

CHAPTER 452

REAL ESTATE PRACTICE

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Cross-reference: See definitions in s. 440.01.

Cross-reference: See also chs. REEB 11, 12, 15, 16, 17, 18, 23, 24, and 25, Wis. adm. code.

452.01 Definitions. In this chapter:

(1e) “Adverse fact” means any of the following:

(a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

1. Significantly and adversely affecting the value of the property.
2. Significantly reducing the structural integrity of improvements to real estate.
3. Presenting a significant health risk to occupants of the property.

(b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations under a contract or agreement made concerning the transaction.

(1m) “Agency agreement” means a written agreement between a firm and a client in which the client authorizes the firm to provide brokerage services to the client.

(1o) “Associated with a firm” means to have been engaged by a firm to provide brokerage services to the firm’s clients and customers on behalf of the firm and under the firm’s supervision, including as an employee of the firm or as an independent contractor, or both.

(1p) “Associated with a subagent” means to be associated with a firm that is engaged as a subagent.

(1s) “Board” means real estate examining board.

(2) “Broker” means any person not excluded by sub. (3), who does any of the following:

(a) For another person, and for commission, money, or other thing of value, negotiates or offers or attempts to negotiate, whether directly or indirectly, a sale, exchange, purchase, or rental of, or the granting or acceptance of an option to sell, exchange, purchase, or rent, an interest or estate in real estate, a time share, or a business or its goodwill, inventory, or fixtures, whether or not the business includes real property.

(b) Is engaged wholly or in part in the business of selling or exchanging interests or estates in real estate or businesses, including businesses’ goodwill, inventory, or fixtures, whether or not the business includes real property, to the extent that a pattern of sales or exchanges is established, whether or not the person owns the real estate or businesses. Five sales or exchanges in one year or 10 sales or exchanges in 5 years is presumptive evidence of a pattern of sales or exchanges.

(bm) For another person, and for commission, money, or other thing of value shows real estate or a business or its inventory or fixtures, whether or not the business includes real property, except that this paragraph does not include showing a property that is offered exclusively for rent.

(c) For another person, and for commission, money, or other thing of value, promotes the sale, exchange, purchase, option, rental, or leasing of real estate, a time share, or a business or its goodwill, inventory, or fixtures, whether or not the business includes real property. This paragraph does not apply to a person who only publishes or disseminates verbatim information provided by another person.

(d) Issues a written report of property value that is prepared for another person and that is not an appraisal, as defined in s. 458.01 (1).

(3) “Broker” does not include any of the following:

(a) Receivers, trustees, personal representatives, 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 bank, 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) Employees of persons enumerated in pars. (a) to (c), (f), and (i) when engaged in the specific performance of their duties as such employees.

(dm) Any employee of an attorney under par. (h) if all of the following are true:

1. The employee’s activities are directly supportive of the attorney’s provision of legal services to the attorney’s client.
2. The employee’s activities are activities that the attorney may perform under par. (h).
3. The employee is under the direction and supervision of the attorney.

(e) Any custodian, janitor, employee 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 licensed as a mortgage banker under s. 224.72 who does not engage in activities described under sub. (2).

(h) Attorneys licensed to practice in this state while acting within the scope of their attorney's license.

(i) A developer, as defined in s. 707.02 (11), negotiating a transaction involving a time share.

(3e) “Brokerage service” means any service described under sub. (2) provided to a person by a firm and any licensees associated with the firm.

(3j) “Business entity” means any organization or enterprise, other than a sole proprietorship, which is operated for profit or that is nonprofit and nongovernmental, including an association, business trust, corporation, joint venture, limited liability company, limited liability partnership, partnership or syndicate.

(3k) “Business representative” means a director, manager, member, officer, owner or partner of a business entity.

(3m) “Client” means a party to a transaction who has an agency agreement with a firm for brokerage services.

(3p) “Crime” does not include a crime for which the individual has been pardoned; a crime for which the conviction has been reversed, set aside, or vacated; or a crime for which the conviction has been expunged under s. 973.015.

(3s) “Customer” means a party to a transaction who is provided brokerage services by a firm and any licensees associated with the firm but who is not a client.

(3w) “Designated agency” means a multiple representation relationship in which each client of the firm in the multiple representation relationship receives negotiation services from the firm only from licensees associated with the firm who are not providing negotiation services to any other client of the firm in the transaction.

(4) “Disciplinary proceeding” means a proceeding against one or more licensees in which the board may revoke, suspend, or limit a license, reprimand a licensee, or assess a forfeiture or require education or training under s. 452.14 (4m) or (4r).

(4v) “Felony” means a felony under the laws of this state or a crime committed elsewhere that would be a felony if committed in this state. “Felony” does not include a felony for which the applicant has been pardoned; a felony for which the conviction has been reversed, set aside, or vacated; or a felony for which the conviction has been expunged under s. 973.015.

(4w) “Firm” means a licensed individual broker acting as a sole proprietorship or a licensed broker business entity.

(4x) “Licensed broker business entity” means a broker licensed under s. 452.12 that is a business entity.

(4y) “Licensed individual broker” means a broker licensed under s. 452.12 who is an individual.

(5) “Licensee” means any person licensed under this chapter.

(5c) “License number” means a number assigned to a person under s. 452.05 (1) (j).

(5e) “Listing firm” means a firm that has entered into an agency agreement with a seller or landlord pursuant to which the firm lists property for sale or lease.

(5g) “Material adverse fact” means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects or would affect the party's decision about the terms of such a contract or agreement.

(5j) “Multiple representation relationship” means a relationship between a firm and 2 or more of the firm's clients in which the clients are parties in the same transaction.

(5m) “Negotiate” means to provide to a party assistance within the scope of the knowledge, skills, and training required under this chapter in developing a proposal or agreement relating to a transaction, including doing any of the following:

(a) Acting, whether directly or indirectly, as an intermediary by facilitating or participating in communications between parties related to the parties' interests in a transaction. In this paragraph, providing advice or opinions on matters that are material to a transaction in which a person is engaged or intends to engage or showing a party real estate does not, in and of itself, constitute acting as an intermediary by facilitating or participating in communications between parties.

(b) Completing, when requested by a party, appropriate board-approved forms or other writings to document the party's proposal consistent with the party's instruction.

(c) Presenting to a party the proposals of other parties to the transaction and giving the party a general explanation of the provisions of the proposal.

(5n) “Out-of-state broker” means a person who is not licensed under this chapter and who is 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.

(5p) “Out-of-state salesperson” means a person who is not licensed under this chapter and who is employed or engaged as an independent contractor by an out-of-state broker.

(5r) “Party” means a person seeking to engage in a transaction.

(5w) “Principal firm” means a firm that engages a subagent to provide brokerage services in a transaction.

(6) “Real estate practice” means engaging in conduct which requires a license under this chapter.

(7) “Salesperson” means any individual who is associated with a firm, other than a broker or an individual who is not required to hold a license under this chapter as provided under s. 452.03 (2).

(7r) “Subagent” means a firm that is engaged by a principal firm to provide brokerage services in a transaction, but that is not associated with the principal firm.

(8) “Time share” has the meaning given in s. 707.02 (24).

(10) “Transaction” means the sale, exchange, purchase or rental of, or the granting or acceptance of an option to sell, exchange, purchase or rent, an interest in real estate, a business or a business opportunity.

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102; 2005 a. 87; 2009 a. 2; 2011 a. 32; 2013 a. 124, 259, 288; 2015 a. 195, 258; 2017 a. 110.

A foreign corporation that entered into a brokerage contract to sell a radio station without being licensed in this state could not sue for its commission. The licensing requirement is not an unlawful burden on interstate commerce. *Chapman Company, Inc. v. Service Broadcasting Corporation*, 52 Wis. 2d 32, 187 N.W.2d 794 (1971).

Units of interest in a limited partnership are personalty and not real estate, and no real estate broker's license is required for their sale. 60 Atty. Gen. 254.

That one who owns stock in a corporation owns “an interest” in a business under sub. (2) (a) and that therefore anyone who negotiates a sale of stock requires a license under this section cannot be right. That would require every securities broker in Wisconsin to have a real estate broker's license as well as a securities license. *Schlueter v. Latek*, 683 F.3d 350 (2012).

The “New” Chapter 452: Defining Real Estate Broker Practice. Leibsle. Wis. Law. June 2006.

452.03 Brokers and salespersons licensed. (1) Except as provided in s. 452.137, 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 issued under this chapter. The board may grant a license only to a person who is competent to transact that business or occupation in a manner that safeguards the interests of the public, and only after satisfactory proof of the person's competence has been presented to the board.

(2) No license under this chapter is required for an individual who, on behalf of and under the direction of a firm or one or more licensees associated with a firm, provides the firm or licensee with

services that are limited to those that are purely administrative, clerical, or personal in nature.

History: 1981 c. 94, 391; 1989 a. 307; 2011 a. 32; 2015 a. 258.

