



VIRTUAL TELECONFERENCE
REAL ESTATE RULES COMMITTEE
of the
REAL ESTATE EXAMINING BOARD

Room 121A, 1400 East Washington Avenue, Madison, WI 53703
Contact: Brittany Lewin (608) 261-5406
October 1, 2015

*Notice: The following agenda describes the issues that the Committee plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. A **quorum of the Board may be present during any committee meetings.***

AGENDA

9:30 A.M.

OPEN SESSION – CALL TO ORDER

- A. Approval of Agenda (1)**
- B. Legislation and Rule Matters – Discussion and Consideration (2-7)**
 - 1) REEB 15 and 18 Relating to Electronic Records**
- C. Public Comments**

ADJOURNMENT

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Sharon Henes Administrative Rules Coordinator		2) Date When Request Submitted: 28 September 2015	
		Items will be considered late if submitted after 12:00 p.m. on the deadline date: ▪ 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Real Estate Examining Board Rules Committee			
4) Meeting Date: 1 October 2015	5) Attachments: <input type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Legislation and Rule Matters – Discussion and Consideration 1. REEB 15 & 18 Relating to Electronic Records	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:			
11) Authorization			
<i>Sharon Henes</i>		<i>28 September 2015</i>	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

STATEMENT OF SCOPE

Real Estate Examining Board

Rule No.: REEB 15 and 18

Relating to: Obligation to Furnish Copies and Maintain Records, and Trust Accounts

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

Chapter REEB 15, Real Estate Broker's Obligation to Furnish Copies and Maintain Records, was created in November 1985 (as ch. RL 15) and with the exception of a minor correction in authority and chapter renumbering; there have been no substantial changes since this rule became effective. At this time the Real Estate Examining Board (the Board) intends in this proposed revision to make minor corrections in format, update the chapter to reflect any statutory changes, provide clarification where appropriate and allow new and current technology in records retention.

Chapter REEB 18, Trust Accounts, is added to this scope statement as provisions for maintaining records in ch. REEB 15 may allow the retention of records in electronic formats and the use of current electronic software. The bookkeeping section, s. REEB 18.13, may be revised to allow similar technology as in ch. REEB 15. In addition, depository institutions currently provide options for electronic bank statements and exporting such financial data to bookkeeping software. When requested by the department or board as in s. REEB 18.036, these records may be determined to be in an acceptable format. With the exception of renumbering and minor changes, this chapter has not been revised since 1994.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Existing rules relating to the retention of certain records that are used in the practice of real estate can be found in s. REEB 15.04. This section requires a real estate broker to retain for at least 3 years exact copies of documents and correspondence utilized in connection with any transaction. These documents and correspondence must be made available to the Department of Safety and Professional Services (the department) or the Board for inspection and copying upon request. The proposed rule may clarify what comprises a record. In addition, the proposed revision intends to provide the broker the ability to retain records in electronic format, stipulate retention times and offer possible discipline for not providing such records when so requested.

Existing rules relating to bookkeeping systems and examination of bank records are found in ch. REEB 18. It is widely known that ledger and journaling financial software is widely utilized in the real estate industry; the Board intends that these rule revisions recognize current practice and modernize the provisions for records and recordkeeping.

No new policies are expected to be created in these revisions. The alternative to not updating these chapters is that record storage and current prescribe bookkeeping formats may continue to be costly and duplicative.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

- Section 15.08 (5) (b), Stats.: This section requires any examining board to promulgate rules for their own guidance or the guidance of respective trade or profession.
- Section 227.11 (2), Stats.: This section confers that each agency has rule-making powers interpreting the authority to enforce and administer as provided in the statutes.
- Section 452.07, Stats.: This section provides the Real Estate Examining Board the express authority to draft and approve rules relating to the guidance of the real estate profession. "S. 452.07 Rules. (1) The board shall promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice."
- Section 452.13, Stats.: This section outlines procedures for brokers regarding their trust accounts, interest-bearing accounts and furnishing financial documents to the department, board or the Department of Administration on request.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The staff time needed to develop the rules is expected to be about 210 hours, depending on the complexity. This includes coordinating the rule-making process with the Board, research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to develop the rules.

6. List with description of all entities that may be affected by the proposed rule:

Real estate licensees.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

An Internet search of the U.S. Code and the code of federal regulations (CFR) did not reveal any existing or proposed regulations at the federal level for: applications and education relating to the licensing of real estate brokers and real estate salespersons, real estate broker's trust accounts, records retention or records kept in a specific format.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The anticipated cost of complying with the proposed rule is deemed minimal to none as it is expected that any electronic format required would include various options and may already be utilized.

Contact Person: Jean MacCubbin, Program Manager, Division of Policy Development, Department of Safety and Professional Services; P.O. Box 8935; Madison WI 53708-8935; phone: 608.266.0955 or Contact Through Relay; email: jean.maccubbin@wisconsin.gov.

Stephen Beer, Chair
Real estate Examining Board

Date Submitted

Electronic Record Retention Research

Minnesota

In 2010, several changes to Minnesota's licensing statute were enacted, including a change from a 3-year to a 6-year record retention requirement. In addition, this statutory change allowed for electronic storage.

