



REAL ESTATE EXAMINING BOARD
Room 121A, 1400 East Washington Avenue, Madison
Contact: Brittany Lewin (608) 266-2112
August 18, 2016

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a record of the actions of the Board.

AGENDA

10:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

- A) Adoption of Agenda (1-2)**
- B) Approval of the Minutes of June 9, 2016 (3-6)**
- C) Administrative Matters**
 - 1. Staff Updates
 - 2. Board Member Training – October 14, 2016
 - 3. Board Member Recognition and Introductions
- D) Election of Officers and Board Appointments (7-8)**
- E) 10:00 AM – Public Hearing on EmR1620 and Clearinghouse Rule 16-042, Relating to Real Estate Practice (9-34)**
 - 1. Review and Respond to Clearinghouse Report and Public Hearing Comments
- F) Legislative and Administrative Rule Matters**
 - 1. Update on Legislation and Pending or Possible Rulemaking Projects
- G) Real Estate Contractual Forms Advisory Council Update**
- H) Discussion and Consideration of Items Received After Preparation of the Agenda:**
 - 1. Introductions, Announcements and Recognition
 - 2. Election of Board Officers
 - 3. Appointment of Board Liaison(s)
 - 4. Administrative Updates
 - 5. Education and Examination Matters
 - 6. Credentialing Matters
 - 7. Practice Matters
 - 8. Legislation/Administrative Rule Matters
 - 9. Liaison Report(s)
 - 10. Informational Items
 - 11. Disciplinary Matters
 - 12. Requests for Disciplinary Proceeding Presentations
 - 13. Motions
 - 14. Petitions
 - 15. Appearances from Requests Received or Renewed

16. Speaking Engagement(s), Travel, or Public Relation Request(s)

I) Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85 (1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.).

J) Presentation and Deliberation on Division of Legal Services and Compliance (DLSC) Matters

1. Administrative Warning(s)

a. 14 REB 107 – JDO **(35-36)**

2. Proposed Stipulation(s), Final Decision(s), and Order(s)

a. 14 REB 084 – John N. Springob **(37-42)**

3. Case Closing(s)

a. 15 REB 038 – JL, CEP, DCW, RORLLC, TREGI **(43-49)**

b. 15 REB 092 – BV, ROTRELLC, CT **(50-53)**

c. 15 REB 127 – MS **(54-56)**

K) Deliberation on Proposed Final Decision and Orders

1. Mike Mendez (DHA Case No. SPS-16-0038)(DLSC Case No. 14 REB 021) **(57-64)**

2. Timothy D. Russell (DHA Case No. SPS-16-0041)(DLSC Case No. 14 REB 063) **(65-73)**

L) Deliberation Orders Fixing Costs/Matters Related to Costs

1. Casey J. Ehler (ORDER0004756) **(74-81)**

M) Presentation and Deliberation on Credentialing Matters

N) Deliberation of Items Received After Preparation of the Agenda

1. Education and Examination Matters

2. Credentialing Matters

3. Disciplinary Matters

4. Professional Assistance Procedure (PAP)

5. Monitoring Matters

6. Petitions for Summary Suspension(s)

7. Proposed Stipulation(s), Final Decision(s) and Order(s)

8. Administrative Warning(s)

9. Review of Administrative Warning(s)

10. Proposed Final Decisions and Orders

11. Orders Fixing Costs/Matters Related to Costs

12. Case Closings

O) Consulting with Legal Counsel

REONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

ADJOURNMENT

The Next Scheduled Meeting is October 20, 2016.

**REAL ESTATE EXAMINING BOARD
MEETING MINUTES
JUNE 9, 2016**

PRESENT: Stephen Beers, Kitty Jedwabny (*Via GoToMeeting*), Michael Mulleady, Randal Savaglio, Dennis Pierce

EXCUSED: Marie Hetzer, Brian McGrath

STAFF: Brittany Lewin - Executive Director; Samantha Weishan - Bureau Assistant; Sharon Henes - Administrative Rules Coordinator; and Other Department Staff

CALL TO ORDER

Stephen Beers, Chair, called the meeting to order at 10:07 a.m. A quorum of five (5) members was confirmed.

ADOPTION OF AGENDA

Amendments to the Agenda:

- *Remove Item L: Presentation and Deliberation on Credentialing Matters*

MOTION: Randal Savaglio moved, seconded by Dennis Pierce, to adopt the agenda as amended. Motion carried unanimously.

APPROVAL OF THE MINUTES

MOTION: Randal Savaglio moved, seconded by Dennis Pierce, to approve the minutes of April 21, 2016 as published. Motion carried unanimously.

LEGISLATIVE AND ADMINISTRATIVE RULE MATTERS

Real Estate Examining Board 11-25 Relating to Act 258

MOTION: Randal Savaglio moved, seconded by Michael Mulleady, to approve the amending of REEB 11-25 relating to Act 258 for emergency rule submission to the governor, publication in an official newspaper and for the permanent rule posting of economic impact. Motion carried unanimously.

CREDENTIALING MATTERS

Discussion on Delegated Authority for Conviction Review

MOTION: Michael Mulleady moved, seconded by Dennis Pierce, to delegate authority to the DSPS attorney to review and approve applications with up to two OWIs, each 5 or more years old. Motion carried unanimously.

MOTION: Michael Mulleady moved, seconded by Dennis Pierce, to delegate authority to the DSPS attorneys to review and approve applications with ordinance violations which are not substantially-related to the practice of real estate, including but not limited to:

- 1) Littering
- 2) Loitering
- 3) Up to two (2) Underage Drinking offenses
- 4) Resisting/Obstructing an Officer
- 5) Public Urination
- 6) Disorderly Conduct
- 7) Trespassing
- 8) Disturbing the Peace
- 9) Operating after Suspension/Revocation

Motion carried unanimously.

MOTION: Michael Mulleady moved, seconded by Dennis Pierce, to delegate authority to the DSPS attorneys to review and approve applications for Real Estate Broker applications which have previously been approved for a full Real Estate Salesperson credential after a criminal background check and there has been no criminal activity since the previous license approval. Motion carried unanimously

CLOSED SESSION

MOTION: Randal Savaglio moved seconded by Dennis Pierce, to convene to closed session to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85 (1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.). Stephen Beers read the language of the motion. The vote of each member was ascertained by voice vote. Roll Call Vote: Stephen Beers-yes; Kitty Jedwabny-yes; Michael Mulleady-yes; Dennis Pierce-yes; Randal Savaglio-yes. Motion carried unanimously.

The meeting convened into closed session at 11:58 a.m.

RECONVENE TO OPEN SESSION

MOTION: Michael Mulleady moved, seconded by Randal Savaglio, to reconvene into open session. Motion carried unanimously.

The meeting reconvened into open session at 12:06 p.m.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MOTION: Michael Mulleady moved, seconded by Randal Savaglio, to affirm all votes made in Closed Session. Motion carried unanimously.

DIVISION OF LEGAL SERVICES AND COMPLIANCE MATTERS

Administrative Warnings

MOTION: Randal Savaglio moved, seconded by Dennis Pierce, to issue an Administrative Warning in the following matters:

1. 14 REB 118 – M.T.N.
2. 14 REB 150 – S.A.W.

Motion carried unanimously.

Proposed Stipulations, Final Decisions And Orders

MOTION: Dennis Pierce moved, seconded by Randal Savaglio, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against:

1. 14 REB 061 – Lance W. Nowak
2. 14 REB 093 – Bradley R. Hetland, Paradigm Real Estate Group, Inc.
3. 14 REB 093 – Susan K. Wells
4. 15 REB 052 – Caston Love
5. 15 REB 102 – David C. Larson and Lancer Group, Inc.

