

STATE OF WISCONSIN
BEFORE THE
REAL ESTATE EXAMINING BOARD

IN THE MATTER OF RULEMAKING : ORDER OF THE REAL ESTATE
PROCEEDINGS BEFORE THE REAL : EXAMINING BOARD REPEALING,
ESTATE EXAMINING BOARD : AMENDING AND ADOPTING RULES

Relating to conduct and ethical practices for real estate licensees.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

The purpose of repealing and recreating Chapter REB 15 is three-fold: First, to better define and clarify minimum standards of conduct for real estate licensees and thereby enhance enforcement of the standards; second, to delete provisions which appear to be in the interest of the real estate profession rather than the public interest; and third, to increase responsibility of licensees to disclose all basic information and to seek out and disclose additional information that would be in the interest of the buyer to know. Analysis by sections follows;

Section REB 15.01(3) establishes "general principles" to guide licensees.

Section REB 15.02(2) links a violation of Chapter REB 15 to s. 452.10(2)(i), Stats., by defining the board's interpretation of statutory terms, "untrustworthiness" and "incompetency".

Section REB 15.03(1) prohibits discrimination in housing consistent with provisions in s. 101.22, Stats.

Section REB 15.03(2) is a renumbering of current rule, REB 15.01(13).

Section REB 15.04 prohibits advertising which is false, deceptive or misleading. Subsections of REB 15.04 require that all advertising be supervised by licensed brokers who must be named in the advertisements; that owners must consent to advertising; and, that owners retain complete control over the advertised purchase price.

Section REB 15.05(1) is a renumbering of current rule, REB 15.01(18).

Section REB 15.05(2) restates and simplifies a current rule that licensees must disclose any personal interest they may have in real estate transactions.

Section REB 15.05(3) requires that licensees disclose to a buyer or seller any personal, professional or business relationship that exists between themselves and other firms or individuals, such as contractors, lending institutions or attorneys, whose services they are recommending.

Section REB 15.05(4) is a renumbering of current rule, REB 15.01(9).

Sections REB 15.06(1) and (2) prohibit a real estate licensee from engaging in the unauthorized practice of law or implying that legal assistance is unnecessary in real estate transactions.

Section REB 15.07(1) is a renumbering of current rule, REB 15.01(10).

Section REB 15.07(2) places the burden on a broker who lists property for sale to ascertain whether or not there are outstanding governmental notices requiring repairs, alterations or corrections to the property, or whether there are any planned or commenced public improvements affecting the property. Currently, the seller is required to obtain and disclose this information.

Section REB 15.08 lists those documents which must be put in writing, simplifying current rule, REB 15.01(22).

Section REB 15.09 prohibits licensees from misleading property owners regarding the value of their property in an attempt to secure a signed listing contract.

Section REB 15.10 prohibits net listings because net listings create a potential for licensees to collect excessive commissions. By guaranteeing a sum certain to the seller, the licensee would stand to receive the balance of proceeds from the sale which could exceed in amount a fair and reasonable commission.

Section REB 15.11 requires a listing broker to disclose to the seller how the broker will divide the commission with another broker who secures a buyer. This requires that a broker provide more information to sellers regarding co-brokerage systems, e.g., Multiple Listing Services. Disclosure of brokers' terms of splitting commissions will help a seller determine the extent of interest other brokers have in finding buyers for the property.

Section REB 15.12 prohibits licensees from disclosing the terms of a buyer's offer to purchase, exchange agreement or option contract proposal. The rule prohibits licensees from using an offer secured by competing licensees as enticement for another buyer to make a higher offer, and thereby ensures a seller's right to accept, reject or counter all offers presented.

Section REB 15.13(1) prohibits licensees from refusing to draft an offer to purchase unless the proposed offer is contrary to specific instructions of the seller. This provision is a codification of a real estate licensee's duty as expressed by the Wisconsin Supreme Court in Nolan v. Wisconsin Real Estate Broker's Board, 3 Wis. 2d. 510 (1958).

Section REB 15.13(2) prohibits a licensee from favoring one offer over others by failing to submit less favored offers to sellers until the favored offer has been acted upon.

Section REB 15.13(3) requires that all offers be presented in an objective and unbiased manner to prevent collusion by sale associates.

Section REB 15.13(4) is consistent with REB 15.01(3)(a) that requires brokers to represent fairly all parties to a transaction.

Section REB 15.14(1) lists responsibilities of brokers to adequately supervise their sales personnel. The rule interprets s. 452.08(3), Stats.

Sections REB 15.14(2) and (3) require brokers to retain various records involving real estate transactions for at least 3 years.

Section REB 15.15 prohibits licensees from overdrawing checking accounts. The public entrusts money to licensees and should be able to expect licensees to manage money responsibly.