Under s. 452.03 an agreement to pay a real estate brokerage commission to a person not licensed as a broker is void at its inception. Using a licensed broker who provides no actual services as a conduit for a fee to an unlicensed person does not create a co-brokerage arrangement authorized by s. 452.19. *Badger III Ltd. v. Howard, Needles, Tammen & Bergendoff*, 196 Wis. 2d 891, 539 N.W.2d 904 (Ct. App. 1995), 94–2531.

Officers of a corporation or partners of a partnership can act for the corporation or partnership in the rental of real estate owned by the entity without being licensed as real estate brokers. 60 Atty. Gen. 1 (1971).

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

The permitted limits of nonlicensed independent contractor agents are discussed. 70 Atty. Gen. 23.

452.05 Duties and powers of board. (1) In addition to the other duties and responsibilities of the board under this chapter, the board shall advise the secretary on matters relating to real estate practice and shall:

(a) Grant and issue licenses to individuals and business entities to act as brokers and to individuals to act as salespersons.

(b) Approve forms for use in real estate practice. The board may conduct public hearings on matters relating to the approval of forms used in real estate practice. The board may also solicit comments relating to forms used in real estate practice from the council on forms created under s. 452.06 (1) (a) or from a professional trade association whose members consist primarily of licensees actively engaged in real estate practice.

(c) After consultation with the council on real estate curriculum and examinations, 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, brokers and salespersons licensed under this chapter, and interested members of the public, establish criteria for the approval of continuing educational programs and courses in real estate related subjects required for renewal under s. 452.12 (5) (c).

(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 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).

(i) Create a form on which an individual applying to renew a broker's or salesperson's license may do all of the following:

1. State whether he or she has been convicted of a crime since he or she last applied to renew the license or, for an initial renewal, since he or she initially applied for the license.

2. Identify the date of conviction for any crime described under subd. 1. and describe the nature and circumstances of the crime.

3. Sign his or her name to attest to the accuracy and truthfulness of the information under subs. 1. and 2. and to acknowledge all of the following:

a. The department's authority to conduct an investigation under s. 440.03 (13).

b. The board's authority to revoke the license under s. 452.14 (3) (o).

c. The board's authority to assess forfeitures under s. 452.14 (4r).

(j) Assign a unique license number to each person licensed under this chapter.

(1m) (a) In this subsection:

1. "Certified local register of historic property" means a register of historic property that is part of a historic preservation ordi-

nance enacted by a city, village, town or county if the ordinance is certified by the state historical society under s. 44.44.

2. "Commercial real property" means real property that is classified as commercial under s. 70.32 (2) (a) 2.

3. "Historic building" means a building that fulfills at least one of the following requirements:

a. Is listed on a certified local register of historic property, if that fact is specified in a statement recorded in the office of the register of deeds for the county in which the commercial real estate is located.

b. Is included in a district that is listed on a certified local register of historic property, if that fact is specified in a statement recorded in the office of the register of deeds for the county in which the commercial real estate is located, and has been determined by the city, village, town or county to contribute to the historic significance of the district.

(b) In preparing the form for the offer to purchase commercial real property under sub. (1) (b), the board shall include a statement that the seller represents to the buyer that the seller has no notice or knowledge that the commercial real property is a historic building.

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

(3) The board may enter into reciprocal agreements with officials of other states or territories of the United States for licensing brokers and salespersons and grant licenses to applicants who are licensed as brokers or salespersons in those states or territories according to the terms of the reciprocal agreements.

History: 1981 c. 94, 391; 1985 a. 305 ss. 1t, 7; 1987 a. 399; 1989 a. 307, 341; 1991 a. 39; 1993 a. 141; 1995 a. 27; 1997 a. 27; 2003 a. 168; 2011 a. 32; 2013 a. 288; 2015 a. 258; 2017 a. 110, 278; 2017 a. 365 s. 111.

A corporation cannot be licensed as real estate salesperson. 71 Atty. Gen. 38.

452.06 Councils and committees. (1) (a) The board shall create a council on forms that shall meet when directed by the board, be chaired by a member of the board, and report to the board.

(b) 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.

(c) The board may direct the council on forms to create or modify a form relating to real estate practice and submit that form to the board for approval. If the board directs the council to create or modify a form, the board shall establish a deadline for the council to submit the form to the board.

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

(a) Advise the board on establishing continuing education requirements under s. 452.05 (1) (d).

(b) 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, 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; 1991 a. 39; 2011 a. 32; 2017 a. 110.

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

(1m) The board may promulgate rules regarding the supervisory responsibilities of brokers under s. 452.132.

(3) The board may promulgate rules regarding advertising by brokers or salespersons that do not conflict with s. 452.136.

History: 1981 c. 94; 1985 a. 182 s. 57; 1987 a. 403 s. 256; 2001 a. 16; 2011 a. 32; 2013 a. 288; 2015 a. 258; 2017 a. 110, 278.

Cross-reference: See also chs. REEB 11, 12, 15, 16, 17, 18, 23, 24, and 25, Wis. adm. code.

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 board an application for a license. The application shall be in such form as the board 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 business entity, the application shall also include the name and address of each business representative and the license number of each business representative licensed as a broker under this chapter.

(d) The business or occupation engaged in by the applicant, or if a business entity, by each business representative, for a period of at least 2 years immediately preceding the date of the application.

(e) Any other information that the board may reasonably require to enable it to determine the competency of each applicant, including each business representative of the business entity, to transact the business of a broker or salesperson in a manner that safeguards the interests of the public.

(2) EDUCATIONAL REQUIREMENTS FOR APPLICANTS FOR LICENSES. (a) Except as provided in a reciprocal agreement under s. 452.05 (3), each applicant for a salesperson's license shall submit to the board evidence satisfactory to the board of successful completion of educational programs approved for this purpose under s. 452.05 (1) (c). The board 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) or a reciprocal agreement under s. 452.05 (3), each applicant for a broker's license to be issued to an individual 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 board evidence satisfactory to the board of successful completion of educational programs in business management approved for this purpose under s. 452.05 (1) (c). No educational programs applied to satisfy the requirement under subd. 1. may be applied to satisfy the requirement under this subdivision.

(d) The board 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 board 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, and conditional sales contracts; and a general and fair understanding of the obligations between principal and agent, as well as of this chapter. The board shall deny a license to an applicant receiving a failing grade, as established by rules of the board,

on any examination given under this section, but any applicant may review his or her examination results in a manner established by rules of the board.

(b) The board 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) Except as provided under s. 452.12 (2) or in a reciprocal agreement under s. 452.05 (3), the board may not grant a broker's license to an applicant unless the applicant passes the salesperson's examination and the broker's examination and meets the requirements under sub. (4).

(4) EXPERIENCE REQUIREMENTS FOR BROKER'S LICENSE APPLICANTS. (a) 1. An applicant for a broker's license who is an individual shall submit to the board evidence satisfactory to the board that the applicant has practiced as a licensed salesperson under the direct supervision of a licensed broker for at least 2 years within the last 4 years preceding the date of the applicant's application for a broker's license.

2. Except as provided under pars. (b) to (e), the board may not accept evidence as satisfactory under subd. 1. unless the evidence demonstrates that the applicant's experience as a licensed salesperson qualifies the applicant for a total of at least 40 points based on the following point system:

a. Each completed or closed residential transaction is worth 5 points.

b. Each completed or closed commercial transaction is worth 10 points.

c. Each property management contract is worth 0.5 points per month.

d. Each completed or closed time share is worth one point.

(b) An applicant who is licensed to practice law in this state may satisfy the requirement under par. (a) by submitting to the board evidence satisfactory to the board that the applicant has experience related to real estate.

(c) An applicant who holds a current certificate of financial responsibility under s. 101.654 may satisfy the requirement under par. (a) by submitting to the board evidence satisfactory to the board that the applicant has experience related to real estate sales.

(d) Except as provided in a reciprocal agreement under s. 452.05 (3), an applicant for a broker's license who is a nonresident may satisfy the requirement under par. (a) by submitting to the board evidence satisfactory to the board that the applicant has been a licensed broker under the laws of another state for at least 2 years within the last 4 years preceding the date of the applicant's application for a broker's license.

(e) The board may waive any requirement under par. (a), (b), (c), or (d) for any applicant based on standards established by the board by rule.

History: 1981 c. 94, 391; 1983 a. 273; 1985 a. 305; 1989 a. 341; 1995 a. 400; 1997 a. 27; 2003 a. 168; 2009 a. 110; 2011 a. 32; 2013 a. 114, 133; 2015 a. 258.

Cross-reference: See also chs. REEB 12, 23, and 25, Wis. adm. code.

452.10 Applications, verification, fees, exceptions.

(1) An application shall be verified by the applicant. If made by a business entity it shall be verified by a business representative that is a licensed individual broker or a licensed broker business entity and that is acting as a business representative for the business entity.

(2) (a) Each new application for a license under this chapter shall be for the remainder of the biennial license period.

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

(3) The fees for examinations and licenses granted under this chapter are specified under s. 440.05, and the renewal fee for such licenses is determined by the department under s. 440.03 (9) (a).

(6) In the case of applications for renewals of licenses the board 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; 1991 a. 39; 1995 a. 400; 2007 a. 20; 2011 a. 32; 2015 a. 258.

Cross-reference: See also ch. REEB 12 and 23, Wis. adm. code.