Motion carried unanimously.

Case Closings

MOTION: Randal Savaglio moved, seconded by Michael Mulleady, to close the following cases for the reasons outlined below:

1. 14 REB 061 (O.R.R.E. LLC) – Prosecutorial Discretion (P7)
2. 14 REB 090 (T.P.S., B.R.E.I.) – Prosecutorial Discretion (P3)
3. 14 REB 114 (G.S., D.K., W.W.P. LLC) – Insufficient Evidence
4. 15 REB 010 (M.M., T.R.E.G.I., C.P.) – No Violation
5. 15 REB 042 (L.B.) – No Violation
6. 15 REB 046 (K.M., 24/7 R.E. LLC) – Prosecutorial Discretion (P3)
7. 15 REB 048 (L.V.E., C.P., T.R.E.G.I.) – No Violation
8. 15 REB 065 (T.G., P.L., L.R.I.) – Insufficient Evidence
9. 15 REB 68 (S.D.S., M.H.P., M.R. LLC) – Insufficient Evidence

Motion carried unanimously.

PROPOSED FINAL DECISIONS AND ORDERS

Casey J. Ehler - (DHA Case #SPS-1510085)(DLSC Case #13 REB 127)

MOTION: Michael Mulleady moved, seconded by Randal Savaglio, to delegate decision making authority to Mike Berndt, Chief Legal Counsel, in the matter of disciplinary proceedings against Respondent Casey J Ehler, DLSC case number 13 REB 127. Motion carried. Recused: Dennis Pierce

(Dennis Pierce recused himself and left the room for deliberation, and voting in the matter concerning Casey J. Ehler - (DHA Case #SPS-1510085)(DLSC Case #13 REB 127).)

ADJOURNMENT

MOTION: Randal Savaglio moved, seconded by Michael Mulleady, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 12:07 p.m.

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

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Kimberly Wood, Program Assistant Supervisor-Adv.		2) Date When Request Submitted: 8/10/2016 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Real Estate Examining Board			
4) Meeting Date: 8/18/2016	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Election of Officers and Board Appointments	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: 1) Elect a new Chair as a result of Stephen Beers resignation from the Board and execute any other officer elections as needed. 2) The new Chair should consider Board Liaison and Committee Appointments and work to fill gaps as a result of member resignation.			
11) Authorization			
<i>Kimberly Wood</i>		<i>8/10/2016</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.			

2016 ELECTION RESULTS	
Chair	Stephen Beers
Vice Chair	Michael Mulleady
Secretary	Randal Savaglio

2016 LIAISON APPOINTMENTS	
Credentialing Liaison	Randal Savaglio
Monitoring Liaison	Marie Hetzer
Professional Assistance Procedure (PAP) Liaison	Kitty Jedwabny
Office of Education and Examinations Liaison	Stephen Beers
Screening Panel Team 1	Dennis Pierce, Stephen Beers, Kitty Jedwabny
Screening Panel Team 2	Marie Hetzer, Michael Mulleady
Screening Panel Team 3	Randal Savaglio, Brian McGrath

2016 COMMITTEE MEMBER APPOINTMENTS	
Real Estate Rules Committee	Marie Hetzer, Michael Mulleady, Randal Savaglio
Council on Real Estate Curriculum and Examinations Chair	Marie Hetzer

**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: 9 August 2106 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			
4) Meeting Date: 18 August 2016	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Public Hearing on EmR1620 and Clearinghouse Rule 16-042 relating to real estate practice Review and respond to Clearinghouse Report and Public Hearing comments	
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: Hold Public Hearing at 10:00 a.m. Discuss any public hearing comments. Review, discuss and respond to any Clearinghouse comments.			
11) Authorization			
<i>Sharon Henes</i>		<i>9 August 2016</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.			

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 15.03, 17.02, 17.025, 17.03 (1), 17.04, 17.05, 17.06, 17.07, 17.08, 17.12, 18.02 (2) and 24.02 (2); to renumber REEB 11.02 (1); to renumber and amend REEB 15.04; to amend REEB 12.011 (1), Chapter 15 (title), 15.02 (1) and (3), 16.02 (1m), (2e), (2m), (2s), (3), (3m), (4), (4m) and (5), 16.03 (1) (intro.), (d) and (e), 16.04 (2), 16.06 (1) (c), (4) (a) and (8), 17.03 (title), 17.03 (2), 17.03 (4), 18.02 (6) (intro.) and (g), 18.031 (1) (intro.) and (a), (2), (3) and (5)(b), 18.032, 18.033, 18.034, 18.035, 18.036, 18.037, 18.04, 18.05, 18.06, 18.07, 18.09 (1)(intro.), (2) and (3), 18.10, 18.11, 18.13 (intro), (1) (intro.), (2), (3), (4), (5) and (6) (intro) and (e), 18.14, 23.03, 23.04, 24.01 (3), 24.02 (3), (5), (6), (9) and (13m), 24.04 (2) (a) and (b), (3) and (4), 24.05 (1) (a), (2), (4) and (5) (a) 3., 24.07 (1) (b) (title), (c), (3), (8) (a) 1., 1g., 1r., and 2 (intro.), a. and c. and (8) (b), (d) and (e), 24.10, 24.13 (2) (a), (3) (b), (4) and (5), 24.16 and 24.17 (1); to repeal and recreate Chapter REEB 17 (title) and 17.03 (3); and to create REEB 11.02 (1d), (1h), (1p), (5g) and (6m), 12.011 (1) (am), 15.02 (4) and 15.04 (2) relating to real estate practice.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Chapter 452, Stats.

Statutory authority: 15.08(5) (b), 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. [s. 15.08 (5) (b), Stats.]

Related statute or rule: N/A

Plain language analysis:

This rule updates the real estate code chapters to reflect current real estate practice as provided in 2015 Act 258 including: terminology, provisions relating to independent contractor relationship,

duties of licensees, supervision of licensees, use of unlicensed personal assistants, business representations, inactive license references, fees for predeterminations on criminal records, electronic records retention, use of forms and elimination of timeshare credential references.

SECTIONS 1 and 2 create definitions for three new terms defined in statute: “associated with a firm”, “associated with a subagent” and firm” by referring to the same definition as the statute. These sections also create a definition for “agency agreement” referring to the statutory definition. Lastly, the sections create a definition for “member of the licensee’s immediate family” which clarifies a previous definition for “immediate family”.

SECTIONS 3 and 4 removes the reference to timeshare salespersons due to Act 258 removing the requirement for credentialing of timeshare salespersons. These sections also create a \$68.00 fee for the binding determination as to whether the individual’s criminal record would disqualify the individual from obtaining a license prior to the individual submitting an application for the license. This provision allows an applicant who receives a favorable determination to credit the amount toward their application fee if the person applies within 1 year of the determination. Act 258 permits the Board to charge a fee for the cost of making this determination.

SECTIONS 5, 13, 15, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 38, 39, 41, and 42 update terminology.

SECTION 6 clarifies documents prepared or received by the licensee in addition to utilized shall be promptly provided. The section also includes rental agreements and clarifies the lease or rental agreement shall be provided upon execution of the lease or rental agreement.

SECTIONS 7 clarifies a broker or salesperson shall promptly distribute a copy of an agency agreement that has been accepted and signed by all parties to the client when the client signs an agency agreement.

SECTION 8 repeals the obsolete provision relating to closing statements.

SECTION 9 updates terminology and clarifies the record retention period in transactions without a date of closing or consummation begins from the date the listing contract or agency agreement is terminated. In addition, this section clarifies electronic or digital record retention may be utilized.