Section REB 15.16 requires that all brokers obtain a copy of board rules and make it available at their place of business for ready reference.

Section REB 15.16(1) recognizes provisions in s. 111.32(5)(h), Stats., relating to conviction records.

ORDER

Now therefore it is ordered that pursuant to authority vested in the Real Estate Examining Board by sections 15.08, 227.014 and chapter 452, Stats., the Real Estate Examining Board hereby repeals and recreates and adopts rules interpreting s. 452.10 of the Wisconsin Statutes as follows:

Chapter REB 15 of the Wisconsin Administrative Code is repealed and recreated and adopted to read:

Chapter REB 15

CONDUCT AND ETHICAL PRACTICES FOR REAL ESTATE LICENSEES

REB 15.01 Authority, intent and general principles. (1) The rules in this chapter are adopted pursuant to ss. 15.08, 227.014 and chapter 452, Stats.

(2) The intent of the real estate examining board in adopting the rules in this chapter is to establish minimum standards of conduct for real estate licensees and to define that conduct which may result in board action to limit, suspend or revoke the license of a real estate broker, salesperson or cemetery salesperson, or to reprimand a real estate broker, salesperson or cemetery salesperson.

(3) The rules in this chapter are based upon the following general principles:

- (a) Licensees have the responsibility to represent the interests of the principal as an agent. However, the responsibility owed the principal does not exempt the licensee from the obligation to treat fairly all parties to a transaction.

- (b) Licensees must act to protect the public against fraud, misrepresentation and unethical practices.
- (c) Licensees must be knowledgeable regarding laws, public policies and current market conditions on real estate matters and assist, guide and advise the buying or selling public based upon these factors.
- (d) Licensees must provide competent service in those areas in which the licensee practices.

REB 15.02 Definitions. (1) "Licensee" means a person, partnership or corporation holding a license as a real estate broker, salesperson or cemetery salesperson.

(2) UNTRUSTWORTHINESS OR INCOMPETENCY. If a licensee violates rules in this chapter, the licensee has demonstrated untrustworthiness or incompetency to act as a broker, salesperson or cemetery salesperson in such manner as to safeguard the interests of the public as those terms are used in s. 452.10(2)(i), Stats. However, the terms "untrustworthiness" and "incompetency" are not limited in their meaning to violations of these rules.

REB 15.03 Competent services. (1) DISCRIMINATION PROHIBITED. Licensees shall not discriminate against, nor deny equal services to, nor be a party to any plan or agreement to discriminate against any person because of sex, race, color, physical condition, developmental disability as defined in s. 51.01(5), Stats., religion, national origin or ancestry.

(2) COMPETENCE REQUIRED. Licensees shall not provide services which the licensee is not competent to provide unless the licensee engages the assistance of one who is competent. Any person engaged to provide such assistance shall be identified and that person's contribution shall be described.

REB 15.04 Advertising. (1) FALSE ADVERTISING. Licensees shall not advertise in a manner which is false, deceptive, or misleading.

(2) DISCLOSURE OF NAME. All advertising shall be under the supervision of the broker and disclose the broker's name exactly as licensed with the board.

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

(4) ADVERTISED PRICE. Brokers shall not advertise property at a price other than that agreed upon with the owner.

REB 15.05 Self-dealing. (1) DISCLOSURE OF PROFITS. Licensees shall not accept any commission, rebate, or profit on expenditures made for the owner without the owner's knowledge and consent.

(2) DISCLOSURE OF INTEREST. Licensees shall not act on their own behalf in acquiring or selling property, or on behalf of their immediate family, firm or any member thereof, or any entity in which they have an interest in acquiring or selling property, without disclosing their interest to all parties to the transaction.

(3) REFERRAL OF SERVICES. Licensees shall not recommend or suggest the use of services of another individual, organization or business entity in which the licensee has an interest without disclosing their interest at the time of the recommendation or suggestion.

(4) DUAL COMPENSATION. Licensees shall not accept compensation from more than one party without the full knowledge of all parties to the transaction.

REB 15.06 Unauthorized practice of law. (1) UNAUTHORIZED PRACTICE OF LAW PROHIBITED. Licensees shall not engage in activities that constitute the unauthorized practice of law.

(2) LEGAL COUNSEL NOT TO BE DISCOURAGED. Licensees shall not discourage any person from retaining an attorney.

REB 15.07 Disclosure. (1) DISCLOSURE OF MATERIAL FACTS. Licensees shall avoid exaggeration, misrepresentation or concealment of material facts. Licensees have an affirmative obligation to discover adverse factors that a reasonably competent and diligent investigation would disclose and to disclose any adverse factors to the buyer or the seller or other interested parties.

