposed rule-making order the Department of Regulation and Licensing sets forth the conditions under which a registered auctioneer or auction company may negotiate the sale of real estate, manage or call an auction of real estate and complete contractual and conveyance forms relating to an auction.

Section RL 127.01 sets forth the authority for the proposed rules. These rules are based on the definition of "auction," "auction company" and "auctioneer" in s. 480.01, Stats., and these rules interpret s. 480.02 (2) (j), Stats., relating to the applicability of ch. 480, Stats., to real estate licensees and other licensees.

Section RL 127.02 states that a registered auctioneer or an auction company may manage or call an auction on real estate by virtue of being registered as an auctioneer or auction company.

Section RL 127.03 states that a registered auctioneer or an auction company who or which also holds a real estate license may prepare contracts or other documents necessary to transfer title to the real estate and may conduct other activities authorized by the real estate license. However, a registered auctioneer or auction company who or which does not hold a real estate license may not perform services which require a real estate license, such as preparing contracts or related forms, distributing to prospective buyers written information about the real estate or conditions affecting it which have not been provided by the owner or owner's agent, or negotiating separately from the actual calling of the auction. The distinction relating to distributing written information about the real estate or conditions affecting the real estate is based on the fact that real estate licensees have received education and training relating to inspecting and investigating for material facts and disclosing material adverse facts to prospective purchasers. Thus, their

license authorizes and requires them to perform such activities. Registered auctioneers do not have similar training and education as a condition of their registration and they are not authorized to perform such duties.

Section RL 127.04 sets forth the type of contractual form which a registrant must use for agreeing to negotiate, manage or call an auction of real estate. This rule distinguishes between forms which may or may not be used, depending on whether the registered auctioneer or auction company is or is not a real estate licensee.

Section RL 127.05 sets forth the obligation of an auctioneer or auction company to determine whether the real estate to be auctioned is subject to an exclusive listing contract with a real estate broker and sets forth conditions on the auctioneer's or auction company's right to contract for services or receive and hold trust funds.

Section RL 127.05 forbids an auctioneer or auction company from soliciting an owner to sell real estate at an auction if the auctioneer or auction company knows that the real estate is subject to an exclusive real estate listing contract.

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TEXT OF RULE

SECTION 1. Chapter RL 127 is created to read:

CHAPTER RL 127

SALE OF REAL ESTATE AT AUCTION

RL 127.01 AUTHORITY. The rules in this chapter are adopted under authority in ss. 227.11 (2), 480.01, 480.14 and 480.16, Stats.

RL 127.02 AUCTION OF REAL ESTATE. (1) AUCTIONEER. An auctioneer may engage in, or advertise or otherwise hold himself or herself out as being available to engage in, the calling for and the recognition and acceptance of offers for the purchase of real estate at an auction, and may handle sales proceeds, down payments, earnest money deposits or other trust funds received by the auctioneer on behalf of the auctioneer's principal or any other person at or as a result of an auction of real estate.

(2) AUCTION COMPANY. An auction company may manage an auction of real estate and may have primary responsibility for handling sales proceeds, down payments, earnest money deposits or other trust funds received by the auction company on behalf of the auction company's principal or any other person at or as a result of an auction of real estate.

RL 127.03 LIMITATIONS. (1) REGISTRANT LICENSED AS A REAL ESTATE BROKER OR SALESPERSON. A registrant who is licensed as a real estate broker and who conducts an auction of real estate listed for sale with the registrant, or a registrant who is licensed as a real estate broker or salesperson and who conducts an auction of real estate listed for sale

with the registrant's real estate broker-employer, may prepare contracts or other documents necessary to transfer title to the real estate or conduct any other activities requiring a real estate license under ch. 452, Stats., and chs. RL 11 to 26.

(2) **REGISTRANT NOT LICENSED AS A REAL ESTATE BROKER OR SALESPERSON.** (a) A registrant who is not licensed as a real estate broker or salesperson may, in connection with an auction of real estate:

1. Distribute written information describing real estate or the condition of the real estate to be auctioned, if the information has been made available by the owner of the real estate or a real estate licensee.

2. Provide access to real estate for the purpose of permitting prospective buyers to view the real estate.

3. Conduct inquiries in person, by telephone or by other media to determine whether the person being contacted is interested in bidding upon the real estate to be auctioned.

4. Perform other tasks relating to conducting an auction which do not require a real estate license under ch. 452, Stats.

(b) A registrant who is not licensed as a real estate broker or salesperson may not perform activities which require a real estate license under ch. 452, Stats., including but not limited to:

1. Preparing any contracts or other documents necessary to transfer title to real estate.

2. Distributing to prospective buyers written information about the real estate or conditions affecting the real estate which has not been provided by the owner of the real estate or the owner's agent.

3. Negotiating with a prospective buyer within the meaning of s. 452.01 (5m), Stats., other than by conducting an auction.

**RL 127.04 CONTRACT.** A registrant shall have a written contract with the owner of real estate to be sold at an auction, or the owner's agent, which specifies the terms and conditions upon which the auctioneer or auction company accepts the real estate for sale at auction. The following conditions apply to the contract:

(1) A registrant who is licensed as a real estate broker under ch. 452, Stats., shall use the appropriate approved listing contract form required under s. RL 16.03, when contracting with the owner to conduct an auction of real estate, and shall include provisions which comply with s. RL 124.02.

(2) A registrant who is licensed as a real estate salesperson shall use the appropriate approved listing contract form required under ch. RL 16, when contracting with the owner to conduct an auction of real estate if the salesperson is employed by a real estate broker, and shall include provisions which comply with s. RL 124.02.

(3) A registrant who is not licensed as a real estate broker or salesperson under ch. 452, Stats., shall use a contract that complies with s. RL 124.02.

RL 127.05 REAL ESTATE SUBJECT TO EXCLUSIVE LISTING CONTRACT. Prior to entering into any contract for the sale of real estate at an auction, the registrant shall determine whether the real estate is subject to an exclusive real estate listing contract. If the real estate to be sold at an auction is subject to an exclusive real estate listing contract between the seller and a real estate broker other than the registrant, the registrant:

(1) May only enter into a contract under s. RL 127.04, with the real estate broker holding the exclusive real estate listing contract on the real estate.

(2) May not receive any sales proceeds, down payments, earnest money deposits or other trust funds as a result of an auction of the real estate, unless the contract under sub. (1) authorizes the registrant to do so.

RL 127.06 SOLICITATION OF OWNERS WITH EXCLUSIVE LISTING CONTRACT PROHIBITED. A registrant may not solicit an owner of real estate to sell the real estate at an auction if the registrant knows that the real estate is subject to an exclusive real estate listing contract.

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(END OF TEXT OF RULE)

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The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

Dated 7/29/96

Agency

Marlene A. Cummings

Marlene A. Cummings, Secretary  
Department of Regulation and Licensing

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2/22/96

**CORRESPONDENCE/MEMORANDUM**

**STATE OF WISCONSIN**

**DATE:** May 1, 1996

**TO:** Gary Poulson  
Assistant Revisor of Statutes

**FROM:** Pamela A. Haack, Rules Center Coordinator  
Department of Regulation and Licensing  
Office of Administrative Rules

**SUBJECT:** Final Order Adopting Rules

**Agency: DEPARTMENT OF REGULATION AND LICENSING**

**Clearinghouse Rule 95-205**

Attached is a copy and a certified copy of a final order adopting rules. Would you please publish these rules in the register.

Please stamp or sign a copy of this letter to acknowledge receipt.

Thank you.