SECTION 10 creates a provision requiring brokers and salespersons to submit documents to the firm in a timely manner so that the firm can be in compliance with the record retention requirements.

SECTIONS 11 and 14 updates terminology and reflects forms are filled out based upon instruction and not intent of the party.

SECTION 12 updates terminology and adds quasi-governmental and tribal agencies to the form exception in order to provide clarification to the profession.

SECTIONS 17, 18, 19, 20, and 21 update terminology in provisions for persons associated with a firm and changes the references from code references to statutory references.

SECTION 23 repeals the obsolete definition of “cooperating broker”.

SECTION 34 repeals the “agency agreement” definition.

SECTION 37 updates terminology and clarifies family member language in order to be clear the code means a member of the family and not family as a unit.

SECTION 40 updates terminology and clarifies a pending written proposal or offer is one being negotiated.

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

Comparison with rules in adjacent states:

Illinois: Illinois does not have a predetermination process regarding criminal convictions. Illinois also does not use terminology relating to firm.

Iowa: Iowa does not have a predetermination process regarding criminal convictions. Iowa also does not use terminology relating to firm.

Michigan: Michigan does not have a predetermination process regarding criminal convictions. Michigan also does not use terminology relating to firm.

Minnesota: Minnesota does not have a predetermination process regarding criminal convictions. Minnesota also does not use terminology relating to firm.

Summary of factual data and analytical methodologies:

The Board reviewed all of the REEB chapters to implement the 2015 Act 258 changes.

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 Jeff.Weigand@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 53708-8366, or by email to Sharon.Henes@wisconsin.gov. Comments must be received at or before the hearing to be held on August 18, 2016 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. REEB 11.02 (1) is renumbered to 11.02 (1t)

SECTION 2. REEB 11.02 (1d), (1h), (1p), (5g) and (6m) are created to read:

REEB 11.02 (1d) “Agency agreement” has the meaning under s. 452.01 (1m), Stats.

(1h) “Associated with a firm” has the meaning under s. 452.01 (1o), Stats.

(1p) “Associated with a subagent” has the meaning under s. 452.01 (1p), Stats.

(5g) “Firm” has the meaning under s. 452.01 (4w), Stats.

(6m) “Member of the licensee’s immediate family” means any of the following:

(a) A parent, stepparent, grandparent, foster parent, child, stepchild, grandchild, foster child, brother, sister, aunt, uncle of the licensee.

(b) The spouse or domestic partner of the licensee or any person listed in par. (a).

SECTION 3. REEB 12.011 (1) is amended to read:

(1) An individual who does not possess a broker’s or salesperson’s license ~~or a time-share salesperson’s certificate~~ may apply to the board, without submitting a full application ~~and payment of application fee~~, for a determination of whether the individual would be disqualified from obtaining a license or certificate based upon a criminal conviction by submitting all of the following:-

SECTION 4. REEB 12.011 (1) (am) is created to read:

REEB 12.011 (1) (am) A fee in the amount of \$68.00. The fee may be applied to the application fee under s. REEB 12.01 (4) if the individual applies for a real estate broker or salesperson license within 1 year of the determination decision.

SECTION 5. Chapter REEB 15 (title) is amended to read:

CHAPTER REEB 15
BROKER'S OBLIGATION TO FURNISH COPIES AND MAINTAIN RECORDS

SECTION 6. REEB 15.02 (1) and (3) are amended to read:

REEB 15.02 Copies of documents (1) A broker or salesperson shall promptly provide an exact and complete copy of any document utilized, prepared or received by the licensee in real estate practice to any person who has signed the document.

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

SECTION 7. REEB 15.02 (4) is created to read:

REEB 15.02 (4) A broker or salesperson shall promptly distribute an exact and complete copy of a listing contract or agency agreement that has been accepted and signed by all parties to the client when the client signs an agency agreement.

SECTION 8. REEB 15.03 is repealed.

SECTION 9. REEB 15.04 is renumbered 15.04(1) and amended to read:

REEB 15.04 Retention of records.

(1) A broker firm shall retain for at least 3 2 years, unless required by federal law or there is an active or ongoing investigation by the Board, 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 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 the listing contract or the agency agreement is terminated. The broker shall make these These records shall be available for inspection and copying by the board. If the records are retained outside this state, the broker The firm shall, upon request of the board, promptly send exact and complete copies to the department without charge to the department or board. The Board may not require copies to be submitted beyond the retention period. Electronic or digital means may be used to retain records.

SECTION 10. REEB 15.04 (2) is created to read:

REEB 15.04 (2) A broker or salesperson shall submit in a timely manner documents and records to the firm related to transactions that are used or received by the broker or salesperson to assist in complying with sub. (1).

SECTION 11. REEB 16.02 (1m) (2e), (2m), (2s), (3), (3m), (4), (4m) and (5) are amended to read:

REEB 16.02 (1m) “Buyer agency/tenant representation agreement” means a written agency agreement authorizing a ~~broker~~ firm to provide brokerage services to the client for the procurement of an interest in property and providing the terms whereby the broker may earn a commission.

(2e) “Exclusive right to locate buyer agency/tenant representation agreement” means a written buyer agency/tenant representation agreement giving the ~~broker~~ firm the exclusive right to locate an interest in property for the client.

(2m) “Exclusive right to locate and negotiate buyer agency/tenant representation agreement” means a written buyer agency/tenant representation agreement giving the ~~broker~~ firm the exclusive right to locate an interest in property and to negotiate the procurement of an interest in property for the client.

(2s) “Exclusive right to negotiate buyer agency/tenant representation agreement” means a written buyer agency/tenant representation agreement giving the ~~broker~~ firm the exclusive right to negotiate the procurement of an interest in a property for the client.

(3) “Exclusive right to sell listing” means a written listing contract making a ~~broker~~ firm the exclusive agent for the sale of property for a specific period of time, and which entitles the listing broker to a commission if the property is sold by the owner, by the ~~broker~~ firm, or by anyone else.

(3m) “Listing contract” means a written agency agreement authorizing a ~~broker~~ firm to provide brokerage services to the client for the sale or rental of property and providing the terms whereby the broker may earn a commission.

(4) “Open listing” means a written listing agreement, which may be given to any number of ~~brokers~~ firms, with the first ~~broker~~ firm to secure a buyer under the terms of the listing agreement earning the commission.

(4m) “One-party listing” means a written listing contract containing all of the elements of an exclusive right to sell listing, except that listing ~~broker~~ firm is entitled to a commission only if the property is sold by the owner, by the ~~broker~~ firm, or by anyone else to a specific party or parties identified in the written listing contract.

(5) “Use a form” means to complete a contractual or conveyance form by filling in the blanks or modifying printed provisions on a form for the purpose of accomplishing the ~~intent~~ instruction of a party in a specific real estate transaction.

SECTION 12. REEB 16.03 (1) (intro.), (d) and (e) 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 ~~brokers~~ licensees.

(d) Forms prepared by governmental, quasi-governmental and tribal agencies for use in programs administered by them under authority provided by law.

(e) Forms to be used for a property management agreement between a ~~broker~~ firm and a landlord, prepared by the broker entering into the agreement, an attorney, or the landlord, that contain provisions relating to leasing, managing, marketing, and overall management of the landlord’s property.

SECTION 13. REEB 16.04 (2) is amended to read:

REEB 16.04 (2) For those kinds of real estate or business opportunity transactions for which the board has not approved contractual forms a licensee, when acting as an agent or a party, may use contractual forms drafted by a party or an attorney, if the name of the drafter is imprinted on the form before use by a licensee. For the purpose of this subsection, a listing ~~broker~~ firm is a party to the listing contract transaction.