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

452.11 Nonresident applicants and licensees. (1) A nonresident may become a broker or salesperson by conforming to all the provisions of this chapter.

(3) Every nonresident applicant, and every resident licensee who becomes a nonresident, shall file with the board an irrevocable consent that actions may be commenced against the applicant or licensee 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 board or any duly authorized employee. The consent shall stipulate and agree that such service is valid and binding as due service upon the applicant or licensee 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) Any process or pleading under this section shall be served in duplicate upon the board or its duly authorized employee. One copy shall be filed with the board and the other immediately forwarded by certified mail to the nonresident licensee against whom the process or pleading is directed at the last address provided to the board by the nonresident licensee. No default in any such proceeding or action may be taken unless it appears by affidavit of the chairperson of the board or any duly authorized employee that a copy of the process or pleading was mailed to the nonresident licensee 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 licensee.

History: 1981 c. 94; 1983 a. 27; 1987 a. 399; 1991 a. 207; 2011 a. 32; 2015 a. 258.

Cross-reference: See also ch. REEB 12, Wis. adm. code.

452.12 Licenses. (1) **EXPIRATION.** A license granted by the board entitles the holder to act as a broker or salesperson, as the case may be, until the applicable renewal date specified under s. 440.08 (2) (a).

(2) **BUSINESS ENTITIES.** (a) A broker's license may be issued to a business entity if the business entity has at least one business representative licensed as a broker. The license issued to the business entity entitles each business representative of the business entity licensed as a broker to act as a broker on behalf of the business entity. A broker may act as a business representative for more than one business entity if the broker obtains the express, written consent of each business entity for which the broker desires to act as a business representative. A broker may act as a broker on behalf each business entity for which it is serving as a business representative.

(c) Application for a broker's license to be issued to a business entity shall be made on forms prescribed by the board, listing the names and addresses of all business representatives and the license numbers of all business representatives that are licensed brokers, and shall be accompanied by the initial credential fee determined by the department under s. 440.03 (9) (a). If there is a change in any of the business representatives, the change shall be reported to the board, on the same form, within 30 days after the effective date of the change.

(3) **FIRM'S RESPONSIBILITY FOR ACTS OF LICENSEES.** Subject to s. 452.139 (3), a firm is responsible for the brokerage services provided on behalf of the firm by a licensee associated with the firm only to the extent that the firm fails to comply with s. 452.132 and any rules promulgated under s. 452.07 (1m) with respect to that licensee.

(4) **REGISTER OF LICENSEES.** The board shall include in the register the board maintains under s. 440.035 (1m) (d) the names of all persons whose licenses issued under this chapter were revoked

within the past 2 years. The register shall be available for purchase at cost.

(5) **RENEWAL.** (a) Renewal applications for all licenses shall be submitted with the applicable renewal fee determined by the department under s. 440.03 (9) (a) on or before the applicable renewal date specified under s. 440.08 (2) (a). The department shall pay \$10 of each renewal fee received under this paragraph to the Board of Regents of the University of Wisconsin System for research and educational, public outreach, and grant activities under s. 36.25 (34).

(b) If an application for renewal of a license issued to an individual is not filed with the board on or before the renewal date with the proof required under par. (c) or if the renewal is not granted, the applicant may not engage in any of the activities covered by the license until the license is renewed or a new license is issued.

(bm) If an application for renewal of a license issued to a firm is not filed with the board on or before the renewal date or if the renewal is not granted, all of the following apply:

1. The firm may not engage in any of the activities covered by the license until the license is renewed or a new license is issued.

2. Any licensees associated with the firm may not engage in any of the activities covered by the firm's license on behalf of the firm until the firm's license is renewed or a new license is issued.

3. A licensed individual broker or licensed broker business entity who is serving as a business representative for the firm shall notify each licensee associated with the firm that the firm's license was not renewed and, within 10 days after notifying a licensee, file with the department a notice of termination for each such licensee on a form prescribed by the department.

(c) At the time of renewal, each broker or salesperson who is an individual shall submit proof of attendance at and successful completion of continuing education programs or courses approved under s. 452.05 (1) (g).

(d) At the time of renewal, each broker or salesperson who is an individual shall complete the form under s. 452.05 (1) (i).

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 264, 399; 1989 a. 307, 341; 1991 a. 39; 1995 a. 27, 400; 1997 a. 27, 191, 237; 2001 a. 16; 2005 a. 87; 2007 a. 20; 2011 a. 32; 2013 a. 288; 2015 a. 258, 269; 2017 a. 365.

Cross-reference: See also chs. REEB 17, 23, and 25, Wis. adm. code.

452.13 Trust accounts. (1) **DEFINITIONS.** In this section:

(a) "Client funds" means all downpayments, earnest money deposits, or other money related to a conveyance of real estate that is received by a licensee on behalf of a firm or any other person. "Client funds" does not include promissory notes.

(b) "Depository institution" means a bank, savings bank, savings and loan association or credit union that is authorized by federal or state law to do business in this state and that is insured by the federal deposit insurance corporation or by the national credit union share insurance fund.

(2) **INTEREST-BEARING COMMON TRUST ACCOUNT.** (a) A firm that holds client funds shall establish an interest-bearing common trust account in a depository institution. The interest-bearing common trust account shall earn interest at a rate not less than that applicable to individual accounts of the same type, size, and duration and for which withdrawals or transfers can be made without delay, subject to any notice period that the depository institution is required to observe by law or regulation.

(b) Any firm that maintains an interest-bearing common trust account shall do all of the following:

1. Register with the department the name and address of the depository institution and the number of the interest-bearing common trust account.

2. Notify the department when any of the information required under subd. 1. is changed.

3. Furnish the department with a letter authorizing the department and the department of administration to examine and audit

the interest-bearing common trust account whenever either department considers it necessary.

(bm) The department shall forward to the department of administration the information and documents furnished under par. (b).

(c) A firm shall deposit all client funds in the interest-bearing common trust account.

(d) The department of administration is the beneficial owner of the interest accruing to the interest-bearing common trust account, minus any service charges or fees.

(e) For each interest-bearing common trust account, the firm shall direct the depository institution to do all of the following:

1. Annually, before February 1, remit to the department of administration the total interest or dividends, minus service charges or fees, earned on the average daily balance in the interest-bearing common trust account during the 12 months ending on the previous December 31. A depository institution is not required to remit any amount if the total interest or dividends for that period is less than \$10 before any deduction for service charges or fees.

2. When the interest remittance is sent, furnish to the department of administration and to the firm maintaining the interest-bearing common trust account a statement that includes the name of the firm for whose account the remittance is made, the rate of interest applied, the amount of service charges or fees deducted, if any, and the account balance for the period that the statement covers.

(f) A depository institution:

1. May not assess a service charge or fee that is due on an interest-bearing common trust account against any firm or, except as provided in subd. 3., against any other account, regardless of whether the same firm maintains the other account.

2. May not assess a service charge or fee for an interest-bearing common trust account against the department of administration.

3. May deduct a service charge or fee from the interest earned by an interest-bearing common trust account, and if a balance remains, may deduct the remaining charge or fee from the interest earned on any other interest-bearing common trust account maintained in that depository institution, before remitting interest to the department of administration.

4. May not deduct a service charge or fee from the principal of an interest-bearing common trust account.

(3) DEPOSIT PROVISIONS. A firm that deposits client funds in an interest-bearing common trust account in compliance with this section may not be held liable to the owner or beneficial owner of the client funds for damages due to compliance with this section. A licensee that deposits client funds in an interest-bearing common trust account in compliance with this section on behalf of a firm is not required to disclose alternative depository arrangements that could be made by the parties or to disclose that a deposit will be made under this section.

(4) TRUST ACCOUNT OPTIONAL. This section does not require a firm to hold client funds or require a person to transfer client funds to a firm.

(5) RULES. In consultation with the department, the department of administration shall promulgate rules necessary to administer this section.

History: 1981 c. 94, 391; 1985 a. 305; 1987 a. 399; 1989 a. 307; 1991 a. 221; 1993 a. 33; 2005 a. 25; 2011 a. 32; 2015 a. 258.

Cross-reference: See also chs. **Adm 91** and **REEB 18**, Wis. adm. code.

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

The 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, subject to audit by the board. 60 Atty. Gen. 514.

452.132 Responsibilities of firms and licensees. (1) A firm shall supervise the brokerage service activities of each

licensee associated with the firm, including by doing all of the following:

(a) Ensuring that a supervising broker for the firm complies with sub. (4).

(b) Providing a licensee with reasonable access to a supervising broker for the purpose of consultation regarding real estate practice issues.

(2) A firm shall do all of the following:

(a) Provide each licensee associated with the firm with a written statement of the procedures under which the firm and licensees associated with the firm must operate with respect to handling leases, agency agreements, offers to purchase, and other documents and records relating to transactions.

(b) Notify each licensee associated with the firm where a copy of the rules promulgated by the board related to the conduct, ethical practices, and responsibilities of licensees may be obtained.

(c) Before a licensee becomes associated with the firm and at the beginning of each biennial licensure period, ensure that the licensee holds a valid license.