(2) LISTING BROKER TO CONFIRM GOVERNMENT NOTICES. Brokers have an affirmative obligation in regard to any property listed for sale with the broker to ascertain in writing from the appropriate governmental agency whether said agency has served any notice requiring repairs, alterations or corrections of any existing conditions in regard to the listed property and whether there are any planned or commenced public improvements which may result in special assessments or otherwise materially affect the property. Licensees shall disclose said facts to the buyer or other interested parties. The duty of the listing broker under this rule does not relieve the selling agent from the obligation to disclose all material facts or adverse factors known to the selling agent.

REB 15.08 AGREEMENTS TO BE IN WRITING. Licensees shall put in writing all listing contracts, guaranteed sale agreements, offers to purchase, option contracts, financial obligations and any other commitments regarding transactions, expressing the exact agreement of the parties.

REB 15.09 MARKET VALUE ESTIMATES. Licensees shall not mislead the owner with respect to market value in attempting to secure a listing.

REB 15.10 NET LISTINGS 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 as commission.

REB 15.11 DISCLOSURE OF CO-BROKERAGE COMMISSION SPLIT. Licensees shall include a provision on every listing contract which states the amount or percentage of the listing broker's commission which the listing broker will share with another broker who procures a purchaser for the property.

REB 15.12 CONFIDENTIALITY OF OFFERS. Licensees shall not disclose any of the terms of a prospective buyer's offer to purchase, exchange agreement or option contract proposal, but shall encourage all prospective buyers to submit their highest and best offers.

REB 15.13(1) DRAFTING AND SUBMISSION OF OFFERS. Licensees shall not refuse to draft or submit any offer to purchase, exchange agreement or option contract proposal to the owner unless the terms of the offer, exchange agreement or option would be contrary to specific instructions of the owner.

(2) WITHHOLDING OFFERS PROHIBITED. Licensees shall present promptly all offers received to the owner for consideration. Licensees shall not withhold any offer from presentation pending the owner's action on an offer previously presented.

(3) FAIR PRESENTATION OF OFFERS. Licensees shall present each offer in an objective and unbiased manner. Licensees shall inform the owner of the advantages and disadvantages of all submitted offers to purchase, exchange agreements and option contract proposals.

(4) NOTIFICATION OF ACTION TO BUYERS. Licensees shall promptly inform prospective buyers whether the seller has accepted, rejected or countered their offer to purchase.

REB 15.14(1) SUPERVISION OF PERSONNEL; RECORDS. Brokers shall adequately supervise the activities of the broker's sales personnel and employees. Supervision includes but is not necessarily limited to the review of all listing contracts, offers to purchase and other documents related to transactions which are received by the licensee's office, and all trust account books and records. Brokers shall provide all sales personnel and employees with a written statement of procedures under which the office, sales personnel and employees shall operate with respect to the handling of listing contracts, offers to purchase and other documents relating to transactions.

(2) RESPONSIBILITY FOR RECORDS. Brokers shall be responsible for the preparation, custody, safety, and correctness of all entries on real estate forms and records, even though another person may be assigned these duties by the broker.

(3) RETENTION OF RECORDS. Brokers shall retain for at least three years copies of all listing contracts, offers to purchase, deposit receipts, cancelled checks, trust account records, and other documents or correspondence received or prepared by the licensee in connection with any transaction. The retention period shall run from the date of closing of the transaction or from the date of listing if the transaction is not consummated.

REB 15.15 ADEQUATE FUNDS REQUIRED. Licensees shall not issue checks upon business or trust accounts which contain insufficient funds.

REB 15.16 AVAILABILITY OF RULES. Brokers shall obtain a copy of these rules. Current rules shall be on file and available in all the licensed offices for the use of all licensees.

REB 15.17 Miscellaneous requirements. (1) VIOLATIONS OF LAW. Licensees shall 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.


(2) VIOLATION OF DISCIPLINARY ORDERS. Licensees shall not violate, or aid or abet the violation of, any formal disciplinary order of the Real Estate Examining Board.

(3) IMPAIRED PRACTICE. Licensees shall not render services while the ability of the licensee to competently perform duties is impaired by mental or emotional disorder, drugs or alcohol.

The rules, amendments and repeals contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.026, Wis. Stats.

Dated this 17th day of December, 1979

By:


Cletus J. Hansen, Director
Bureau of Real Estate

FISCAL ESTIMATE

There is no anticipated fiscal effect on either the state during the current biennium or on county, city, village, town, school district, vocational, technical or education district or any fiscal liability or revenues anticipated on sewerage districts.

The estimate, prepared pursuant to s. 227.019, Wis. Stats., is based on the assumption that the rules will affect licensees of the Real Estate Examining Board and will be enforced by state personnel.