SECTION 14. REEB 16.06 (1) (c), (4) (a) and (8) are amended to read:

REEB 16.06 (1) (c) Shall indicate that the form is reproduced by the licensee's firm, stating its address and telephone number at an appropriate place on the form.

(4) (a) The addendum has been prepared by the ~~broker~~ firm or an attorney who is identified on the addendum.

(8) A licensee shall use approved forms and prepare addenda in such a manner as to adequately accomplish the contractual ~~intent~~ instruction of the person for whom the licensee uses the forms and prepares the addenda.

SECTION 15. Chapter REEB 17 (title) is repealed and recreated to read:

CHAPTER REEB 17 LICENSEES ASSOCIATED WITH A FIRM

SECTION 16. REEB 17.02 and 17.025 are repealed.

SECTION 17. REEB 17.03 (title) is amended to read:

REEB 17.03 Limitations on ~~employees of a broker~~ licensees associated with a firm.

SECTION 18. REEB 17.03 (1) is repealed.

SECTION 19. REEB 17.03 (2) is amended to read:

REEB 17.03 (2) A licensee ~~who is employed by a broker-employer~~ associated with a firm may personally employ or engage as an independent contractor licensed persons only as unlicensed personal assistants within the meaning of s. ~~REEB 17.02 (5)~~ 452.34(1), Stats., subject to the provisions in s. ~~REEB 17.12~~ 452.34, Stats.

SECTION 20. REEB 17.03 (3) is repealed and recreated to read:

REEB 17.03 (3) A broker shall be associated with only one firm unless the broker is engaging in independent practice under s. 452.30 (6) (a) or acting as business representative for a licensed business entity under s. 452.12 (2) (a).

SECTION 21. REEB 17.03 (4) is amended to read:

REEB 17.03 (4) A salesperson ~~or time-share salesperson~~ may engage in real estate practice only when ~~employed by a broker~~ associated with a firm.

SECTION 22. REEB 17.04, 17.05, 17.06, 17.07, 17.08, and 17.12 are repealed.

SECTION 23. REEB 18.02 (2) is repealed.

SECTION 24. REEB 18.02 (6) (intro) and (g) are amended to read:

REEB 18.02 (6) (intro) “Real estate trust funds” means any cash, checks, share drafts, drafts, or notes received by a ~~broker or a broker’s salesperson or time share salespersons~~ firm or licensee on behalf of a principal or any other person including any of the following:

(g) Initial and additional earnest money downpayments and other funds received in connection with offers to purchase, options, and exchanges, even if the broker, ~~or salesperson, or time share salesperson~~ receives the downpayments or funds when negotiating the sale of real estate or a business opportunity which the broker, ~~or salesperson, or time share salesperson~~ owns in whole or in part, or when negotiating the purchase of real estate or a business opportunity for ownership in whole or in part by the broker, ~~or salesperson, or time share salesperson~~.

SECTION 25. REEB 18.031 (1) (intro) and (a), (2), (3) and (5) (b) are amended to read:

REEB 18.031 (1) (intro) TIME OF DEPOSIT. A ~~broker~~ firm shall deposit all real estate trust funds received by the ~~broker or broker’s salespersons or time share salespersons~~ firm or licensees associated with the firm in a real estate trust account within 48 hours of receipt of the trust funds. If funds are received on a day prior to a holiday or other day when the depository institution is closed, the ~~broker~~ firm shall deposit the funds within the next 2 business days. If a ~~broker~~ firm receives funds which cannot be deposited by the ~~broker~~ firm, the ~~broker~~ firm shall, no later than one business day after receipt, either:

(a) Forward the funds to the payee, if someone other than the ~~broker~~ firm.

(2) DUTY OF ~~SALESPERSON~~ LICENSEES. A ~~salesperson or time share salesperson~~ licensee who receives real estate trust funds shall promptly submit the funds to the ~~employer~~ broker firm of the ~~salesperson or time share salesperson~~ licensee.

(3) INTEREST-BEARING ACCOUNTS.

(a) Client funds shall be deposited in an interest-bearing common trust account and the department of administration shall be the beneficial owner of the interest accruing to the account, minus any service charges. At no time may the ~~broker~~ firm remove or use the interest earned on such accounts.

(b) Real estate trust funds, other than client funds, may be deposited in an interest-bearing account if the ~~broker~~ firm obtains from the persons for whom the funds are being held written authorization to deposit the funds in an interest-bearing account and if the authorization specifies how and to whom the interest will be disbursed. None of the interest earned on the funds deposited into an interest-bearing account may inure to the benefit of the ~~broker~~ firm.

(5) (b) A ~~broker~~ firm may directly deposit into an owner’s account rental application deposits, rents and security deposits which may have been made payable to one or more owners.

The ~~broker~~ firm or licensee associated with the firm may be designated as a signatory on the

owner's account and may make disbursements from that account to the extent authorized by the owner in writing.

SECTION 26. REEB 18.032, 18.033, 18.034, 18.035, 18.036 and 18.037 are amended to read:

REEB 18.032 Number of real estate trust accounts. A broker firm may maintain more than one real estate trust account, including more than one interest-bearing common trust account for client funds, if the broker firm notifies the department of these accounts, as required in s. REEB 18.035.

REEB 18.033 Opening and closing real estate trust accounts. (1) OPENING AN ACCOUNT. A broker firm shall open a real estate trust account if the broker firm receives real estate trust funds.

(2) CLOSING AN ACCOUNT. A broker firm may close a real estate trust account if no real estate trust funds remain in the account or for reasons specified in s. REEB 18.035.

REEB 18.034 Account designation. (1) NAME ON TRUST ACCOUNT. A broker firm shall name the broker firm's real estate trust account with the name appearing on the broker's license or with a trade name submitted to the department under s. REEB 23.03 and shall include the words "trust account" in the name of the account.

(2) NAME ON CHECKS. A broker firm shall imprint the name of the real estate trust account on real estate trust account checks, share drafts or drafts.

REEB 18.035 Duty to notify the department. (1) OPENING AN ACCOUNT. No later than 10 days after opening any real estate trust account a broker firm shall provide the department with the name and number of the account, with the name of the depository institution in which the broker firm holds the account and with information concerning whether the account is for client funds or for real estate trust funds other than client funds. The information shall be provided on a form, as required in s. REEB 18.037.

(2) CHANGING OR CLOSING AN ACCOUNT. A broker firm shall notify the department no later than 10 days after a broker firm changes a real estate trust account name or number, changes the real estate trust account from one depository institution to another, closes a real estate trust account or changes a real estate trust account to or from an interest-bearing common trust account established for client's funds. The notification shall be provided on a form, as required in s. REEB 18.037. When closing a real estate trust account, a broker firm may inform the board by letter.

REEB 18.036 Authorization to examine real estate trust accounts and records.

(1) BROKER'S FIRM'S AUTHORIZATION. No later than 10 days after opening a real estate trust account a broker firm shall furnish the department authorization for the department to examine and audit all of the broker's firm's real estate trust account records and authorization for the department of administration to examine all of the broker's firm's interest-bearing common trust accounts maintained for client funds. The authorization shall be provided on a form, as required in s. REEB 18.037.

(2) DEPOSITORY INSTITUTION'S CERTIFICATION. No later than 10 days after opening a real estate trust account a broker firm shall obtain the certification of every depository institution in which

the broker firm maintains a real estate trust account attesting to the existence of the account and consenting to the examination and audit of the account by a duly authorized representative of the department or, in the case of interest-bearing common trust accounts maintained for client funds, the department of administration. The certification shall be provided to the department on a form, as required in s. REEB 18.037.

