

## **Notice of Hearing**

The Real Estate Examining Board announces that it will hold a public hearing on both emergency and permanent rule to create REEB 13 relating to cooperative broker agreements, at the time and place shown below.

### **Hearing Information**

Date: April 16, 2015

Time: 10:15 a.m.

Location: 1400 East Washington Avenue, Room 121A  
Madison, Wisconsin

### **Appearances at the Hearing and Submittal of Written Comments**

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708, or by email to [Sharon.Henes@wisconsin.gov](mailto:Sharon.Henes@wisconsin.gov). Comments must be received at or before the public hearing to be held on April 16, 2015 to be included in the record of rule-making proceedings.

The rules may be reviewed and comments made at <http://dsps.wi.gov/Boards-Councils/Rulemaking/Public-Hearing-Comments> no later than April 16, 2015.

### **Initial Regulatory Flexibility Analysis**

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

### **Agency Small Business Regulatory Coordinator**

Eric Esser, (608) 266-2435, [Eric.Esser@wisconsin.gov](mailto:Eric.Esser@wisconsin.gov)

STATE OF WISCONSIN  
REAL ESTATE EXAMINING BOARD

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IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : REAL ESTATE EXAMINING BOARD  
REAL ESTATE EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE )

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PROPOSED ORDER

An order of the Real Estate Examining Board to create REEB 13 relating to cooperative broker agreements.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** s. 452.137, Stats.

**Statutory authority:** ss. 15.08(5)(b) and 452.137, Stats.

**Explanation of agency authority:**

Each examining board shall promulgate rules for its own guidance and for the guidance of the profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade of profession.

The board shall, by rule, establish the form and terms of the cooperative agreement.

**Related statute or rule:** None

**Plain language analysis:**

This rule requires the cooperative agreement between the licensed real estate broker and the out-of-state broker be in writing utilizing a board approved form. The terms must include the terms of cooperation and out-of-state broker's compensation as well as provide that all client funds in connection with the transaction shall be deposited in a trust account maintained by the Wisconsin licensed broker.

**Summary of, and comparison with, existing or proposed federal regulation:** None

**Comparison with rules in adjacent states:**

**Illinois:** Illinois does not have rules relating to out-of-state cooperative broker agreements.

**Iowa:** Iowa does not have rules relating to out-of-state broker cooperative agreements.

**Michigan:** Michigan does not have rules relating to out-of-state broker cooperative agreements.

**Minnesota:** Minnesota does not have rules relating to out-of-state broker cooperative agreements.

**Summary of factual data and analytical methodologies:**

The Board considered the format and process of other forms utilized by the real estate profession as well as inclusion of the statutory term requirements.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:**

This rule was posted for economic comments for a period of 14 days and no comments were received.

**Fiscal Estimate and Economic Impact Analysis:**

The Fiscal Estimate and Economic Impact Analysis is attached.

**Effect on small business:**

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Eric.Esser@wisconsin.gov, or by calling (608) 267-2435.

**Agency contact person:**

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

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

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708, or by email to Sharon.Henes@wisconsin.gov. Comments must be received at or before the public hearing to be held on April 16, 2015 to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1 Chapter REEB 13 is created to read:

**CHAPTER REEB 13**

**COOPERATIVE AGREEMENT**

**REEB 13.01 Cooperative agreement.** (1) A cooperative agreement between a licensed broker and an out-of-state broker shall be all of the following:

- (a) In writing.
- (b) A form approved by the board pursuant to s. 452.05(1)(b).
- (2) The terms of the cooperative agreement shall contain at least all of the following:
  - (a) The terms of cooperation between the out-of-state broker, any out-of-state salesperson, and the licensed broker.
  - (b) The terms of the out-of-state broker's compensation.
  - (c) Provide that all client funds, as defined in s. 452.13(1)(a), that the out-of-state broker and licensed broker receive in connection with a transaction subject to the cooperative agreement shall be deposited in a trust account maintained by the licensed broker.

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

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(END OF TEXT OF RULE)  
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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis  
 Original    Updated    Corrected

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2. Administrative Rule Chapter, Title and Number  
REEB 13

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3. Subject  
Cooperative Broker Agreements

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4. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	5. Chapter 20, Stats. Appropriations Affected 20.165(1)(g)
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6. Fiscal Effect of Implementing the Rule  
 No Fiscal Effect    Increase Existing Revenues    Increase Costs  
 Indeterminate    Decrease Existing Revenues    Could Absorb Within Agency's Budget  
 Decrease Cost

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7. The Rule Will Impact the Following (Check All That Apply)  
 State's Economy    Specific Businesses/Sectors  
 Local Government Units    Public Utility Rate Payers  
 Small Businesses **(if checked, complete Attachment A)**

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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?  
 Yes    No

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9. Policy Problem Addressed by the Rule  
The policy problem addressed by the rule is to establish the form and terms of the agreement between a Wisconsin licensed real estate broker and an out-of-state broker.

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10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.  
This rule was posted for economic comments and none were received.

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11. Identify the local governmental units that participated in the development of this EIA.  
None. It does not have an impact on local governmental units.

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)  
This rule will not have an economic impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole. There are no implementation and compliance costs expected.

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule  
The benefit is to provide guidance to Wisconsin licensed real estate brokers and out-of-state brokers as to the requirements for the form and terms of the agreement.

