

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

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 04-124)

ORDER

An order of the Department of Regulation and Licensing to repeal RL 17.02 (1), (2), (4), 17.09, 17.10 and 17.11; to amend RL 17.04, 17.08 (1) and 17.12 (1); and to create RL 17.02 (4g) and (4r) and 17.08 (3) to (5), relating to supervision by real estate brokers.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statute interpreted:

Section 452.12 (3), Stats.

Statutory authority:

Sections 227.11 (2), 452.07, 452.12 (3), 452.133, Stats.

Explanation of agency authority:

Section 3608 dp, contained in 2001 Wisconsin Act 16, repealed former Wis. Stats. § 452.12 (3) (b), which provided that if a broker maintained any branch office in this state, each branch office must be under the direct-full time supervision of a broker. The broker maintaining the branch office was responsible for the acts and conduct of all brokers, salespersons and time-share salespersons employed at the branch office. Section 3608 dm, contained in 2001 Wisconsin Act 16, amended former Wis. Stats. § 452.12 (3) to provide that each broker shall supervise and is responsible for the acts of any broker, salesperson or time-share salesperson employed by the broker. The proposed amendments to Chapter RL 17 remove rules relating to the supervision of principal offices (s. RL 17.09), supervision of branch offices (s. RL 17.10), and supervision outside of principal or branch office (s. RL 17.11), and replace these sections with a defined “supervising broker” who is responsible for the supervision of licensed employees under s. RL 17.08. The scope of supervision contained in s. RL 17.08 is amended to provide for the reasonable review of documents. Additional sections are added to s. RL 17.08 describing the manner and effect of a delegation of supervision duties to a supervising broker.

Related statute or rule:

There are no related statutes or rules other than those listed above.

Plain language analysis:

SECTIONS 1 and 2 repeal definitions which are no longer applicable.

SECTION 3 creates definitions of “reasonable review” and “supervising broker.”

SECTION 4 changes the spelling of “employe” to “employee.”

SECTION 5 amends the scope of a broker-employer’s duty to supervise employees.

SECTION 6 creates s. RL 17.08 (3) to require that a broker-employer that is a business entity shall delegate the duty to supervise licensed employees to a supervising broker. Section RL 17.08 (4) is created to provide that a broker-employer who is not a business entity will be deemed to be the supervising broker in the absence of a delegation of the duty to supervise licensed employees to another supervising broker. And s. RL 17.08 (5) is created to set forth the requirements of a broker-employer’s delegation of the duty to supervise licensed employees to a supervising broker.

SECTION 7 repeals sections related to the supervision of principal and branch offices and the supervision of licensed employees outside of principal or branch offices.

SECTION 8 changes the spelling of “employe” to “employee.”

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Minnesota Rules Chapter 2805

2805.1000 RESPONSIBILITIES OF BROKERS.

Subpart 1. Supervision of personnel. Brokers shall adequately supervise the activities of their salespersons and employees. Supervision includes the ongoing monitoring of listing agreements, purchase agreements, other real estate-related documents which are prepared or drafted by the broker’s salespersons or employees or which are otherwise received by the broker’s office, and the review of all trust account books and records. If an individual broker maintains more than one place of business, each place of business shall be under the broker’s direction and supervision. If a partnership or corporate broker maintains more than one place of business, each place of business shall be under the direction and supervision of an individual broker licensed to act on behalf of the partnership or corporation. The primary broker shall maintain records specifying the name of each broker responsible for the direction and supervision of each place of business. If an individual broker, who may be the primary broker, is

responsible for supervising more than one place of business, the primary broker shall, upon written request of the commissioner, file a written statement specifying the procedures which have been established to assure that all salespersons and employees are adequately supervised. Designation of another broker to supervise a place of business does not relieve the primary broker of the ultimate responsibility for the actions of licensees.