18.037 Form for notification and authorization. A broker firm shall provide the information and authorization as specified in ss. REEB 18.035 and 18.036 on a form provided by the department. This form shall be designated “consent to examine and audit trust account.”

SECTION 27. REEB 18.04, 18.05, 18.06 and 18.07 are amended to read:

REEB 18.04 Authorization to sign trust account checks. A broker firm may authorize other persons to sign real estate trust account checks, share drafts or drafts drawn on the broker’s firm’s real estate trust account if the person is at least 18 years of age.

REEB 18.05 Receipt for earnest money received by the broker licensee. A broker licensee shall indicate on the offer to purchase the receipt of earnest money received from a buyer at the time the offer is drafted.

REEB 18.06 Escrow agreement for earnest money not held by the broker firm. If the parties to a transaction do not desire that the broker firm hold the earnest money in the broker’s firm’s real estate trust account, and wish to designate an escrow agent other than the broker firm, the broker licensee may not draft the escrow agreement. The escrow agreement shall be drafted by the parties or an attorney. The broker firm may not hold the funds in the firm’s real estate trust account, nor may the broker firm act in any way as custodian of the funds for the parties. The funds, pursuant to the escrow agreement, shall be held by a party other than the broker firm, such as: a bank, a savings and loan association, a credit union, or an attorney.

REEB 18.07 After closing escrow agreements. (1) BY SEPARATE AGREEMENT. If the parties to a contract wish, or are required, to place funds in escrow which are to be held after closing by the broker firm in the broker’s firm’s trust account or by another person until some future occurrence, an agreement to that effect shall be prepared by the parties or an attorney. If the broker firm holds these funds, the broker firm shall place them in the broker’s firm’s real estate trust account. The broker licensee may draft the escrow agreement if a form for this purpose has been approved by the board for use by licensees pursuant to s. REEB 16.03.
(2) ON CLOSING STATEMENT. A broker firm may hold in the broker’s firm’s trust account without a separate escrow agreement occupancy or possession escrows, escrows for final proration of taxes, and escrows for charges incurred by a seller but not yet billed, provided that the closing statement shows that the broker firm is holding the funds.

SECTION 28. REEB 18.09 (1) (intro), (2), and (3) are amended to read:

REEB 18.09 Disbursement of trust funds. (1) PROPER DISBURSEMENT. A broker firm who disburses trust funds from the ~~broker's~~ firm's real estate trust account under any of the following circumstances shall not be deemed to have violated s. 452.14 (3) (i), Stats.:

(2) NOTIFICATION OF DISBURSEMENT. Prior to making a disbursement of trust funds under sub.

(1) (a) where the broker firm has knowledge that not all parties agree that the rejection or withdrawal occurred prior to binding acceptance, and prior to making a disbursement under sub.

(1) (e), (f) and (g) where the broker firm has knowledge that either party disagrees with the disbursement, the broker firm shall attempt to notify all parties in writing of the intent to disburse. The notice shall be delivered by certified mail to the parties' last known addresses and shall state to whom and when the disbursement will be made. The disbursement may not occur until 30 days after the date on which the notice is sent.

(3) WITHDRAWAL OF COMMISSIONS. (a) A broker firm shall withdraw commissions or fees earned by the broker firm from real estate trust accounts maintained by the broker firm within 24 hours after transactions are consummated or terminated, or after the commissions or fees are earned in accordance with the contract involved.

(b) A broker firm providing property management services shall disburse the fee earned for providing property management services as a regular monthly basis unless otherwise agreed in a written property management agreement signed by the parties to that agreement.

SECTION 29. REEB 18.10 and 18.11 are amended to read:

REEB 18.10 Comingling funds prohibited. (1) DEPOSITABLE FUNDS. A broker firm shall deposit only real estate trust funds in the ~~broker's~~ firm's real estate trust account.

(a) Except for sub. (b), a broker firm shall not commingle ~~the broker's~~ personal funds or other funds in the real estate trust account.

(b) A broker firm may deposit and maintain a sum not to exceed \$300.00 from ~~the broker's~~ personal funds in any real estate trust account. Such sum shall be specifically identified and deposited to cover service charges relating to the real estate trust account.

(2) ADDITIONAL FUNDS. A broker firm shall deposit additional personal funds in sums consistent with sub. (1) (b) in the ~~broker's~~ firm's real estate trust account within 10 business days following receipt of a statement or other notification from a depository institution that a service charge has been made against the account for which insufficient personal funds are available in the real estate account.

REEB 18.11 Non-depositable items. A broker firm shall not hold any instrument, equity or thing of value which is not depositable in a real estate trust account. Non-depositable items shall be held by one of the parties to a transaction or some other party, subject to an escrow agreement prepared by the parties or an attorney.

SECTION 30. REEB 18.13 (intro), (1) (intro), (2), (3), (4), (5), and (6) (intro) and (e) are amended to read:

REEB 18.13 Bookkeeping system. Each broker firm shall maintain and be responsible for a bookkeeping system in the ~~broker's~~ firm's office consisting of at least the following:

- (1) CASH JOURNAL. A broker firm shall maintain a record, called a journal showing the chronological sequence in which real estate trust funds are received and disbursed as follows:
- (2) LEDGER. A broker firm shall maintain a record including the receipts and the disbursements as they affect each particular transaction, including transactions between buyer and seller, landlord and tenant, etc. The ledger entry shall include the names of all parties to a transaction, the dates and the amounts received and the name of the party or parties providing the money if different from the buyer. Ledger entries shall include at least the date, payee, number of the check, share draft or draft and amount when funds are disbursed. The ledger shall include a running balance and segregate each transaction. The broker firm shall maintain a separate ledger or separate section of the ledger for each of the various kinds of real estate transactions, including sales, rental collections, or mortgage and land contract collections.
- (3) ACCOUNT RECONCILIATION. The broker firm or a person designated by the broker firm shall reconcile the real estate trust account or accounts in writing each month except in the case where there has been no activity during the month. The written reconciliation shall include at least the ending account statement balance, the date and amounts of the deposits in transit, the number of the check, share draft, or draft, and amount of checks, share drafts, or drafts written but not paid by the depository institution as of the ending date shown on the account statement to be reconciled, and the reconciled account statement ending balance.
- (4) TRIAL BALANCE. The broker firm shall prepare or have prepared, in conjunction with sub. (3), a written listing of all open items in the real estate trust account. The written listing shall be referred to as the “trial balance”. The listing shall include at least the names of all parties to the transaction and the amount held in trust for the parties at the time corresponding to the account reconciliation. The broker firm may in lieu of the names of the parties to the transaction substitute the ledger page number or other means of identification from the ledger to label the funds in the trial balance.
- (5) VALIDATION. The broker firm or a person designated by the broker firm shall review the reconciled account statement balance, the open ledger account listing, and the journal running balance to ensure that all of these records are valid and in agreement as of the date the account statement has been reconciled.
- (6) USE OF COMPUTERS. A computerized system may be used to maintain the broker's firm's bookkeeping system if:
- (e) ~~All records which are not maintained as written paper records are capable of being immediately converted to written paper records and immediately shall be made available for inspection and copying by the department and exact and completed copies promptly sent to the department upon the request of the department without charge to the department or board for the purposes of an audit or investigation.~~

SECTION 31. REEB 18.14 is amended to read:

REEB 18.14 Violation of rules. A broker firm who fails to comply with the rules in this chapter shall be considered to have demonstrated incompetency to act as a licensed individual broker or a licensed broker business entity in a manner as to safeguard the interests of the public, as specified in s. 452.14 (3), Stats.

