



STATE OF WISCONSIN

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Positions Statements Related to Real Estate Brokers Issued by the Real Estate Examining Board

WHEN DOES A PERSON NEED A REAL ESTATE BROKER'S LICENSE?

[Wis. Stat. § 452.03](#) states that no person may engage in or follow the business or occupation of, or advertise as a real estate broker or salesperson without a license. The definition of a broker can be found in [Wis. Stat. § 452.01\(2\)](#). The definition includes, but is not limited to:

- Negotiating, promoting, or advertising the sale, exchange, purchase, or rental of real property, or the granting or acceptance of an option to sell, exchange, purchase, or rent an interest or estate in real estate or a time share.
- Selling or exchanging interest in real estate or businesses, including business' goodwill, inventory, or fixtures.

CAN A REAL ESTATE BROKER OFFER A FINDER'S FEE TO PEOPLE WHO MAKE SUCCESSFUL REFERRALS TO THE BROKER?

[Wis. Stat. § 452.19](#) prohibits the payment of a finder's fee or a commission to a person not licensed as a salesperson or broker. However, there are no restrictions on a licensee giving a gift or an incentive to a buyer or seller.

CAN A REAL ESTATE BROKER USE A NICKNAME ON OFFERS, LISTINGS, AND OTHER DOCUMENTS IF THE NICKNAME IS DIFFERENT THAN HIS OR HER REGISTERED NAME?

Except for advertisements for the rental of real estate owned by the broker, [REEB 24.04\(2\)](#) prohibits a broker from using any other name in business or in advertisements other than the broker's name exactly as printed on the broker's license, or a trade name filed with the Department under [REEB 23.03](#).

IF A LICENSED REAL ESTATE BROKER FACILITATES THE SALE OF HIS OR HER OWN PROPERTY, OR THE PURCHASE OF A NEW PROPERTY FOR HIS OR HER PERSONAL USE, CAN THAT BROKER RECEIVE A PORTION OF THE TYPICAL SALES COMMISSION?

[REEB 24.05\(2\)](#) states that a licensee acting on his own behalf for the sale or the purchase of real property may not collect a commission unless he or she obtains written consent of all the parties to the transaction. [REEB 24.05\(5\)](#) states that the licensee must disclose his or her license status and intent to act in the transaction at the first showing of the property, the first contact with the other party or agent, or any other negotiation.

IS A BROKER OBLIGATED TO DISCLOSE A MATERIAL ADVERSE FACT ABOUT THE PROPERTY?

[REEB 24.07\(2\)](#) states that a licensee may not exaggerate or misrepresent facts. Furthermore, the licensee shall disclose to all parties all materially adverse facts that the licensee knows and that the party does not know or cannot discover through a reasonably vigilant observation, unless the disclosure is prohibited by law. A licensee does not have to disclose that the property was the site of a specific occurrence such as death if the act or occurrence had no effect on the physical condition of the property or on any structures of the property.

WHAT TYPE OF PROPERTY INSPECTION IS A BROKER REQUIRED TO PERFORM?

[REEB 24.07\(1\)\(a-b\)](#) states that in general, a licensee shall conduct a reasonably competent and diligent inspection of accessible areas of the structure and surrounding areas of the property to search for observable, materially adverse facts. If the licensee is the listing broker, the listing broker shall make inquiries of the seller as to the condition of the property and request that the seller provide a written response to the inquiries. [REEB 24.07\(1\)\(d\)](#) states that a reasonably competent and diligent inspection does not include moving of furniture or other mobile property, inspection of inaccessible areas or areas that present a risk of injury, or the requirement to retain third party inspectors or investigators. Furthermore, while a licensee must inspect vacant lots, he or she is not required to observe the entire property.

WHAT ARE REAL ESTATE TRUST FUNDS?

[REEB 18.02\(6\)](#) defines real estate trust funds as any cash, checks, share drafts, drafts or notes, other than promissory notes, received by a broker or broker's salespersons or time-share salespersons on behalf of a principal or any other person. Please see the statute for a complete definition.

MAY A BROKER RECEIVE THE INTEREST EARNED ON ANY REAL ESTATE TRUST ACCOUNTS?

[REEB 18.031\(3\)\(a\)](#) states that none of the interest earned on the funds deposited into an interest-bearing trust account may inure to the benefit of the broker.

WHEN MUST TRUST FUNDS RECEIVED BY THE BROKER BE DEPOSITED IN THE TRUST ACCOUNT?

[REEB 18.031\(1\)](#) states that a broker shall deposit all real estate trust funds in a real estate trust account within 48 hours of receipt of the trust funds, or if received on a day prior to a holiday or some other day when depository institutions are closed, within the next 2 business days.

MAY A BROKER HAVE MORE THAN ONE TRUST ACCOUNT?

Yes, a broker may have an unlimited number of trust accounts, but each account must be in compliance with all statutes and the administrative code. Please see [REEB 18.032](#).

MAY A BROKER AUTHORIZE OTHER PERSONS TO SIGN REAL ESTATE TRUST ACCOUNT CHECKS, SHARE DRAFTS, OR DRAFTS DRAWN ON THE BROKER'S TRUST ACCOUNT?

[REEB 18.04](#) states that a broker may authorize other persons to sign real estate trust account checks, share drafts, or drafts drawn on the broker's real estate trust account if the person is at least 18 years of age.

DOES A BROKER NEED TO NOTIFY THE DEPARTMENT WHEN HE OR SHE OPENS A TRUST FUND?

Yes. [REEB 18.035\(1\)](#) states that a broker must provide the Department with the name and number of the account, with the name of the depository institution in which the broker holds the account and with information concerning whether the account is for client funds or for real estate trust funds other than client funds within 10 days of opening the account.

WHAT ARE SALESPERSONS' DUTIES WITH REGARD TO EARNEST MONEY?

[REEB 18.031\(2\)](#) states that a salesperson or timeshare salesperson who receives real estate trust funds shall promptly submit the funds to the employer-broker.

IS THERE A LIMIT ON THE AMOUNT OF MONEY THAT A REAL ESTATE BROKER CAN PUT INTO AN INTEREST BEARING REAL ESTATE TRUST ACCOUNT?

[REEB 18.10](#) states that a real estate broker may deposit no more than \$300 of his or her personal funds into a real estate trust account. There is no limit on the amount of client funds that may be deposited in the account.

WHEN CAN A REAL ESTATE BROKER DISBURSE MONIES IN A TRUST FUND?

[REEB 18.09](#) states that a broker may disburse trust funds from his or her real estate account under the following circumstances:

- To the payor upon the rejection, expiration, or withdrawal prior to binding acceptance of an offer to purchase, lease, exchange agreement or option on real estate, or a business opportunity.
- As directed in a written earnest money disbursement agreement signed by all parties with interest in the trust funds.

- To a court having jurisdiction over a civil action
- As directed by court order.
- Upon a good faith decision based on the advice of an attorney not representing any part to the contract.
- By authorization granted in the contract.
- As otherwise provided in the law.
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WHEN MAY A BROKER CLOSE A REAL ESTATE TRUST FUND?

A broker may close an account if no real estate trust funds remain in the account. See [REEB 18.033\(2\)](#).