

STATE OF WISCONSIN
REAL ESTATE EXAMINING BOARD

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)

PROPOSED ORDER

An order of the Real Estate Examining Board to repeal REEB 25.023 (4) (a) 3. and 25.028 (1) (g) 1., 2., 3.; to renumber and amend REEB 25.028 (1) (g) (intro.); and to amend REEB 16.03 (1), 25.033 (14) (b) and 25.038 (5) (b) relating to obsolete cross references in real estate broker education and update real estate terminology.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 452.09 (2), 452.132 and 452.40, Stats.

Statutory authority: ss. 15.08 (5) (b), 452.05 (1) (c) and 452.07 (1), 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 or profession.

The board shall 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.

The board shall promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice.

Related statute or rule: n/a

Plain language analysis:

This rule does not create new policy.

Section 1 corrects an inconsistency. In CR 16-042, s. REEB 16.03 (1) was amended to refer to forms for use for licensees, which would include both brokers and salespersons. This change

created an inconsistency by creating a section which allowed salespersons to utilize all forms and a section allowing salespersons to utilize specific forms. This rule changes “licensees” to “brokers” restoring the rule to the Board’s intent and the practice in place prior to CR 16-042.

Section 2 repeals the requirement that there be education on the policy manual required by REEB 17.08. REEB 17.08 was repealed by CR 16-042. This rule repeals the obsolete cross-reference.

Sections 3 and 4 makes revisions to remove the introductory paragraph language and repeals the subdivisions. The requirement requires education on licensure and supervision of employees under REEB 17. These changes are a result of obsolete cross-references due to CR 16-042.

Sections 5 and 6 update terminology from “broker” to “firm” consistent with 2015 Act 258.

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

Comparison with rules in adjacent states:

Illinois: Illinois does not have administrative rules regarding use of approved forms and does not use terminology relating to firm.

Iowa: Iowa does not have administrative rules regarding use of approved forms and does not use terminology relating to firm.

Michigan: Michigan does not have administrative rules regarding use of approved forms and does not use terminology relating to firm.

Minnesota: Minnesota does not have administrative rules regarding use of approved forms and does not use terminology relating to firm.

Summary of factual data and analytical methodologies:

The Board received information from the Legislative Reference Bureau regarding obsolete cross-references and stakeholders regarding the terminology updates.

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

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 Kirsten.Reader@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at DSPSAdminRules@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 Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held on * to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. REEB 16.03 (1) is amended to read:

REEB 16.03 (1) In addition to forms prepared and approved by the board pursuant to s. 452.05 (1) (b), Stats., the board approves the following forms for use by ~~licensees~~ brokers:

SECTION 2. REEB 25.023 (4) (a) 3. is repealed.

SECTION 3. REEB 25.028 (1) (g) (intro.) is renumbered REEB 25.028 (1) (g) and is amended to read:

REEB (1) (g) Licensure and supervision of employees under ch. REEB 17, ~~including all of the following:~~

SECTION 4. REEB 25.028 (1) (g) 1., 2. and 3. are repealed.

SECTION 5. REEB 25.033 (14) (b) is amended to read:

REEB 25.033 (14) (b) Inquiry by listing ~~broker~~ firm under s. REEB 24.07 (1) (b).

SECTION 6. REEB 25.038 (5) (b) is amended to read:

REEB 25.038 (5) (b) Inquiry by listing ~~broker~~ firm under s. REEB 24.07 (1) (b).

SECTION 7. 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.

(END OF TEXT OF RULE)

State of Wisconsin



2017 Senate Bill 455

Date of enactment: **November 30, 2017**

Date of publication*: **December 1, 2017**

2017 WISCONSIN ACT 110

AN ACT *to renumber* 452.01 (2) (h) and 452.137 (1) (c); *to renumber and amend* 452.06 (1), 452.137 (1) (a), 452.137 (2) (a) (intro.), 452.137 (2) (a) 1. and 452.137 (2) (a) 2.; *to amend* 452.01 (2) (a), 452.01 (5m) (a), 452.05 (1) (b), 452.133 (title), 452.134 (1) (a), 452.137 (2) (c), 452.137 (4) (a), 452.137 (4) (b) (intro.) and 452.25 (1) (a); *to repeal and recreate* 452.14 (3) (p); and *to create* 452.01 (2) (d), 452.01 (5e), 452.06 (1) (c), 452.07 (3), 452.133 (3) (d), 452.136, 452.137 (1) (am), 452.137 (1) (cm), 452.137 (1) (e), 452.137 (2) (am), 452.137 (2) (b) 3., 452.137 (2) (bm), 452.137 (4) (c) and 452.25 (1) (f) of the statutes; **relating to**: various changes regarding the laws governing real estate practice and the licensure of real estate brokers and salespersons and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 452.01 (2) (a) of the statutes is amended to read:

452.01 (2) (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.