SECTION 32. REEB 23.03 and 23.04 are amended to read:

REEB 23.03 Trade name. (1) DEFINITION. “Trade name” means the name other than the name appearing on the ~~broker’s~~ license, under which the ~~broker~~ licensed individual broker or a licensed broker business entity advertises or does business.

(2) NOTIFICATION. A ~~licensed broker~~ licensee, before doing business under any trade name, shall notify the department in writing of the trade name.

REEB 23.04 Change of form of business organization. (1) APPLICATION. A licensed broker business entity who intends to conduct business under a different ~~form of~~ business ~~entity type~~, shall apply for a new license. Upon payment of the fee specified in s. 440.05 (1), Stats., the ~~department board~~ shall issue to the applicant, ~~without examination~~, a license under the new ~~form of entity~~ business type.

(2) NEW LICENSE REQUIRED. A broker business entity shall not engage in real estate activities under a different ~~form of~~ business ~~entity type~~ until a new license is issued.

SECTION 33. REEB 24.01 (3) is amended to read:

REEB 24.01 (3) If a licensee violates rules in this chapter, the licensee has demonstrated incompetency to act as a broker, ~~salesperson~~ or ~~time share~~ salesperson in such manner as to safeguard the interests of the public under s. 452.14 (3) (i), Stats. However, the term “incompetency” is not limited in its meaning to violations of this chapter.

SECTION 34. REEB 24.02 (2) is repealed.

SECTION 35. REEB 24.02 (3), (5), (6), (9) and (13m) are amended to read:

REEB 24.02 (3) “Brokerage service” means any service described under s. 452.01 (2), Stats., provided ~~by a broker to another~~ a person by a firm and any licensees associated with the firm.

(5) “Buyer’s ~~broker firm~~” means a ~~licensee firm~~ who has an agency agreement with a buyer.

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

(9) “Customer” means a party to a transaction who is provided brokerage services by a ~~broker firm~~ but who is not a client.

(13m) “Principal ~~broker firm~~” means a ~~broker firm~~ who engages a subagent to provide brokerage services in a transaction.

SECTION 36. REEB 24.04 (2) (a) and (b), (3) and (4) are amended to read:

REEB 24.04 (2) DISCLOSURE OF NAME. (a) Except for advertisements for the rental of real estate owned by the ~~broker licensee~~, a ~~broker licensee~~ shall in all advertising disclose the ~~broker’s~~ firm name exactly as printed on the ~~broker’s~~ licensed individual broker or a licensed broker business entity’s license or disclose a trade name previously filed with the department, as required by s. REEB 23.03, and in either case clearly indicate that the ~~broker firm~~ is a business concern and not a private party.

(b) Except for advertisements for the rental of real estate owned by the licensee, a licensee ~~employed by a broker~~ associated with a firm shall advertise under the supervision of and in the name of the employing broker firm.

(3) ADVERTISING WITHOUT AUTHORITY PROHIBITED. ~~Brokers~~ Licensees shall not advertise property without the consent of the owner.

(4) ADVERTISED PRICE. ~~Brokers~~ Licensees shall not advertise property at a price other than that agreed upon with the owner; however, the price may be stated as a range or in general terms if it reflects the agreed upon price.

SECTION 37. REEB 24.05 (1) (a), (2), (4) and (5) (a) 3. is amended to read:

REEB 24.05 (1) COMPENSATION. (a) A licensee acting as an agent in a real estate or business opportunity transaction may not accept any fee or compensation related to the transaction from any person, other than the licensee's client, principal ~~broker firm~~, or ~~broker-employer firm~~ the licensee is associated with without prior written consent from all parties to the transaction.

(2) DISCLOSURE OF INTEREST. A licensee acting as an agent in a real estate or business opportunity transaction on the licensee's own behalf, on behalf of the licensee's ~~immediate family or firm~~, on behalf of any member of the licensee's immediate family or any combination of members of the licensee's immediate family, or on behalf of any other 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 this subsection, a licensee shall obtain the written consent in the offer to purchase, option, lease or other transaction contract.

(4) DISCLOSURE TO SELLER. A listing ~~broker firm~~ may not pay any compensation or incentive to a licensee who is acting as a buyer in a transaction without prior written consent from the seller.

(5)(a)3. Any other negotiation with the seller or the listing ~~broker firm~~.

SECTION 38. REEB 24.07 (1) (b) (title) and (c), (3), (8) (a) 1., 1g., 1r., and 2 (intro), a. and c., and (8) (b), (d) and (e) are amended to read:

REEB 24.07 (1) (b) *Listing broker firm.* When listing real estate and prior to execution of the listing contract, a licensee shall inspect the real estate as required by sub. (1), and shall make inquiries of the seller on the condition of the structure, mechanical systems and other relevant aspects of the property as applicable. The licensee shall request that the seller provide a written response to the licensee's inquiry.

(c) *Other licensees.* Licensees, other than listing ~~brokers firm~~, shall inspect the real estate as required by sub. (1) prior to or during the showing of the property, unless the licensee is not given access for a showing.

(3) DISCLOSURE OF INFORMATION SUGGESTING MATERIAL ADVERSE FACTS. A licensee, when engaging in real estate practice, who becomes aware of information suggesting the possibility of material adverse facts to the transaction, shall be practicing competently if the licensee discloses to the parties the information suggesting the possibility of material adverse facts to the transaction in writing and in a timely fashion, recommends the parties obtain expert assistance to inspect or investigate for possible material adverse facts to the transaction, and, if directed by the parties, drafts appropriate inspection or investigation contingencies. This provision is not limited to the condition of the property, but includes other material adverse facts to the transaction, including but not limited to defects and conditions included within the report form under ~~s.~~ ss. 703.33 and 709.03, Stats. A licensee is not required to retain third party inspectors or investigators to perform investigations of information suggesting the possibility of a material adverse fact to the transaction.

(8) DISCLOSURE OF AGENCY. (a) *General requirements.* 1. A ~~broker firm~~ may not negotiate on behalf of a party who is not the ~~broker's firm's~~ client unless the ~~broker firm~~ provides to the party a copy of the ~~broker~~ disclosure to customers required under s. 452.135 (1), Stats. If the brokerage services are related to real estate primarily intended for use as a residential property containing one to 4 dwelling units, the ~~broker firm~~ shall request the party's signed acknowledgement that the party has received a copy of the written disclosure statement.

1g. A ~~broker firm~~ may not negotiate on behalf of a client unless the ~~broker firm~~ gives the client a copy of the ~~broker~~ disclosure required under s. 452.135 (2), Stats.

1r. If a client enters into an agency agreement with a ~~broker 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 ~~broker~~ disclosure to clients is not incorporated into the agency agreement, the ~~broker firm~~ shall request the client's signed acknowledgement that the client has received a copy of the written disclosure statement required in s. 452.135 (2), Stats.

2. Licensees acting as agents of potential buyers of real estate that is used or intended to be used principally for one to 4 family residential purposes, who are negotiating directly with the seller or who are aware that the owner of the real estate has granted a listing ~~broker firm~~ the exclusive right to sell, shall notify the seller or the listing ~~broker firm~~, as applicable, of the licensee's buyer agency relationship at the earlier of all of the following:

a. The first contact with the seller or the listing ~~broker firm~~ where information regarding the seller or transaction is being exchanged.

c. Any other negotiation with the seller or the listing ~~broker firm~~.

(b) *Agency agreements.* 1. ~~Brokers or their salespeople~~ Firms and the licensees associated with the firm shall explain to their clients the responsibilities of ~~seller's listing agents, buyer's agents, and subagents~~ before entering into an agency agreement.