Illinois Administrative Code

Title 68, Section 1450.125 Managing Broker Responsibilities

- a) The sponsoring broker shall inform OBRE in writing of the name and certificate number of all managing brokers employed by the sponsoring broker and the office or branch offices each managing broker is responsible for managing. Each managing broker shall have an active license as a broker.
- b) The sponsoring broker shall be responsible for issuing sponsor cards. However, the sponsoring broker may delegate that responsibility to one or more managing brokers.
- c) Upon written request within 15 days after the loss of a managing broker, OBRE shall issue a written authorization to allow the continuing operation of a licensed office or branch office, provided that the sponsoring broker or representative under a duly executed power of attorney assumes responsibility, in writing, for the operation of the office and agrees to personally supervise the operations. No authorization shall be valid for more than 60 days unless extended by OBRE for good cause and upon written request by the sponsoring broker. Good cause includes circumstances as sales under contract pending closing, loss of livelihood for sales associates, and undue hardship caused to sellers.
- d) When a managing broker receives a renewal application from OBRE for a licensee supervised by the managing broker or employed by the sponsoring broker of the manager, he shall notify the licensee of the receipt, personally within 7 days or by certified or registered mail or other signature restricted delivery service within 10 days. The notice shall also inform the licensee that any unprocessed renewal form will be returned to OBRE by the manager broker. When a managing broker receives a renewal application from OBRE for a licensee not supervised by the managing broker or employed by the sponsoring broker of the managing broker, the renewal form shall immediately be returned to OBRE.
- e) All managing brokers shall notify OBRE on business letterhead of any change of business address of the offices they manage within 24 hours of any change. Change of address is required for all offices and branch offices. A license returned to OBRE for the reason described in this subsection shall remain in good standing until the new licenses are issued and in the possession of the licensee.
- f) OBRE will honor the Order of a court of competent jurisdiction appointing a legal representative for the sole purpose of closing out the affairs of a deceased broker or a broker who has been adjudicated disabled, who was a sole proprietor, until the real estate brokerage is closed but not to actively engage in the brokerage business as defined in Section 1-10 of the Act.

Section 1450.130 Supervision

a) A managing broker shall exercise reasonable supervision over the activities of licensees and unlicensed assistants working in those offices managed by the managing broker. This would include:

- 1) the implementation of office policies and procedures established by the sponsoring broker;
- 2) training of licensees or unlicensed assistants;
- 3) assisting licensees as necessary in real estate transactions;
- 4) supervising those special (escrow) accounts over which the sponsoring broker has delegated responsibility to the managing broker in order to ensure compliance with the special (escrow) account provisions of the Act and this Part;
- 5) supervising all advertising of any service for which a license is required;
- 6) familiarizing sponsored licensees with the requirements of federal and state laws relating to the practice of real estate; and
- 7) compliance with this Part for licensees and offices under his/her supervision.

b) The sponsoring broker shall remain ultimately responsible for compliance with this Part. The sponsoring broker shall name a managing broker for every office.

Iowa Administrative Code-IAC Real Estate Commission [193E]

193E—7.10(543B) Agency-designated broker responsibilities. The following conditions and circumstances, together with the education and experience of licensed and unlicensed employees and independent contractors, shall be considered when determining whether or not the designated broker has met the supervisory responsibilities as set forth by Iowa Code section 543B.62, subsection (3), paragraph “b.”

7.10(1) When making a determination, the commission may consider, but is not limited to consideration of, the following:

- a. Availability of the designated broker/designee to assist and advise regarding brokerage related activities;
- b. General knowledge of brokerage-related staff activities;
- c. Availability of quality training programs and materials to licensed and unlicensed employees and independent contractors;
- d. Supervisory policies and practices in the review of competitive market analysis, listing contracts, sales contracts and other contracts or information prepared for clients and customers;
- e. Frequency and content of staff meetings;

- f. Written company policy manuals for licensed and unlicensed employees and independent contractors;
- g. Ratio of supervisors to licensed employees and independent contractors; and
- h. Assignment of an experienced licensee to work with new licensees.