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14. Long Range Implications of Implementing the Rule  
The long range implication is Wisconsin licensed real estate brokers and out-of-state brokers will be clear as to the requirements for the form and terms of the agreement.

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15. Compare With Approaches Being Used by Federal Government  
None

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16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)  
Our surrounding states do not have rules relating to out-of state cooperative broker agreements.

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17. Contact Name Sharon Henes	18. Contact Phone Number (608) 261-2377
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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Scott Grosz**  
*Clearinghouse Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Margit Kelley**  
*Clearinghouse Assistant Director*

**Jessica Karls-Ruplinger**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 15-026

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### 1. Statutory Authority

The proposed rule largely repeats the statutory language from the directive to create this rule, without providing additional governance. Section 452.137 (4), Stats., requires the board to establish, by rule, the “form and terms” of a cooperative agreement, and outlines minimum subjects that are to be addressed in such an agreement. It appears under this provision that the Legislature may have intended for the board to provide substantive guidance for the “form and terms” of a cooperative agreement that builds upon the basic framework given in the statute, rather than simply reproducing the statutory language. Accordingly, the board should consider revising the proposed rule to provide more detailed instructions for the format that must be used, and the content that must be included, in a cooperative agreement.

#### 2. Form, Style and Placement in Administrative Code

a. Rather than creating a new chapter in the administrative code for the single section created by the proposed rule, consider creating the provision for the cooperative agreement form in another chapter, such as ch. REEB 16, among other approved forms. Single-section chapters should be avoided, and similar material should be grouped together. [s. 1.02 (3) (intro.), Manual.]

b. Definitions could be created for the specific terms used in the proposed rule, such as “licensed broker”, “out-of-state broker”, and “out-of-state salesperson”, by referencing the statutory definitions given for those terms in ss. 452.01 (5n) and (5p), and 452.137 (1) (b), Stats. [ss. 1.01 (7) (d), and 1.02 (3) (b), Manual.]

c. In s. REEB 13.01 (1) (b), the notation “, Stats.” should be inserted after the reference to “s. 452.05 (1) (b)”. [s. 1.07 (2) (Table), Manual.]

d. In that same section, s. REEB 13.01 (1) (b), a Note should be created that indicates how the form that is referenced in the rule may be obtained. [s. 1.09 (3), Manual.] Compare, for example, s. REEB 16.03 (2) (Note), in the current rules. Alternatively, the text of the form could be provided in the rule itself, either in a rule section or an appendix.

e. In s. REEB 13.01 (2), the paragraphs following the subsection’s introductory material should form a complete sentence with the introduction. [s. 1.03 (3), Manual.] For example, the subsection could be revised as follows:

(1) In the introductory material, the word “do” could replace the phrase “contain at least”.

(2) In par. (a), the sentence could begin with the word “Establish”.

(3) In par. (b), the sentence could begin with the word “Establish”.

f. In s. REEB 13.01 (2) (c), the notation “, Stats.” should be inserted after the reference to “s. 452.13 (1) (a)”. [s. 1.07 (2) (Table), Manual.]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In the rule summary’s listing of statutory authority, a specific reference to sub. “(4) (a)” should be inserted in the citation to s. 452.137, Stats.

b. In the rule summary’s explanation of agency authority, the narrative should reference each specific statute section that is being described. For example, the first paragraph could begin with the phrase, “Under s. 15.08 (5) (b), Stats., each”, and the second paragraph could begin with the phrase, “Under s. 452.137 (4) (a), Stats., the”.

c. In s. REEB 13.01, the proposed rule follows the language of only sub. (4) of s. 452.137, Stats., but that section contains other requirements that apply to the parties to a cooperative agreement, which could be referenced in the rule. For example, the rule could require, among the terms of a cooperative agreement, that the parties must agree to comply with the provisions of s. 452.137 (2) and (3), Stats.

d. In s. REEB 13.01 (1) (b), a citation to “s. 452.137 (4) (a)” should replace the citation to “s. 452.05 (1) (b)”, in order to reference the board’s specific authority to approve a form for use in a cooperative agreement.

e. In s. REEB 13.01 (2) (c), the board could, if desired, insert the phrase “under s. 452.13, Stats.” after the phrase “trust account maintained by the licensed broker”, in order to specifically reference the statute governing the management of trust accounts.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In the title for ch. REEB 13, consider revising the title to more specifically indicate the subject matter of the chapter. For example, the phrase “Out-of-State Brokers” could replace the

phrase “Cooperative Agreement”, or the phrase “with Out-of-State Brokers” could be inserted after the phrase “Cooperative Agreement”.

b. In s. REEB 13.01 (1), unless the board intends to create a structure that allows subunits to be added in the future, the subsection does not need to be divided into subunits. For example, the introduction and subunits could be combined into the following phrase:

A cooperative agreement between a licensed broker and an out-of-state broker shall be made in writing using a form approved by the board under s. 452.137 (4) (a), Stats.

c. In s. REEB 13.01 (1) (b), if the board does not revise the subunit structure that is given in the proposed rule for sub. (1), as described in the previous comment, the phrase “On a” should replace the word “A” at the beginning of the sentence, and the word “under” should replace the word “pursuant to”.

d. In s. REEB 13.01 (2) (intro.), the phrase “terms of the” should be deleted.