(3) A firm shall be responsible for the custody and safety of all documents and records relating to transactions submitted to the firm as required under sub. (6) (b).

(4) (a) A supervising broker for a firm, as determined under sub. (5), shall review all of the following prior to the closing of a transaction in accordance with par. (b):

1. All agency agreements, offers to purchase, leases, and other documents that are executed by the parties and records relating to the transaction that are used by a licensee associated with the firm and submitted to the firm as required under sub. (6) (b).

2. All trust account records relating to the transaction.

(b) The review under par. (a) shall be limited to confirming that a written disclosure statement to a customer or client has been provided by a licensee associated with the firm in accordance with s. 452.135, confirming that any applicable form approved by the board has been used and the forms have been completed by filling in the blanks in a manner consistent with the structure of the form, and communicating to the licensee any errors in how the forms were completed that are apparent on the face of the document and known to the person reviewing the document.

(5) (a) A firm that is a licensed broker business entity shall delegate the performance of the duty to supervise licensees associated with the firm to a supervising broker who is a licensed individual broker.

(b) A firm that is not a licensed broker business entity may delegate the duty to supervise licensees associated with the firm to a supervising broker who is a licensed individual broker, but in the absence of a specific supervising broker delegation, the firm itself is deemed to be the supervising broker for that firm.

(c) A delegation under par. (a) or (b) shall be written and signed by or on behalf of the delegating firm, identify the duty delegated, and be signed by the broker to whom the delegation is made.

(d) A firm may delegate the duty to supervise licensees to more than one supervising broker.

(6) (a) A licensee associated with a firm shall be responsible for discussing with the party with whom the licensee is working with or representing any error communicated to the licensee as provided in sub. (4) (b), and the party shall determine whether to request any changes to address the error.

(b) A licensee associated with a firm shall submit to the firm in a timely manner all agency agreements, offers to purchase, leases, and other documents that are executed by the parties and records related to the brokerage services provided on behalf of the firm and transactions that are used or received by the licensee.

History: 2015 a. 258.

452.133 Duties of licensees; prohibitions. (1) **DUTIES TO ALL PARTIES TO A TRANSACTION.** A firm providing brokerage services to a party to a transaction owes all of the following duties to the party:

(a) The duty to provide brokerage services honestly and fairly.
 (b) The duty to provide brokerage services with reasonable skill and care.

(c) The duty to timely disclose in writing all material adverse facts that the firm knows and that the party does not know or cannot discover through reasonably vigilant observation, unless the disclosure of a material adverse fact is prohibited by law.

(d) The duty to keep confidential any information given to the firm in confidence, or any information obtained by the firm that the firm knows a reasonable person would want to be kept confidential, unless the information must be disclosed by law or the person whose interests may be adversely affected by the disclosure specifically authorizes the disclosure of particular information. The firm shall continue to keep the information confidential after the transaction is complete and after the firm is no longer providing brokerage services to the party.

(e) The duty to provide accurate information about market conditions that affect the transaction, within a reasonable time after a request for such information by the party, unless disclosure of the information is prohibited by law.

(f) The duty to safeguard trust funds and other property held as required by rules promulgated under s. 452.13 (5).

(g) When the firm is negotiating on behalf of a party, the duty to present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

(2) DUTIES TO CLIENTS. A firm providing brokerage services to a client owes the client the duties that the firm owes to a party under sub. (1) and all of the following additional duties:

(a) The duty to loyally represent the client's interests by doing all of the following:

1. Placing the client's interests ahead of the interests of the firm.

2. Placing the client's interests ahead of the interests of persons in the transaction who are not the firm's clients by not disclosing to persons in the transaction other than the firm's clients information or advice the disclosure of which is contrary to the interests of a client of the firm, unless the disclosure is required by law.

(am) The duty to provide, when requested by the client, information and advice to the client on matters that are material to the client's transaction and that are within the scope of the knowledge, skills, and training required under this chapter.

(b) The duty to disclose to the client all information known by the firm that is material to the transaction and that is not known by the client or discoverable by the client through reasonably vigilant observation, except for confidential information under sub. (1) (d) and other information the disclosure of which is prohibited by law.

(c) The duty to fulfill any obligation required by the agency agreement, and any order of the client that is within the scope of the agency agreement, that is not inconsistent with another duty that the firm has under this chapter or any other law.

(d) The duty to negotiate on behalf of the client.

(3) PROHIBITED CONDUCT. In providing brokerage services, a licensee may not do any of the following:

(a) Accept any fee or compensation related to the transaction from any person other than the licensee's client, principal firm, or firm, without the prior written consent of all parties to the transaction.

(b) Act in a transaction on the licensee's own behalf, on behalf of the licensee's immediate family if the firm is an individual, on behalf of the licensee's firm, or on behalf of any organization or business entity in which the licensee has an interest, without the prior written consent of all parties to the transaction. For the purpose of complying with this paragraph, a licensee shall obtain the written consent in the offer to purchase, option, lease, or other transaction contract.

(c) Except as provided in s. 452.19 (1), refer, recommend, or suggest to a party to the transaction the services of an individual

or entity from which the licensee may receive compensation for a referral or in which the licensee has an interest, unless the licensee has disclosed in writing the fact that the licensee may receive compensation or has disclosed in writing an interest in the individual or entity providing the services.

(d) Negotiate the sale, exchange, purchase, or rental of personal property unless related to the transaction. The licensee may use a form approved by the board under s. 452.05 (1) (b) for the conveyance of the seller's interest in the personal property. In this paragraph, "use a form" has the meaning given in s. 452.40 (1) (a).

(4) SUBAGENT'S DUTIES. (a) A subagent owes all parties to whom the subagent is providing brokerage services in a transaction the duties specified in sub. (1) but does not owe the clients of the principal firm the duties under sub. (2).

(b) A subagent may not do any of the following:

1. Place the subagent's interests ahead of the interests of the clients of the principal firm in the transaction in which the subagent has been engaged by the principal firm.

2. Provide advice or opinions to parties in the transaction if providing the advice or opinions is contrary to the interests of the clients of the principal firm in the transaction in which the subagent has been engaged by the principal firm, unless required by law.

(4m) DUTIES AND PROHIBITIONS; APPLICATION TO LICENSEES.

(a) Subject to par. (d), a firm's duties under sub. (1) extend to each licensee associated with that firm, and each licensee associated with a firm owes the same duties to a party that the firm owes to that party under sub. (1).

(b) Except as provided in s. 452.134 (3) (b) and subject to par. (d), a firm's duties under sub. (2) extend to each licensee associated with that firm, and each licensee associated with a firm owes the same duties to a client of the firm that the firm owes to that client under sub. (2).

(c) 1. Subject to par. (d), a subagent's duties under sub. (4) (a) extend to each licensee associated with that subagent, and each licensee associated with a subagent owes the same duties to a party that the subagent owes to that party under sub. (4) (a).

2. Subject to par. (d), the prohibitions that apply to a subagent under sub. (4) (b) extend to each licensee associated with that subagent, and no licensee associated with a subagent may take any action that the subagent is prohibited from taking under sub. (4) (b).

(d) The duties and prohibitions under pars. (a) to (c) extend only to a licensee providing brokerage services to a party to the transaction.

(5) DUTIES WITHOUT AGENCY OR SUBAGENCY RELATIONSHIP. If a firm is providing brokerage services to a person who is a party or a prospective party to a current or prospective transaction, and the firm does not have an agency agreement with the person and is not a subagent of another firm in the transaction, then the firm and any licensees associated with the firm owe the person the duties under sub. (1) and may not, unless required by law, provide advice or opinions relating to the transaction in which the person is receiving brokerage services if providing the advice or opinions is contrary to the interests of a party to a current or prospective transaction with the person receiving the brokerage services.

(6) WAIVER OF DUTIES. The duties imposed by subs. (1), (2) (a), (am), (b), and (c), (4), and (5) may not be waived. A client may waive, in part or in full, the duty under sub. (2) (d), except that a waiver under this subsection is not effective unless the firm or a licensee associated with the firm provides to the client a written disclosure containing all of the following:

(a) A copy of the text of sub. (2) (d) and s. 452.01 (5m), and a statement that, as a consequence of the client's waiver, the firm and any licensees associated with the firm will have no legal duty to perform the duty imposed by sub. (2) (d).

(b) A statement that as a consequence of the client's waiver, the client may require the assistance of an attorney or another ser-

vice provider to fulfill the client's goals and contractual duties in the transaction.

History: 1993 a. 127; 1995 a. 400; 2005 a. 87; 2015 a. 258; 2017 a. 110.

Cross-reference: See also ch. REEB 24, Wis. adm. code.

The New Real Estate Agency Law: Redefining the Role of Real Estate Brokers. Smith and Staff. Wis. Law. Oct. 1994.

The 'New' Chapter 452: Defining Real Estate Broker Practice. Leible. Wis. Law. June 2006.

452.134 Agency relationships; multiple representation relationships. (1) AGENCY RELATIONSHIP NOT REQUIRED.

(a) Subject to par. (b), a firm and any licensees associated with the firm may provide brokerage services to any party, whether or not the firm has entered into an agency agreement with a party or the firm has been engaged to provide brokerage services as a subagent.