SECTION 2. 452.01 (2) (d) of the statutes is created to read:

452.01 (2) (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).

SECTION 3. 452.01 (2) (h) of the statutes is renumbered 452.01 (2) (c).

SECTION 4. 452.01 (5e) of the statutes is created to read:

452.01 (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.

SECTION 5. 452.01 (5m) (a) of the statutes is amended to read:

452.01 (5m) (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.

SECTION 6. 452.05 (1) (b) of the statutes is amended to read:

452.05 (1) (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

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

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.

SECTION 7. 452.06 (1) of the statutes is renumbered 452.06 (1) (a) and amended to read:

452.06 (1) (a) The board shall create ~~one or more councils~~ a council on forms ~~which that~~ shall meet ~~on a regular basis~~ 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 ~~appropriate~~ council on forms for review before the form is approved.

SECTION 8. 452.06 (1) (c) of the statutes is created to read:

452.06 (1) (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.

SECTION 9. 452.07 (3) of the statutes is created to read:

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

SECTION 10. 452.133 (title) of the statutes is amended to read:

452.133 (title) Duties of licensees; prohibitions.

SECTION 11. 452.133 (3) (d) of the statutes is created to read:

452.133 (3) (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).

SECTION 12. 452.134 (1) (a) of the statutes is amended to read:

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

SECTION 13. 452.136 of the statutes is created to read:

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 depart-

ment 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.

SECTION 14. 452.137 (1) (a) of the statutes is renumbered 452.137 (1) (d) and amended to read:

452.137 (1) (d) "Cooperative agreement" means ~~the an agreement established by the board under sub. (4) entered into between an out-of-state broker and a firm as provided in this section.~~

SECTION 15. 452.137 (1) (am) of the statutes is created to read:

452.137 (1) (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.

SECTION 16. 452.137 (1) (c) of the statutes is renumbered 452.137 (1) (h).

SECTION 17. 452.137 (1) (cm) of the statutes is created to read:

452.137 (1) (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.

SECTION 18. 452.137 (1) (e) of the statutes is created to read:

452.137 (1) (e) “Dwelling unit” has the meaning given in s. 440.97 (3).

SECTION 19. 452.137 (2) (a) (intro.) of the statutes is renumbered 452.137 (2) (a) and amended to read:

452.137 (2) (a) ~~Except as provided in par. (b), an 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:

SECTION 20. 452.137 (2) (a) 1. of the statutes is renumbered 452.137 (2) (ag) 1. and amended to read:

452.137 (2) (ag) 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.

SECTION 21. 452.137 (2) (a) 2. of the statutes is renumbered 452.137 (2) (ag) 2. and amended to read:

452.137 (2) (ag) 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.

SECTION 22. 452.137 (2) (am) of the statutes is created to read:

452.137 (2) (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.

SECTION 23. 452.137 (2) (b) 3. of the statutes is created to read:

452.137 (2) (b) 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.

SECTION 24. 452.137 (2) (bm) of the statutes is created to read:

452.137 (2) (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.

SECTION 25. 452.137 (2) (c) of the statutes is amended to read:

452.137 (2) (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.

SECTION 26. 452.137 (4) (a) of the statutes is amended to read:

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

SECTION 27. 452.137 (4) (b) (intro.) of the statutes is amended to read:

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

SECTION 28. 452.137 (4) (c) of the statutes is created to read:

452.137 (4) (c) A cooperative agreement under sub. (2) (am) shall describe the type, function, location, approximate size, and functional or geographic limita-

tions of the property being sought. A separate cooperative agreement shall be entered into for each type of property.

SECTION 29. 452.14 (3) (p) of the statutes is repealed and recreated to read:

452.14 (3) (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.

SECTION 30. 452.25 (1) (a) of the statutes is amended to read:

452.25 (1) (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 ~~a~~ an initial

broker's or salesperson's license if the applicant has been convicted of a felony.

SECTION 31. 452.25 (1) (f) of the statutes is created to read:

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

SECTION 32. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of section 452.137 (1) (a), (am), (c), (cm), and (e), (2) (a) (intro.), 1., and 2., (am), (b) 3., (bm), and (c), and (4) (a), (b) (intro.), and (c) of the statutes takes effect on March 1, 2018, or on the day after publication, whichever is later.