7.10(2) The designated broker shall disseminate, in a timely manner, to licensed employees and independent contractors all regulatory information received by the brokerage pertaining to the practice of real estate brokerage.

193E—7.11(543B) Supervision required. An employing or affiliated broker is responsible for providing supervision of any salesperson or broker associate employed by or otherwise associated with the broker as a representative of the broker. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and the salesperson or broker associate shall not relieve either the broker or the salesperson or broker associate of duties, obligations or responsibilities required by law.

7.11(1) Each salesperson and broker associate shall keep the broker fully informed of all activities being conducted on behalf of the broker and any other activities that might impact the broker's responsibilities. However, the failure of the salesperson or broker associate to keep the broker fully informed shall not relieve the broker of duties, obligations or responsibilities required by law.

Michigan – Administrative Rules

R 339.22310 Supervision.

Rule 310. A broker or associate broker shall supervise the work of a licensee. Supervision shall include, at a minimum, all of the following:

- (a) Direct communication in person or by radio, telephone, or electronic communication on a regular basis.
- (b) Review of the practice of the supervised licensee.
- (c) Review of the supervised licensee's reports.
- (d) Analyses and guidance of the licensee's performance in regulated activities.
- (e) Provision of written operating policies and procedures.

Indiana Administrative Code

876 IAC 1-1-3 Definitions.

Authority: IC 25-34.1-2-5/IC 25-34.1-2-5.1

Affected: IC 25-34.1-3-2; IC 25-34.1-5

Sec. 3. (a) The definitions in this section apply throughout this title.

- (i) "Principal broker" means the individual broker, including the broker designated as representative of a corporation or partnership whom the commission shall hold responsible for the actions of licensees who are assigned to the principal broker.

876 IAC 1-1-18 Supervision of office by licensed broker; branch offices; notice by principal broker.

Authority: IC 25-34.1-2-5

Affected: IC 25-34.1-3-3.1; IC 25-34.1-3-4.1

Sec. 18. Every real estate office or real estate branch office whether operated as a corporation, partnership, or sole proprietorship, shall be directed, supervised, and managed by a licensed real estate broker. The office or branch office shall constitute the managing broker's principal and sole place of real estate business. Said managing broker may be the principal broker in cases where there is only one office. The principal broker must submit to the commission a Branch Office Registration Form prior to the opening of any branch office. Said principal broker shall notify the commission when any licensee associated with said principal broker transfers from one branch office to another branch office within the same association. (*Indiana Real Estate Commission; Rule 19; filed Sep 28, 1977, 4:30 pm: Rules and Regs. 1978, p. 799; filed Mar 13, 1980, 2:30 pm: 3 IR 647; filed Dec 11, 1986, 10:40 am: 10 IR 877; readopted filed Jun 29, 29, 2001, 9:56 a.m.: 24 IR 3824*)

Summary of factual data and analytical methodologies:

The department and the Real Estate Board created a rule subcommittee to review issues related to the supervision of employees in the current marketplace which increasingly relies upon communications technology for supervisory oversight. The subcommittee was comprised of members of the Real Estate Board, a representative of the Wisconsin Realtors Association, and department staff. The intent of the subcommittee was to design rules which would allow for flexibility in the supervision of employees and to clarify the type of supervision needed such that the public would be better protected by having mistakes in a real estate transaction be more likely to be identified and corrected before harm could result.

Determination of significant fiscal effect on the private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

These proposed rules will have no impact on the department's funds.

Effect on small business:

Pursuant to s. 227.114 (1) (a), Stats., these proposed rules will have no significant economic impact on a substantial number of small businesses. The Department's Small Business Regulatory Review Coordinator may be contacted by email at christopher.klein@drl.state.wi.us, or by calling (608) 266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, Room 171, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708-8935. Phone: 608-266-0495. Email address: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission:

Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received on or before December 13, 2004, to be considered in the rule-making process. Email address: pamela.haack@drl.state.wi.us.