(b) A firm and any licensees associated with the firm may not negotiate on behalf of a party to a transaction unless a party to the transaction is one of the following:

1. The firm's client.
2. A client of a principal firm who has engaged the firm as a subagent.

(2) MULTIPLE REPRESENTATION RELATIONSHIPS. A firm and any licensees associated with the firm may not provide brokerage services in a multiple representation relationship unless all of the firm's clients in the multiple representation relationship have consented to a multiple representation relationship in writing.

(3) DESIGNATED AGENCY. (a) A firm in a multiple representation relationship may not engage in designated agency unless all of the firm's clients in the relationship have consented to designated agency in writing. A client may withdraw consent to designated agency by written notice to the firm at any time.

(b) If a firm is engaged in designated agency, the licensee associated with the firm that is negotiating on behalf of a client of the firm in the transaction may provide to the client on whose behalf the licensee is negotiating information, opinions, and advice to assist the client in the negotiations, whether or not the information, opinions, and advice place the interests of one of the firm's clients ahead of the interests of another client of the firm.

(4) MULTIPLE REPRESENTATION RELATIONSHIPS WITHOUT DESIGNATED AGENCY. If a firm's client in a multiple representation relationship does not consent to designated agency or withdraws consent to designated agency, the firm and any licensees associated with the firm may not place the interests of any client ahead of the interests of any other in the negotiations.

History: 2005 a. 87; 2015 a. 258; 2017 a. 110.

The 'New' Chapter 452: Defining Real Estate Broker Practice. Leible. Wis. Law. June 2006.

452.135 Disclosure of duties. (1) (a) No firm, and no licensee associated with a firm, may negotiate on behalf of a party who is not the firm's client unless the firm, or a licensee associated with the firm, provides to the party a copy of the following written disclosure statement:

DISCLOSURE TO CUSTOMERS

You are a customer of the brokerage firm (hereinafter firm). The firm is either an agent of another party in the transaction or a subagent of another firm that is the agent of another party in the transaction. A broker or a salesperson acting on behalf of the firm may provide brokerage services to you. Whenever the firm is providing brokerage services to you, the firm and its brokers and salespersons (hereinafter agents) owe you, the customer, the following duties:

The duty to provide brokerage services to you fairly and honestly.

The duty to exercise reasonable skill and care in providing brokerage services to you.

The duty to provide you with accurate information about market conditions within a reasonable time if you request it, unless disclosure of the information is prohibited by law.

The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the information is prohibited by law.

The duty to protect your confidentiality. Unless the law requires it, the firm and its agents will not disclose your confidential information or the confidential information of other parties.

The duty to safeguard trust funds and other property held by the firm or its agents.

The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

Please review this information carefully. An agent of the firm can answer your questions about brokerage services, but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax advisor, or home inspector.

This disclosure is required by section 452.135 of the Wisconsin statutes and is for information only. It is a plain-language summary of the duties to a customer under section 452.133 (1) of the Wisconsin statutes.

(b) If a firm is providing brokerage services as a subagent to a principal firm, the subagent, or a licensee associated with the subagent, shall provide a copy of the written disclosure statement under par. (a) to any person who is not the principal firm's client and who receives brokerage services from the subagent within the scope of the agreement between the subagent and the principal firm.

(2) (a) Except as provided in par. (b), a firm shall provide to a client a copy of the following written disclosure statement not later than the time the firm enters into an agency agreement with the client:

DISCLOSURE TO CLIENTS

Under Wisconsin law, a brokerage firm (hereinafter firm) and its brokers and salespersons (hereinafter agents) owe certain duties to all parties to a transaction:

The duty to provide brokerage services to you fairly and honestly.

The duty to exercise reasonable skill and care in providing brokerage services to you.

The duty to provide you with accurate information about market conditions within a reasonable time if you request it, unless disclosure of the information is prohibited by law.

The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the information is prohibited by law.

The duty to protect your confidentiality. Unless the law requires it, the firm and its agents will not disclose your confidential information or the confidential information of other parties.

The duty to safeguard trust funds and other property the firm or its agents holds.

The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

Because you have entered into an agency agreement with a firm, you are the firm's client. A firm owes additional duties to you as a client of the firm:

The firm or one of its agents will provide, at your request, information and advice on real estate matters that affect your transaction, unless you release the firm from this duty. The firm or one of its agents must provide you with all material facts affecting the transaction, not just adverse facts.

The firm and its agents will fulfill the firm's obligations under the agency agreement and fulfill your lawful requests that are within the scope of the agency agreement.

The firm and its agents will negotiate for you, unless you release them from this duty.

The firm and its agents will not place their interests ahead of your interests. The firm and its agents will not, unless required by

law, give information or advice to other parties who are not the firm's clients, if giving the information or advice is contrary to your interests.

If you become involved in a transaction in which another party is also the firm's client (a "multiple representation relationship"), different duties may apply.

MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY

A multiple representation relationship exists if a firm has an agency agreement with more than one client who is a party in the same transaction. If you and the firm's other clients in the transaction consent, the firm may provide services through designated agency, which is one type of multiple representation relationship.

Designated agency means that different agents with the firm will negotiate on behalf of you and the other client or clients in the transaction, and the firm's duties to you as a client will remain the same. Each agent will provide information, opinions, and advice to the client for whom the agent is negotiating, to assist the client in the negotiations. Each client will be able to receive information, opinions, and advice that will assist the client, even if the information, opinions, or advice gives the client advantages in the negotiations over the firm's other clients. An agent will not reveal any of your confidential information to another party unless required to do so by law.

If a designated agency relationship is not authorized by you or other clients in the transaction, you may still authorize or reject a different type of multiple representation relationship in which the firm may provide brokerage services to more than one client in a transaction but neither the firm nor any of its agents may assist any client with information, opinions, and advice which may favor the interests of one client over any other client. Under this neutral approach, the same agent may represent more than one client in a transaction.

If you do not consent to a multiple representation relationship the firm will not be allowed to provide brokerage services to more than one client in the transaction.

CHECK ONLY ONE OF THE THREE BELOW:

_____ The same firm may represent me and the other party as long as the same agent is not representing us both. (multiple representation relationship with designated agency)

_____ The same firm may represent me and the other party, but the firm must remain neutral regardless if one or more different agents are involved. (multiple representation relationship without designated agency)

_____ The same firm cannot represent both me and the other party in the same transaction. (I reject multiple representation relationships)

NOTE: All clients who are parties to this agency agreement consent to the selection checked above. You may modify this selection by written notice to the firm at any time. Your firm is required to disclose to you in your agency agreement the commission or fees that you may owe to your firm. If you have any questions about the commission or fees that you may owe based upon the type of agency relationship you select with your firm, you should ask your firm before signing the agency agreement.

SUBAGENCY

Your firm may, with your authorization in the agency agreement, engage other firms (subagent firms) to assist your firm by providing brokerage services for your benefit. A subagent firm and the agents with the subagent firm will not put their own interests ahead of your interests. A subagent firm will not, unless required by law, provide advice or opinions to other parties if doing so is contrary to your interests.

Please review this information carefully. An agent can answer your questions about brokerage services, but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax advisor, or home inspector.

This disclosure is required by section 452.135 of the Wisconsin statutes and is for information only. It is a plain-language summary of the duties owed to you under section 452.133 (2) of the Wisconsin statutes.

(b) If a client enters into an agency agreement with a firm to receive brokerage services related to real estate primarily intended for use as a residential property containing one to 4 dwelling units, and the written disclosure statement under par. (a) is not incorporated into the agency agreement, the firm shall request the client's signed acknowledgment that the client has received a copy of the written disclosure statement.

History: 1993 a. 127; 2005 a. 87; 2007 a. 97; 2015 a. 258; 2017 a. 365 s. 111.

The "New" Chapter 452: Defining Real Estate Broker Practice. Leible. Wis. Law. June 2006.

452.136 Advertising by licensees. (1) FALSE ADVERTISING. A licensee may not advertise in a manner that is false, deceptive, or misleading.

(2) DISCLOSURE OF NAME. (a) Except for advertisements for the rental of real estate owned by the licensee, a licensee shall in all advertising disclose the firm's name exactly as printed on the license of the licensed individual broker or licensed broker business entity or disclose a trade name previously filed by the firm with the department and shall in either case clearly indicate that the firm is a business enterprise and not a private party.

(b) Except for advertisements for the rental of real estate owned by the licensee, a licensee associated with a firm shall advertise under the supervision of and in the name of the firm. The firm's name as used in advertising shall be clear and conspicuous. This paragraph does not apply to a licensee engaged in independent practice as provided in s. 452.30 (6).

(c) Notwithstanding pars. (a) and (b), a licensee may advertise the occasional sale of real estate owned by the licensee or may engage in the occasional solicitation of real estate for purchase by the licensee without complying with pars. (a) and (b), provided that the licensee clearly identifies himself, herself, or itself as a real estate licensee in the advertisement.

(3) ADVERTISING WITHOUT AGENCY AGREEMENT PROHIBITED. A firm and any licensees associated with the firm may not advertise a property unless one of the following applies:

(a) The firm is the listing firm for the property.

