



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.