See Minnesota Statutes 82.72: <https://www.revisor.mn.gov/statutes/?id=82.72>

82.72 RECORDS. (Minnesota)

Subdivision. 3. Retention.

A licensed real estate broker shall retain for six years copies of all listings, buyer representation and facilitator services contracts, deposit receipts, purchase money contracts, canceled checks, trust account records, and such other documents as may reasonably be related to carrying on a real estate brokerage business. The retention period shall run from the date of the closing of the transaction, or from the date of the document if the document is not consummated. The following documents need not be retained:

(1) agency disclosure forms provided to prospective buyers or sellers, where no contractual relationship is subsequently created and no services are provided by the licensee; and

(2) facilitator services contracts or buyer representation contracts entered into with prospective buyers, where the prospective buyer abandons the contractual relationship before any services have been provided by the licensee.

Subd. 4. Storage.

Storage of documents identified in subdivision 3 may be by electronic means.

Subd. 5. Destruction.

After the retention period specified in subdivision 3 has elapsed and the broker no longer wishes to retain the documents, the broker must ensure that the documents are disposed of according to the confidential record destruction procedures of the Fair and Accurate Credit Transaction Act of 2003, Public Law 108-159.

Wisconsin's Current Law with WRA's suggested changes

The following changes address the electronic and digital storage discussion as well as overall updates to the rule.

Chapter RL 15 – Broker's Obligation to Furnish Copies and Maintain Records

RL 15.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 452.07 and 452.14 (3) (h) and (i), Stats.

RL 15.02 Copies of documents.

(1) A broker or salesperson shall promptly provide an exact and complete copy of any document utilized in real estate practice to any person who has signed the document. The broker may use electronic or digital means to retain and store copies.

(2) A broker or salesperson shall promptly distribute to the following persons exact and complete copies of ~~offers to purchase, amendments to contracts of sale, counter-offers, exchange agreements, or grants of option~~ written proposals (defined in REEB 24.02(19)) which have been accepted and signed by all parties:

- (a) The seller.
- (b) The buyer.
- (c) The listing broker.
- (d) The selling broker.

Electronic Record Retention Research

(3) A broker or salesperson shall promptly distribute an exact and complete copy of a lease which has been accepted and signed by all parties to the tenant when the tenant leases the property and to the landlord upon the landlord's request.

RL 15.03 Copies of closing statements.

(1) At the time of closing a real estate transaction, the listing broker or the broker's designee shall ensure that a complete copy of the seller's portion of the closing statement is delivered to the seller and a complete copy of the buyer's portion of the closing statement is delivered to the buyer. These closing statements shall accurately account for all funds received and paid by the broker in connection with the transaction.

(2) If a transaction is handled through escrow and the escrow holder renders a closing statement, the broker shall assure that funds which the broker has received or paid as part of the transaction are properly accounted for.

RL 15.04 Retention of records.

A broker shall retain for at least 3 years exact and complete copies of all ~~listing contracts~~ agency agreements, offers to purchase, leases, closing statements, deposit receipts, cancelled checks, trust account records and other documents or correspondence received or prepared by the ~~broker licensees~~ in connection with any transaction. The retention period shall run from the date of closing of the transaction or, if the transaction has not been consummated, from the date of listing agency agreement. The broker shall make these records available for inspection and copying by the department. If the records are retained outside this state, electronically or digitally, the broker shall, upon request of the department, promptly send exact and complete copies to the department at the broker's expense.

UETA in Wisconsin:

CHAPTER 137 - SUBCHAPTER II ELECTRONIC TRANSACTIONS AND RECORDS; ELECTRONIC NOTARIZATION AND ACKNOWLEDGEMENT

137.20 Retention of electronic records; originals.

(1) Except as provided in sub. (6), if a law requires that a record be retained, the requirement is satisfied by retaining the information set forth in the record as an electronic record which:

(a) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(b) Remains accessible for later reference.

(2) A requirement to retain a record in accordance with sub. (1) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(3) A person may comply with sub. (1) by using the services of another person if the requirements of that subsection are satisfied.

(4) Except as provided in sub. (6), if a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, a person may comply with that law by using an electronic record that is retained in accordance with sub. (1).

(5) Except as provided in sub. (6), if a law requires retention of a check, that requirement is satisfied by retention of an electronic record containing the information on the front and back of the check in accordance with sub. (1).

(6) (a) Except as provided in sub. (6), a record retained as an electronic record in accordance with sub. (1) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this paragraph ... [revisor inserts date], specifically prohibits the use of an electronic record for the specified purpose.

(b) A governmental unit that has custody of a record is also further subject to the retention requirements for public records of state agencies, and the records of the University of Wisconsin

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Hospitals and Clinics Authority established under ss. 16.61, and 16.611 and the retention requirements for documents of local governmental units established under s. 16.612.

(7) The public records board may promulgate rules prescribing standards consistent with this subchapter for retention of records by state agencies, the University of Wisconsin Hospitals and Clinics Authority and local governmental units.

(8) This section does not preclude a governmental unit of this state from specifying additional requirements for the retention of any record subject to the jurisdiction of that governmental unit.