(b) The firm or a licensee associated with the firm has obtained consent to advertise the property from the listing firm for the property.

(4) ADVERTISED PRICE. A licensee may not advertise property at a price other than that agreed upon with the owner, except that the price may be stated as a range or in general terms if it reflects the agreed upon price.

History: 2017 a. 110.

452.137 Cooperation with out-of-state brokers and salespersons. (1) DEFINITIONS. In this section:

(am) Notwithstanding s. 452.01 (1m), "agency agreement" includes a written agreement between an out-of-state broker and a client in which the client authorizes the out-of-state broker to provide brokerage services to the client.

(cm) 1. "Commercial transaction" means a transaction concerning any real property, other than real property containing 1 to 4 dwelling units or real property zoned for agricultural use.

2. "Commercial transaction" does not include any transaction concerning a dwelling unit that is a part of real property containing more than 4 dwelling units and that is being sold on a unit-by-unit basis.

(d) "Cooperative agreement" means an agreement entered into between an out-of-state broker and a firm as provided in this section.

(e) "Dwelling unit" has the meaning given in s. 440.97 (3).

(h) "Licensed salesperson" means a salesperson who is licensed under this chapter.

(2) OUT-OF-STATE BROKERS. (a) An out-of-state broker may act as a broker in this state only as provided in par. (ag) or (am).

(ag) An out-of-state broker may, subject to par. (b), act as a broker in this state if the out-of-state broker does all of the following:

1. Enters into a cooperative agreement with a listing firm and cooperates with the listing firm on the listing agreement that is subject to the cooperative agreement. Each cooperative agreement may cover only one listing agreement.

2. Submits to the listing firm evidence that the out-of-state broker is licensed in good standing to engage in real estate brokerage in a jurisdiction other than this state.

(am) An out-of-state broker representing a person who is seeking to buy or rent property located in this state in a commercial transaction may, subject to pars. (b) and (bm), act as a broker in this state if the out-of-state broker does all of the following:

1. Enters into a cooperative agreement with a firm and cooperates with the firm. Each cooperative agreement shall be limited to a type of property, type of function, geographic area, or other criteria specified in the buyer's or tenant's search parameters.

2. Submits to the firm evidence that the out-of-state broker is licensed in good standing to engage in real estate brokerage in a jurisdiction other than this state.

3. Either the out-of-state broker or the firm enters into an agency agreement with the prospective buyer or tenant. The cooperative agreement shall acknowledge whether the out-of-state broker or firm has the agency agreement. If the out-of-state broker has entered into the agency agreement with the prospective buyer or tenant, the out-of-state broker and the prospective buyer or tenant shall, notwithstanding s. 452.01 (3m) and (5w), be considered to be a principal firm and client for purposes of this chapter, and the firm shall be a subagent and shall provide the out-of-state broker with a copy of the disclosure statement under s. 452.135 (2) to be given to the client. The out-of-state broker is not required to request that the client sign the statement.

(b) An out-of-state broker, including an out-of-state broker who is a party to a cooperative agreement, may not do any of the following:

1. Enter into a listing agreement concerning any property located in this state.

2. For commission, money, or other thing of value, promote in this state the sale, exchange, purchase, option, rental, or leasing of any property located in this state, including by posting signs on the property.

3. Enter into a cooperative agreement with a person who is not licensed under this chapter as authority to sell, lease, rent, exchange, or attempt to sell, lease, rent, or exchange property in this state.

(bm) An out-of-state broker acting under par. (am) may not do any of the following:

1. Negotiate with a seller or landlord, unless authorized under the cooperative agreement. If a property is not listed with a listing firm, the firm shall conduct all negotiations with the seller or landlord of that property.

2. View or show commercial property in this state for sale or lease without the firm or a licensee associated with the firm being present, unless authorized under the cooperative agreement. If a property is not listed with a listing firm, the firm shall view or show the property with the out-of-state broker.

3. Have contact with another firm or another firm's seller or landlord, unless otherwise agreed to in the cooperative agreement.

(c) An out-of-state broker who is a party to a cooperative agreement with a firm, and any out-of-state salesperson of the out-of-state broker, are not required to be licensed under this chapter but shall otherwise be treated as licensees for purposes of this chapter and shall comply with the laws of this state as they apply to licensees, and the out-of-state broker shall file with the board an irrevocable consent that actions may be commenced against the out-of-state broker in the proper court of any county

in this state in which a cause of action arises or the plaintiff resides, by the service of any process or pleading authorized by the laws of this state on the board or any duly authorized employee. The consent shall stipulate and agree that such service is valid and binding as due service upon the out-of-state broker 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.

(d) A firm that is a party to a cooperative agreement with an out-of-state broker, and any licensee associated with the firm, may not act under the cooperative agreement on behalf of a broker who is not a party to the cooperative agreement.

(e) 1. An out-of-state broker who is a party to a cooperative agreement with a firm shall maintain the originals or copies of all documents the out-of-state broker receives, maintains, or generates in connection with any transaction subject to the cooperative agreement, for at least 3 years after the date of closing or completion of the transaction, or, if no closing or completion occurs, 3 years after the date on which the parties execute the cooperative agreement.

2. An out-of-state broker who is a party to a cooperative agreement with a firm shall deposit with the firm copies of all documents the out-of-state broker is required to maintain under subd. 1., unless the out-of-state broker and the firm agree in writing that the out-of-state broker is not required to do so.

(f) No person may pay an out-of-state broker a commission, money, or any other thing of value for brokerage services unless the out-of-state broker is a party to a cooperative agreement with a firm.

(g) Notwithstanding s. 452.01 (2) (bm), no out-of-state broker may, for commission, money, or other thing of value, show a property in this state that is offered exclusively for rent unless that showing is authorized under a cooperative agreement between the out-of-state broker and a firm.

(3) OUT-OF-STATE SALESPERSONS. An out-of-state salesperson may act as a salesperson in this state only if all of the following conditions are met:

(a) The out-of-state broker who employs the out-of-state salesperson satisfies all of the applicable requirements under sub. (2).

(b) The out-of-state salesperson works under the direct supervision of the out-of-state broker.

(c) The out-of-state salesperson submits evidence to the firm that the out-of-state salesperson is licensed in good standing or is otherwise authorized to act as a salesperson in a jurisdiction other than this state.

(d) In any transaction subject to the cooperative agreement, the out-of-state salesperson represents only the out-of-state broker who is a party to the cooperative agreement and with whom the out-of-state salesperson is employed.

(4) COOPERATIVE AGREEMENT. (a) The board shall establish one or more forms to be used for cooperative agreements under this section, which shall include any required terms for such an agreement.

(b) A cooperative agreement may be entered into only through the use of a form established by the board under par. (a) and shall do at least all of the following:

1. Establish the terms of cooperation between the out-of-state broker, any out-of-state salesperson, and the firm.

2. Establish the terms of the out-of-state broker's compensation.

3. Provide that all client funds, as defined in s. 452.13 (1) (a), that the out-of-state broker and the firm receive in connection with a transaction subject to the cooperative agreement shall be deposited in a trust account maintained by the firm.

(c) A cooperative agreement under sub. (2) (am) shall describe the type, function, location, approximate size, and functional or geographic limitations of the property being sought. A separate

cooperative agreement shall be entered into for each type of property.

(5) PENALTY. (a) Subject to the rules promulgated under s. 440.03 (1), the board may conduct investigations and hold hearings to determine whether a person has violated this section or a rule promulgated under this section.

(b) Notwithstanding s. 452.17 (3), any person who violates this section or a rule promulgated under this section may be fined, for each violation, not more than the greater of the following:

1. Five thousand dollars.
2. For a sales transaction, 1 percent of the purchase price of the property subject to the cooperative agreement.
3. For a lease or rental transaction, 1 percent of the total lease or rental value of the property subject to the cooperative agreement.

History: 2013 a. 259; 2015 a. 47; 2015 a. 195 s. 83; 2015 a. 258; 2017 a. 110.

452.138 Firms providing services in more than one transaction. A firm may provide brokerage services simultaneously to more than one party in different transactions, unless the firm agrees with a client that the firm is to provide brokerage services only to that client. If the firm and a client agree that the firm is to provide brokerage services only to that client, the agency agreement shall contain a statement of that agreement.

History: 1993 a. 127; 2005 a. 87; 2015 a. 258.

Cross-reference: See also ch. REEB 24, Wis. adm. code.

452.139 Changes in common law duties and liabilities of brokers and parties. (1) COMMON LAW DUTIES OF FIRMS. The duties of a firm specified in this chapter or in rules promulgated under this chapter shall supersede duties or obligations under common law to the extent that those common law duties or obligations are inconsistent with the duties specified in this chapter or in rules promulgated under this chapter.

(2) MISREPRESENTATION. (a) A client is not liable for a misrepresentation made in connection with the provision of brokerage services by a firm or any licensee associated with the firm, unless the client knows or should have known of the misrepresentation or the firm or licensee is repeating a misrepresentation made by the client.