2. No ~~broker or broker's salesperson~~ firm or licensees associated with the firm may permit other ~~brokers~~ firms to act as subagents in a transaction unless the ~~broker's firm's~~ client has authorized the use of a subagent in the agency agreement.

(d) *Subagency arrangements.* 1. A listing ~~broker firm~~ shall provide a ~~broker~~ disclosure statement to a customer as required in s. 452.135 (1), Stats., to the buyer if negotiations are being conducted directly with the buyer and not through a buyer's ~~broker firm~~.

2. A buyer's ~~broker firm~~ shall provide a ~~broker~~ disclosure statement to a customer as required in s. 452.135 (1), Stats., to a seller if negotiations are being conducted directly with the seller and not through a seller's ~~broker firm~~.

3. A subagent shall provide a ~~broker~~ disclosure statement to a customer as required in s. 452.135 (1), Stats., with whom he or she is working but not to the principal ~~broker's firm's~~ client.

4. A principal ~~broker firm~~ is not required to provide a ~~broker~~ disclosure statement to a customer as required in s. 452.135 (1), Stats., to a customer of their subagents.

(e) *Agency agreements for lease and property management contracts.* 1. A licensee who is entering into agency agreements for lease or property management contracts shall

provide to his or her clients the ~~broker~~ disclosure statement as required in s. 452.135 (2), Stats.

2. A licensee shall provide to prospective tenants a ~~broker~~ disclosure statement as required in s. 452.135 (1), Stats., when negotiating the terms of a lease on behalf of the client.

SECTION 39. REEB 24.10 is amended to read:

REEB 24.10 Net listing prohibited. Licensees shall not obtain, negotiate or attempt to obtain or negotiate any listing contract providing for a stipulated net price to the owner with the excess over the stipulated net price to be received by the ~~broker~~ firm as commission.

SECTION 40. REEB 24.13 (2) (a), (3) (b), (4) and (5) are amended to read:

REEB 24.13 (2) (a) Listing ~~brokers~~ firms shall permit access to listed property for showing purposes, to all buyers and persons assisting or advising buyers, without unreasonable delay, unless the buyer's or other person's access is contrary to specific written instructions of the seller.

(3) (b) A listing individual licensed broker acting as a sole proprietor or ~~the listing broker's employee~~ licensee associated with a listing firm may not submit his or her own personal written proposal or offer to purchase a property which the broker firm has listed if the broker or broker's employee licensee has knowledge of the terms of any pending offer, except that a broker firm may arrange for a guaranteed sale at the time of listing.

(4) NOTIFICATION OF ACTION ON WRITTEN PROPOSAL. Licensees shall promptly inform their clients and customers whether the other party has accepted, rejected, or countered their written proposal. A licensee shall immediately provide a written statement to the other party's ~~broker~~ firm that includes the date and time when the written proposal was presented when such a statement is requested by the other party or the other party's ~~broker~~ firm. A licensee shall immediately provide a written statement to the other party's ~~broker~~ firm that includes the date and time when the written proposal was rejected or had expired without acceptance when such a statement is requested by the other party or the other party's ~~broker~~ firm.

(5) NEGOTIATION THROUGH ~~BROKER~~ FIRM. A licensee may not negotiate a sale or lease of real estate directly with a party if the licensee knows that the party has an unexpired written contract in connection with the real estate which grants to another licensee an exclusive right to sell, lease, or negotiate. All negotiations shall be conducted with the ~~broker~~ firm holding the exclusive right to sell, lease, or negotiate, and not with the party, except with the consent of the ~~broker~~ firm or where the absence of the ~~broker~~ firm, or other similar circumstances, reasonably compels direct negotiation with the party. A listing ~~broker~~ firm has no duty to investigate whether a buyer has granted a buyer's agent an exclusive right to negotiate.

SECTION 41. REEB 24.16 is amended to read:

REEB 24.16 Availability of rules. ~~Brokers~~ Firms shall have the rules of the department readily available in all offices for the use of all licensees.

SECTION 42. REEB 24.17 (1) is amended to read:

REEB 24.17 (1) VIOLATIONS OF LAW. Licensees may not violate, or aid or abet the violation of, any law the circumstances of which substantially relate to the practices of a real estate ~~broker or salesperson~~ licensee. A licensee who has been convicted of a crime shall send to the board within 48 hours after the judgment of conviction a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction in order that the board may determine whether the circumstances of the crime of which the licensee was convicted are substantially related to the practice of a real estate ~~broker or salesperson~~ licensee, pursuant to s. 111.335 (1) (c), Stats.

SECTION 43. 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)

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	
2. Administrative Rule Chapter, Title and Number REEB 11-24	
3. Subject Real Estate Practice	
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)
6. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Cost	
7. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
8. Would Implementation and Compliance Costs Be Greater Than \$20 million? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9. Policy Problem Addressed by the Rule This rule implements 2015 Act 258.	
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 14 days for economic comments and none were received	
11. Identify the local governmental units that participated in the development of this EIA. None	
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 or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units or the State's economy as a whole.	
13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit is to update the current code to reflect the changes to terminology and the practice of real estate due to 2015 Act 2015.	
14. Long Range Implications of Implementing the Rule The long range implication is having the code and statute in conformity.	
15. Compare With Approaches Being Used by Federal Government None	
16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota) Our surrounding states do not use terminology relating to firm. The surrounding states do not have a predetermination process regarding criminal convictions.	
17. Contact Name Sharon Henes	18. Contact Phone Number (608) 261-2377

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

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ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 16-042

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

In the rule summary’s listing of statutory authority, the Board should include a citation to s. 452.07, Stats., which specifically requires the Board to promulgate certain rules and grants the board the discretion to promulgate rules under certain circumstances. A description of this authority should also be added to the rule summary’s explanation of agency authority.

2. Form, Style and Placement in Administrative Code

a. In the enumeration of provisions treated by the proposed rule, the following revisions should be made:

- (1) Insert “REEB” in the following locations:
 - (a) Between “Chapter” and “15” on line 3.
 - (b) Before “15.02 (1) and (3)” on line 3.
 - (c) Before “17.03 (3)” on line 12.
- (2) Revise the two instances of the word “Chapter” to “ch.”, on lines 3 and 11. [s. 1.03 (1) (Example), Manual.]
- (3) Remove the second and third instances of “17.03” in the listing of “17.03 (title), 17.03 (2), 17.03 (4)” on line 5. [s. 1.02 (1) (Example), Manual.]