TEXT OF RULE

SECTION 1. RL 17.02 (1) and (2) are repealed.

SECTION 2. RL 17.02 (4) is repealed.

SECTION 3. RL 17.02 (4g) and (4r) are created to read:

RL 17.02 (4g) "Reasonable review" means the timely review of a document or record to detect and correct errors which include ambiguous, omitted or incomplete portions of a document or record, or incorrect words, numbers, phrases, legal descriptions, terms or conditions. "Reasonable review" does not include the detection and correction of an error which is not apparent on the face of the document or record, unless the supervising broker knows or has reason to know of the error.

(4r) "Supervising broker" means a broker to whom a broker-employer's duty to supervise licensees employed by a broker-employer is delegated and who is responsible for ensuring compliance by the broker-employer with the duty to supervise licensed employees under s. RL 17.08.

SECTION 4. RL 17.04 is amended to read:

RL 17.04 Notice of employment. A licensee who wishes to engage in real estate practice as an ~~employe~~ employee of a broker-employer shall notify the department of the name of the broker-employer on forms prescribed by the department. If this notice is provided at the time of application for original licensure, the department may not charge a fee in addition to the fee specified in s. 440.05 (1), Stats. If the notice is provided other than at the time of application for original licensure, the licensee shall pay the fee specified in s. 440.05 (7), Stats.

SECTION 5. RL 17.08 (1) is amended to read:

RL 17.08 Supervision of employees. (1) A broker-employer shall supervise the activities of any licensee employed by the broker-employer. Supervision includes but is not limited to ~~reviewing~~ the reasonable review of all listing contracts, offers to purchase, trust account records and other documents and records related to transactions as well as providing all

licensees reasonable access to a supervising broker for purposes of consultation regarding real estate practice issues. Documents or records related to a transaction, described in ss. RL 15.02, 15.03 and 15.04, including the receipt and proposed disbursement of real estate trust funds in or from the real estate trust account of the broker-employer, shall be reviewed by the supervising broker prior to the closing of the transaction. A broker-employer may delegate this responsibility to other brokers. Broker-employers shall provide all licensed employees with a written statement of procedures under which the office and employees shall operate with respect to handling leases, listing contracts, offers to purchase and other documents relating to transactions. Broker-employers shall notify all employed licensees where a copy of the rules of the department maintained under s. RL 24.16 may be obtained.

SECTION 6. RL 17.08 (3) to (5) and a Note following RL 17.08 (5) are created to read:

RL 17.08 (3) A broker-employer which is a business entity shall delegate the performance of the duty to supervise licensed employees to a supervising broker.

(4) A broker-employer who is not a business entity may delegate the duty to supervise licensed employees to a supervising broker. In the absence of a specific supervising broker delegation to another person, a broker-employer who is not a business entity is deemed to be a supervising broker.

(5) A delegation under this section shall be written and signed by or on behalf of the delegating broker-employer, identify the duty delegated, and be signed by the supervising broker to whom the delegation is made. A broker-employer may delegate the duty to supervise licensees employed by the broker-employer to more than one supervising broker.

Note: Sections RL 17.08 (3) and (4) do not affect a broker-employer's liability under s. 452.12 (3), Stats.

SECTION 7. RL 17.09, 17.10 and 17.11 are repealed.

SECTION 8. RL 17.12 (1) is amended to read:

RL 17.12 Unlicensed personal assistants. (1) A licensed ~~employe~~ employee, prior to employing an unlicensed personal assistant, shall enter into a written agreement with his or her broker-employer, setting forth the duties of the unlicensed personal assistant, the manner in which the personal assistant will be compensated for his or her services and the responsibilities between the licensed ~~employe~~ employee and broker-employer for supervision of the personal assistant's activities.

(END OF TEXT OF RULE)

These proposed rules shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Wis. Stats.

Dated _____

Agency _____

Celia M. Jackson, Secretary
Department of Regulation and Licensing

RL 17 CR04-124 (REB - Supervision) Final Draft 5-11-05