(b) A firm that is providing brokerage services to a client and that retains another firm to provide brokerage services as a subagent is not liable for a misrepresentation made by the subagent or any licensee associated with the subagent, unless the firm knew or should have known of the misrepresentation or the subagent or licensee is repeating a misrepresentation made to by the firm or any licensee associated with the firm.

(c) Nothing in this subsection limits the responsibility of a firm under s. 452.12 (3) for misrepresentations made by a licensee associated with the firm. Nothing in this subsection limits the liability of a client for a misrepresentation that the client makes in connection with brokerage services.

(3) LIABILITY FOR NEGLIGENT HIRING. If a licensee associated with a firm commits a crime under the laws of this state or another wrongful act, the firm may not be held civilly liable for hiring that licensee in a claim brought for negligent hiring if, regardless of whether the firm conducted its own investigation, the firm relied on the investigations conducted by the department under s. 440.03 (13) or on any determination made by the board, including a determination under s. 111.335 (4) (f) or 452.25.

History: 1993 a. 127; 2001 a. 16; 2005 a. 87; 2013 a. 288; 2015 a. 258; 2017 a. 278.

Cross-reference: See also ch. REEB 24, Wis. adm. code.

452.14 Investigation and discipline of licensees.

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

(2) The board may commence disciplinary proceedings on any matter under investigation concerning a licensee.

(2m) The board shall conduct disciplinary proceedings in accordance with the rules adopted under s. 440.03 (1).

(3) The board may revoke, suspend, or limit the license of any licensee, or reprimand the licensee, if it finds that the licensee has done any of the following:

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

(b) Made any substantial misrepresentation with reference to a transaction injurious to a party in which the licensee acts as agent.

(c) Made any false promises of a character such as to influence, persuade, or induce a party to his or her injury or damage.

(d) Pursued a continued and flagrant course of misrepresentation or made false promises through other licensees or through advertising.

(f) Accepted from any person except the firm with which the licensee is associated, if the licensee is associated with a firm, a commission or valuable consideration for the performance of any act specified in this chapter or as compensation for referring a person to another licensee or to any other person in connection with a transaction.

(g) Represented or attempted to represent a firm without the express knowledge and consent of the firm.

(h) Failed, within a reasonable time, to account for or remit any moneys coming into the licensee's possession which belong to another person.

(i) Demonstrated incompetency to act as a broker or salesperson, whichever is applicable, 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 licensee 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, that constitutes improper, fraudulent, or dishonest dealing.

(L) Violated any provision of this chapter or any rule promulgated under this chapter.

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

(n) Treated any person unequally solely because of sex, race, color, handicap, national origin, ancestry, marital status, lawful source of income, or status as a victim of domestic abuse, sexual assault, or stalking, as defined in s. 106.50 (1m) (u).

(o) Violated s. 452.25 (2) (a) or failed to pay any forfeiture assessed by the board under sub. (4r) for such a violation.

(p) Subject to ss. 111.321, 111.322, and 111.335, been convicted of an offense the circumstances of which substantially relate to real estate practice.

(4) If a firm is a business entity it shall be sufficient cause for reprimand or for the limitation, suspension, or revocation of the firm's license that any business representative of the firm, or anyone who has a financial interest in or is in any way connected with the operation of the firm's brokerage business, has been guilty of any act or omission that would be cause for refusing a broker's license to such person as an individual.

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

(a) Assess against a licensee 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 for renewal of a license under this chapter, as a condition of continued licensure or reinstatement of a license.

(4r) The board may assess against a licensee who is an individual a forfeiture of \$1,000 for a violation under s. 452.25 (2) (a).

(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; 1991 a. 32, 163; 1993 a. 127; 1995 a. 400; 2005 a. 87; 2009 a. 95; 2011 a. 32; 2013 a. 124, 288; 2015 a. 258; 2017 a. 110.

Cross-reference: See also chs. REEB 15, 16, and 24, Wis. adm. code.

Real estate brokers may engage in guaranteed sales plans if there is full disclosure and the 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 brokers to advise prospective purchasers of floodplain zoning status of property, do not constitute a new standard but suggest a course of action that the real estate examining board might take. The action to be taken would depend on the facts in each case. 63 Atty. Gen. 236.

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

452.142 Actions concerning licensees. (1) Notwithstanding s. 100.18 (11) (b) 3., 893.43, 893.52, or 893.57, an action concerning any act or omission of a firm or any licensee associated with the firm relating to brokerage services shall be commenced within 2 years after whichever of the following that applies occurs first:

- (a) A transaction is completed or closed.
- (b) An agency agreement is terminated.
- (c) An un consummated transaction is terminated or expires.

(2) The period of limitation under this section may not be reduced by agreement.

(3) The period of limitation under this section does not apply to disciplinary actions initiated by the board.

History: 2015 a. 258.

452.15 Ineligibility. (1) Except as otherwise provided in sub. (2), no license may be issued under this chapter to any person whose license 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.

(2) Issuance of a license to an individual whose license is revoked under s. 452.14 (3) (p) is subject to the provisions in s. 452.25 (1).

History: 1981 c. 94; 1983 a. 354; 1989 a. 341; 2013 a. 288; 2015 a. 258.

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.

(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 licensee has violated s. 452.14 (3) (jm), the board:

1. Shall, for the first offense, suspend the license of the licensee for not less than 90 days.
2. Shall, for the 2nd offense, revoke the license of the licensee.

(b) This penalty may be imposed in addition to any penalty imposed under this chapter or s. 66.1011 or 106.50.

History: 1981 c. 94; 1983 a. 354; 1987 a. 399; 1989 a. 95, 307, 341; 1995 a. 27; 1999 a. 82; 1999 a. 150 s. 672; 2011 a. 32; 2015 a. 258.

452.18 Court review. Except as provided in ss. 73.0301 (2) (b) 1. a. and 2. and 108.227 (2) (b) 1. a. and (6), orders of the board and department shall be subject to review as provided in ch. 227.

History: 1981 c. 94; 1997 a. 237; 2013 a. 36.

452.19 Fees and commissions. (1) No licensee 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 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.

(2) If a licensee is associated with a firm, all fees or commissions and any part thereof for performing any act specified in this chapter and all compensation for a referral or as a finder's fee shall be paid to the firm.

History: 1981 c. 94; 1983 a. 464; 1985 a. 128; 1989 a. 307; 2015 a. 258; 2017 a. 365 s. 111.

Under s. 452.03 an agreement to pay a real estate brokerage commission to a person not licensed as a broker is void at its inception. Using a licensed broker who provides no actual services as a conduit for a fee to an unlicensed person does not create a co-brokerage arrangement authorized by s. 452.19. *Badger III Ltd. v. Howard, Needles, Tammen & Bergendoff*, 196 Wis. 2d 891, 539 N.W.2d 904 (Ct. App. 1995), 94–2531.

452.20 Limitation on actions for commissions. No person engaged in the business or acting in the capacity of a broker or 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 or salesperson at the time the alleged cause of action arose.

History: 1981 c. 94; 1987 a. 399; 1989 a. 56; 2015 a. 258.

A foreign corporation that 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 Wis. 2d 32, 187 N.W.2d 794.

The prohibition against paying a commission to an unlicensed person acting as a broker is absolute and not conditioned on the innocence or lack of sophistication of the other contracting parties. Because a contract for a commission with a person not licensed as a broker is void from its inception, estoppel is not available to avoid the effect of the statute. *Greenlee v. Rainbow Auction/Realty Co.* 202 Wis. 2d 653, 553 N.W.2d 257 (Ct. App. 1996), 95–1463.

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 or salesperson is prima facie proof that compensation therefor was received or promised.

History: 1981 c. 94; 1987 a. 399; 2015 a. 258.

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 chairperson of the board or his or her designee to the effect that a specified individual or business entity is not or was not on a specified date the holder of a broker's or salesperson's license, or that a specified license was not in effect on a date specified, or as to the issuance, limitation, suspension, or revocation of any license or the reprimand of any licensee, the filing or withdrawal of any application or its existence or nonexistence, is prima facie evidence of the facts stated in the certificate for all purposes in any action or proceedings.

History: 1981 c. 94; 1987 a. 399; 1995 a. 400; 2011 a. 32; 2015 a. 258.

452.23 Disclosures, investigations and inspections by brokers and salespersons. (1) No licensee may 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. 106.50 or unlawful discrimination based on handicap under 42 USC 3604, 3605, 3606, or 3617.

(2) A licensee 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 licensee 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.

(d) Except as provided in s. 452.24, any information related to the fact that a particular person is required to register as a sex offender under s. 301.45 or any information about the sex offender registry under s. 301.45.

(3) A licensee shall disclose to the parties to a real estate transaction any facts known by the licensee 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 licensee 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 under this chapter.

History: 1989 a. 341; 1995 a. 27; 1999 a. 82, 89; 2015 a. 258.

An independent inspection by a qualified third party operates to relieve a broker from liability for disclosures related to the physical condition of the property. *Conell v. Coldwell Banker*, 181 Wis. 2d 894, 512 N.W.2d 239 (Ct. App. 1994).