- (4) Insert a space between “(5)” and “(b)” on line 6 and between “(1)” and “(intro.)” on line 7. [s. 1.03 (1) (Example), Manual.]
- (5) Insert a period in two designations of “(intro.)” on line 8, after “18.13” and after “(6)”. [s. 1.03 (3), Manual.]
- (6) Insert a period after “and 2” on line 10.
- (7) Remove the second instance of “(8)” on line 11.
- (8) Insert a comma between “15.04 (2)” and “relating to real estate practice”. [s. 1.02 (1) (Example), Manual.]

b. In the enumeration of provisions treated by the proposed rule, and in the corresponding treatment clauses for the SECTIONS of the proposed rule, consider revising the listing of consecutively affected sections to be an inclusive series as follows:

- (1) “17.04 to 17.12” on line 2.
- (2) “(2e) to (5)” on line 4.
- (3) “18.032 to 18.07” on lines 6 and 7.
- (4) “(2) to (5)” on line 8.
- (5) “1. to 1r.” on line 10. [ss. 1.01 (9) (d) and 1.07 (2) (Table), Manual.]

c. An entry should be inserted after the heading in the rule summary for the analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis.

d. In s. REEB 12.011 (1) (am), consider moving the second sentence of the created provision. The first sentence, “A fee in the amount of \$68.00.”, is appropriately placed under s. REEB 12.011 (1) as part of the list of items that must be submitted to the Board in order to obtain a predetermination. The subsequent language about how the fee may be applied is a substantive provision that would be more appropriately placed later in the section, perhaps as an independent subsection.

e. In ch. REEB 15 (title), the amended title should not be in bold type. [s. 1.05 (2) (a), Manual.]

f. In SECTION 7 of the proposed rule, the created provision should not be underlined. [s. 1.055 (2), Manual.]

g. In the treatment clause for SECTION 9 of the proposed rule, a space should be inserted between “15.04” and “(1)”.

h. In s. REEB 16.03 (1) (intro.), the underscored period should be removed, and a colon should be shown without strike-through or underscoring to reflect the current rule language.

i. In SECTION 15 of the proposed rule, the recreated title should not be in bold type. [s. 1.05 (2) (a), Manual.]

j. In the treatment clauses for SECTIONS 24, 25, 28, 30, and 38 of the proposed rule, insert a period in each designation of “(intro.)”. [s. 1.03 (3), Manual.]

k. In s. REEB 18.034 (1), the second instance of the word “broker” with a strike-through should be shown as “broker’s” to reflect the current rule language. [s. 1.06 (1) (a), Manual.]

l. In s. REEB 18.14, the phrase “real estate broker” should be inserted and shown with a strike-through before the phrase “licensed individual broker” to reflect the current rule language, and the phrase “licensed individual broker or a licensed broker business entity” should be underscored because it is inserted language. [s. 1.06 (1) (a), Manual.]

m. Consider moving the definitions of “client” and “customer” under ch. REEB 24 to ch. REEB 11 so that they apply to all REEB chapters, not just ch. REEB 24. The term “client” does appear in other chapters. Definitions could cite to s. 452.01 (3m) and (3s), Stats., respectively. [s. 1.01 (7) (d), Manual.]

n. In s. REEB 24.04 (2) (a), the first use of the word “firm” should be underscored because it is inserted language. [s. 1.06 (1) (a), Manual.]

o. In SECTION 43 of the proposed rule, the first letter of both words in the phrase “administrative register” should be capitalized because it is a proper noun. [ss. 1.01 (4) and 1.02 (4) (a) (Example), Manual.]

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

a. In paragraph two of the plain language analysis, a comma should be inserted between “associated with a subagent” and “and firm” and a quotation mark should be inserted before “firm”.

b. In paragraph three of the plain language analysis, “removes” should be changed to “remove” and “their” in the second-to-last sentence should be changed to “the”.

c. In paragraph three of the plain language analysis, “Board” should be changed to “Real Estate Examining Board” because it is the first time that the Board is referenced. The full name could be followed by “(the Board)” to indicate that the Real Estate Examining Board will be referred to throughout the remainder of the document in a simplified way.

d. In paragraph five of the plain language analysis, consider specifying to whom documents should be provided and describing for what purpose.

e. In paragraph seven of the plain language analysis, consider explaining why the provision is obsolete. It does not appear that the provision was made obsolete by 2015 Wisconsin Act 258, and it may be confusing to a reader that one provision about “closing statements” is repealed while other references to “closing statements” remain in the rules.

f. In paragraph 10 of the plain language analysis, the word “updates” should be changed to “update”. Also, consider replacing “reflects” with a different verb that more clearly describes the required action or consider rephrasing the second clause for clarity. As an example, the phrase could instead say “require forms to be filled out based upon a party’s instruction rather than a party’s intent”.

g. In s. REEB 11.02, consider defining the terms “licensed broker business entity” and “licensed individual broker” as used in the proposed rule. Definitions could cite to s. 452.01 (4x) and (4y), Stats., respectively. [s. 1.01 (7) (d), Manual.]

h. In s. REEB 11.02 (1d), (1h), (1p), and (5g), each instance of the word “under” should be revised to “given in”. Likewise, consider amending the same phrasing in s. REEB 11.02 (2), (3), and (6) of the current rule, in the final proposed rule. [s. 1.01 (7) (d), Manual.]

i. In s. REEB 11.02 (6m) (a), the word “or” should be inserted between “aunt,” and “uncle”.

j. In s. REEB 11.02 (6m) (b), it appears that the the word “of” should be inserted between “or” and “any”. If that is not the intended meaning, the phrase “or any person listed in par. (a)” should be removed, because it duplicates the defined family members already given in par. (a).

k. In s. REEB 15.02 (1), a comma should be inserted between “prepared” and “or received”.

l. In s. REEB 15.04 (1), consider adding the word “utilized” to the list of documents that must be retained to mirror the “utilized, prepared, or received” language in s. REEB 15.02 of the proposed rule.

m. Consider reviewing the proposed rule in its entirety to ensure all changes from “broker or salesperson” to “licensee” are completed as desired, for the sake of clarity and consistency. It appears that many references were changed, but not all. For example, in s. REEB 15.02, the term “licensee” is inserted but the phrase “broker or salesperson” remains. Likewise, in s. REEB 18.02 (6), “time-share salesperson” is deleted, but “broker” and “salesperson” remain. In contrast, in s. REEB 18.031 (1) (intro.), “broker or broker’s salespersons” is replaced with “firm or licensees associated with the firm”.

n. Consider rephrasing the provision created in s. REEB 15.04 (2) for clarity. First, it appears that “broker or salesperson” could be changed to “licensee”, as discussed above, and should be modified by “associated with a firm”. Second, consider changing “used or received” to “utilized, prepared, or received” to mirror the language in s. REEB 15.02 of the proposed rule. Finally, the phrase “to assist in complying with sub. (1)” is superfluous and may be removed.

One way that the provision could be rephrased is as follows: “A licensee associated with a firm shall submit documents and records related to transactions that are utilized, prepared, or received by the licensee to the firm in a timely manner”.

o. Similar to the comment in par. m., above, consider reviewing the proposed rule in its entirety to ensure that all changes from “broker” to “firm” have been made as appropriate. For example, under SECTIONS 11 and 12, the proposed rule changes many references from “broker” to “firm”, but not all. Further, if it is intended to leave “broker” in some circumstances, review whether the term should be changed from “broker” to “licensee”, for the sake of consistency.

p. In the treatment clauses for SECTIONS 12 and 37 of the proposed rule, the word “is” should be revised to “are”.

q. In s. REEB 16.03 (1) (d), a comma should be inserted between “quasi-governmental” and “and tribal agencies”.

r. In s. REEB 16.04 (2), a comma should be inserted between “forms” and “a licensee”.

s. In s. REEB 17.03 (2), the word “an” before “independent” should be deleted, and “contractor” should instead be “contractors”.

t. In s. REEB 18.031 (2), the provision should be rephrased to state that the requirement applies to a licensee “associated with a firm”, for the sake of consistency. For example, it could be rephrased as follows: “A licensee associated with a firm who receives real estate trust funds shall promptly submit the funds to the firm”.

u. In s. REEB 24.04 (2) (a), the word “a” between “licensed individual broker or” and “licensed broker business entity’s” should be changed to “the” or should be deleted.

v. In s. REEB 24.07 (1) (c), the underscored word “firm” should be revised to “firms”.

w. If a definition for “licensed individual broker” is inserted as described in par. g, above, then, in s. REEB 24.13 (3) (b), the phrase “individual licensed broker” should be revised to “licensed individual broker”, to conform with the defined term.