Sub. (2) (b) relieves a broker from the obligation to disclose information disclosed in a 3rd party report. Sub. (2) (b) does not apply to a separate affirmative act of negligence and does not preclude a broker's liability for a breach of other duties. *Johnson v. Neville*, 226 Wis. 2d 365, 595 N.W.2d 100 (Ct. App. 1999), 98–1680.

452.24 Disclosure duty; immunity for providing notice about the sex offender registry. (1) If, in connection with the sale, exchange, purchase or rental of real property, a licensee receives a request from a person to whom the licensee is providing brokerage services in connection with the sale, exchange, purchase or rental for information related to whether a particular person is required to register as a sex offender under s. 301.45 or any other information about the sex offender registry under s. 301.45, the licensee has a duty to disclose such information, if the licensee has actual knowledge of the information.

(2) Notwithstanding sub. (1), the licensee is immune from liability for any act or omission related to the disclosure of information under sub. (1) if the licensee in a timely manner provides to the person requesting the information written notice that the person may obtain information about the sex offender registry and persons registered with the registry by contacting the department of corrections. The notice shall include the appropriate telephone number and Internet site of the department of corrections.

History: 1999 a. 89; 2015 a. 258.

452.25 Criminal convictions and disclosures. (1) FELONY CONVICTIONS. (a) Notwithstanding ss. 111.321, 111.322, and 111.335, and except as provided in pars. (b) to (e), no applicant

who is an individual may be issued an initial broker's or salesperson's license if the applicant has been convicted of a felony.

(b) If an applicant has been convicted of a felony described under par. (a); the applicant has completed the confinement portion of his or her sentence, if the applicant is serving a bifurcated sentence, or has been released from prison to parole or released upon the completion of his or her sentence; and 3 years have elapsed since the date on which the confinement portion was completed or the applicant was released, the applicant may apply to the board for a determination as to whether the applicant is suitable to be granted a license.

(c) If an applicant applies for a determination under par. (b), the board may require the applicant to provide any information that is necessary for the investigation and shall make a determination by doing all of the following:

1. Reviewing any information relating to the felony.

2. Reviewing any supplemental information provided by the applicant bearing upon his or her suitability for licensure as a broker or salesperson.

3. Considering all of the following factors:

a. The severity and nature of the felony.

b. The amount of time that has elapsed.

c. The number or pattern of felonies or other similar incidents that gave rise to the felony conviction.

d. The circumstances surrounding the felony that may have a bearing on whether the applicant might repeat the behavior that was the subject of the felony.

e. The relationship of the felony to real estate practice.

f. The applicant's activities since the felony, including employment, education, participation in treatment, payment of restitution, and any other factor that may be evidence of rehabilitation.

(d) With respect to a determination under par. (c), the applicant bears the burden of demonstrating his or her suitability for licensure.

(e) If the board makes a determination under par. (c) to allow an applicant to be granted a broker's or salesperson's license, the applicant shall be granted the license if the applicant satisfies all other requirements for granting the license.

(f) This subsection does not apply to the renewal of a license.

(2) FALSE AFFIRMATIONS. (a) No person may intentionally submit any false information on a form created by the board under s. 111.335 (4) (f) 5. or 452.05 (1) (i).

(b) No applicant may be issued an initial broker's or salesperson's license, and no applicant may renew such a license, if the applicant has violated par. (a) and failed to pay any forfeiture assessed by the board under s. 452.14 (4r) for that violation.

History: 2013 a. 288; 2015 a. 258; 2017 a. 110, 278.

452.30 Association with firm; independent practice. (1) No licensee may provide brokerage services on behalf of a firm unless all of the following apply:

(a) The licensee is associated with the firm.

(b) The licensee has notified the department that the licensee is associated with the firm.

(2) A licensee may notify the department that the licensee is associated with a firm under sub. (1) (b) by doing one of the following:

(a) Providing the notice at the time the licensee first applies for licensure as a broker or salesperson. No separate fee for notifying the department may be required for such a notification under this paragraph.

(b) Notifying the department through the use of a form prescribed by the department and paying the transfer fee specified in s. 440.05 (7).

(3) A licensee who is associated with a firm may notify the department that the licensee has become associated with another firm using the method specified in sub. (2) (b).

(4) (a) A licensee that ceases to be associated with a firm shall, through the use of a form prescribed by the department, send written notice to the department within 10 days after the date on which the licensee ceases to be associated with the firm.

(b) A firm that terminates a licensee from being associated with the firm shall, through the use of a form prescribed by the department, send written notice of that termination to the department within 10 days after the termination.

(5) No licensee may be associated with a firm if the firm's license has been suspended or revoked during the period of suspension or revocation. The licensee may become associated with another firm, provided the licensee is not a party to the activities causing the suspension or revocation of the firm's license. If the licensee becomes associated with another firm, the licensee may not provide brokerage services on behalf of that firm until sub. (1) (b) has been satisfied.

(6) (a) A broker who is associated with a firm may also engage in independent real estate practice in his or her own name or under the name of a licensed broker business entity, if the broker obtains written approval from and avoids conflicts of interest with each firm with which the broker is associated. The written approval shall specify all of the following:

1. Whether the broker engaging in independent practice may engage other licensees to work under the broker.

2. That the broker engaging in independent practice is responsible for the supervision of any licensees associated with the broker.

(b) Before engaging in independent practice as provided in par. (a), a broker shall notify the department of that fact and of the name under which the broker will engage in independent practice. The broker shall notify the department using any form or other method prescribed by the department for that purpose.

(c) A broker that is engaging in independent practice shall not be considered to be associated with a firm that approved the broker engaging in independent practice under par. (a) with respect to the broker's independent practice activities.

(7) (a) A salesperson may be associated with only one firm at a given time.

(b) A salesperson may not engage in independent real estate practice and may engage in real estate practice only when associated with a firm.

History: 2015 a. 258 ss. 67, 171, 172.

452.34 Unlicensed personal assistants. (1) In this subsection, “unlicensed personal assistant” means an individual, including an individual who is licensed under this chapter, who is employed only to provide services for which a license is not required under this chapter as provided in s. 452.03 (2).

(2) A licensee associated with a firm, prior to retaining an individual to serve as an unlicensed personal assistant, shall enter into a written agreement with the licensee's firm, setting forth the duties of the unlicensed personal assistant, the manner in which the unlicensed personal assistant will be compensated for his or her services, and the responsibilities of the licensee and the firm with respect to supervision of the unlicensed personal assistant's activities.

(3) (a) In this subsection, “open house” means a showing of real estate open to the public for viewing without an individual appointment.

(b) An unlicensed personal assistant may not assist a licensee at an open house for the sale of real estate or a business without

the direct, on-premises supervision and presence of a licensee, and may not provide any services at an open house for which a license is required under this chapter.

History: 2015 a. 258.

452.38 Independent contractor relationship.

(1) Except as otherwise provided in s. 102.078, a licensee shall not, under ch. 102, 103, 104, or 109, under subch. X of ch. 71 or subch. II of ch. 111, under any other law or rule other than those specified under sub. (1m), or in any action or proceeding under the common law, be considered an employee of a firm if all of the following are satisfied:

(a) A written agreement has been entered into with the firm that provides that the licensee shall not be treated as an employee for federal and state tax purposes.

(b) Seventy-five percent or more of the compensation related to sales or other output, as measured on a calendar year basis, paid to the licensee pursuant to the written agreement referenced under par. (a) is directly related to the brokerage services performed by the licensee on behalf of the firm.

(1m) This section does not apply with respect to ch. 108 or any rules promulgated thereunder.

(2) (a) Subsection (1) applies notwithstanding the requirements and responsibilities of a firm under s. 452.132 and any rules promulgated by the board.

(b) Subsection (1) applies regardless of the licensee's status as a supervising broker under s. 452.132 and any actions taken by the licensee as a supervising broker under s. 452.132.

(3) In the case of an individual who is engaged as both an independent contractor and an employee for the same firm, sub. (1) applies only with respect to activities covered under the written agreement referenced under sub. (1) (a).

History: 2015 a. 258.

452.40 Use of forms; provision of legal advice. (1) (a)

In this subsection, “use a form” means to complete a form by filling in blanks or modifying printed provisions on the form at the instruction of one or more parties with whom a licensee is working or representing in a specific transaction.

(b) A firm and any licensee associated with the firm may use a form approved by the board under s. 452.05 (1) (b) in real estate practice.

(2) A licensee may not provide advice or opinions concerning the legal rights or obligations of parties to a transaction, the legal effect of a specific contract or conveyance, or the state of title to real estate. A licensee may provide a general explanation of the provisions in a form approved by the board under s. 452.05 (1) (b) to the parties to a transaction at the time of completing the form or when delivering an approved form for the seller's or buyer's acceptance. Reviews conducted by a supervising broker under s. 452.132 (4) shall not be considered to be the provision of legal advice or opinion.

History: 2015 a. 258.

452.42 Records retention. (1) In this section, “electronic” has the meaning given in s. 137.11 (5).

(2) A licensee shall retain documents or records related to a transaction, as determined by the board, in accordance with any rules promulgated by the board. Records described in this section may be retained in an electronic file format.

History: 2015 a. 258.