

CR 85-34

CERTIFICATE

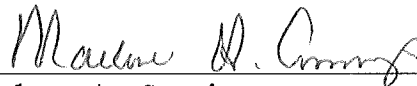
STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF REGULATION AND LICENSING )

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Marlene A. Cummings, Secretary of the Department of Regulation and Licensing, and custodian of the official records of the Department, do hereby certify that the annexed rules, relating to rules concerning approved forms, trust accounts and conduct and ethical practices for real estate licensees, were duly approved and adopted by the Department of Regulation and Licensing on April 13, 1988.

I further certify that said copy has been compared to me with the original on file in this board and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the board at 1400 East Washington Avenue, Madison, Wisconsin, this 20th day of May, A.D. 1988.



Marlene A. Cummings  
Secretary  
Department of Regulation & Licensing

RECEIVED

MAY 23 1988

8:40 am  
Revisor of Statutes  
Bureau

STATE OF WISCONSIN  
RECEIVED AND FILED

MAY 23 1988

DUGLAS LA FOLLET  
SECRETARY OF STATE

JOH: gad  
TENDAY-4404

7-1-88

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF RULEMAKING : ORDER OF THE DEPARTMENT OF  
PROCEEDINGS BEFORE THE DEPARTMENT : REGULATION AND LICENSING REPEALING,  
OF REGULATION AND LICENSING : AMENDING OR ADOPTING RULES

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ORDER

AN ORDER to repeal RL 24.07(2); to renumber RL 24.17(2) and (3); to amend RL 16.03(2) and the note following, RL 18.04(1) and (2), RL 24.05(1) and (5), RL 24.07(1), RL 24.08 and RL 24.13(3); and to create RL 16.03(1)(d), RL 24.07(2)(a), (b), (c) and (d), RL 24.07(4)(a), (b) and (c), and RL 24.17(2), relating to rules concerning approved forms, trust accounts and conduct and ethical practices of real estate licensees.

Analysis prepared by the department of regulation and licensing.

ANALYSIS

Statutory authority: ss. 227.11(2), 452.07(1), Stats.  
Statutes interpreted: ss. 452.05(1)(b), 452.13, 452.14(3).

In this proposal:

1. Sections RL 16.03(1)(d) and (2) are created and amended, respectively, in order to permit brokers and salespersons to use contractual forms prepared by governmental agencies for use in authorized programs. Current rules do not address the existence of these forms and approval of their use by real estate licensees.
2. The note following s. RL 16.03(2) is amended for the purpose of removing from the list of approved forms two standard office lease forms whose approval the department had rescinded under authority granted in ss. 452.05(1)(b) and 452.06(1), Stats. The note also changes the approval date on the counteroffer form which was revised in 1986.
3. Section RL 16.06(4) is amended to clarify the intent of the current rule and to more clearly set forth the difference between this subsection and subsec. (5).

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SECRETARY OF STATE

4. Sections RL 18.04(1) and (2) are amended to remove the requirement that a licensed broker submit an application form to the department and receive authorization from the department for certain persons who meet the conditions in s. RL 18.04 to sign checks, or other drafts drawn on the broker's real estate trust account. Section RL 18.04 retains the criteria and conditions which govern who may sign checks on the broker's real estate trust account.
5. Section RL 24.05 is amended by changing "owner" to "principal" because licensees may act as agents for either owners or buyers. The word "principal" includes either owners or buyers.
6. Section RL 24.05(5) is amended to require that any disclosure of dual compensation be with the written consent of all parties to a transaction. A written consent is a more affirmative action and provides proof of such consent, if any future problems concerning the consent were to arise.
7. Section RL 24.07(2) is repealed because the department and board believe it is no longer necessary to separately address this one out of many adverse factors which real estate licensees have an obligation to discover and disclose to interested parties in a real estate transaction. There is statistical evidence that the amount of offgasing or urea-formaldehyde decreases over time. Such insulation has not been blown into buildings in Wisconsin since the late 1970's.
8. Sections RL 24.07(1) and (2) are amended and created, respectively, in order to clarify the requirements imposed on licensees to inspect properties and to disclose defects noted from such inspections. The rules show that property defects are only one of many kinds of material facts which must be dealt with by a real estate licensee in a real estate transaction. Subsection (2) distinguishes between the obligation of a listing broker and a selling broker and clarifies the obligation of the licensee when the licensee's visual inspection reveals conditions inconsistent with or contrary to the seller's statements regarding the condition of the property.
9. Section RL 24.07(4) is created in order to require real estate licensees to adequately disclose to buyers and sellers the nature of the relationship of selling brokers and buying brokers to sellers and buyers involved in transactions. The rules state minimum disclosure language which must be included in any disclosure documents provided to clients. The rules also require that written disclosures made early in the negotiation process be reconfirmed in offers to purchase and option contracts. These rules help avoid the common misconception that all selling brokers working with buyers are their agents and have their interests above the interests of the seller. In fact, most selling brokers are subagents of the listing broker and the seller.

10. Section RL 24.08 adds two agreements to the list of those which must be put in writing by real estate licensees.
11. Section RL 24.13(3) is amended in order to better reflect changes in the industry, whereby more brokers are acting as agents for buyers. The rule requires that written proposals must be submitted to any kind of a principal in an objective and unbiased manner.
12. Section RL 24.17(2) is amended in order to make a judgment of conviction or conviction the basis of discipline, rather than the current violation of statutes, administrative code and disciplinary orders. This change enables a prosecutor to pursue a disciplinary action if a conviction was based upon a plea of no contest.

TEXT OF RULE

SECTION 1. RL 16.03(1)(d) is created to read:

RL 16.03(1)(d) Forms prepared by governmental agencies for use in programs administered by them under authority provided by law.

SECTION 2. RL 16.03(2) is amended to read:

RL 16.03(2). In addition to forms prepared and approved by the department pursuant to s. 452.05(1)(b), Stats., the department grants approval of the forms in sub. (1)(c) and (d) for use by salespersons.

Note to Revisor: In the published version of the code, the note following RL 16.03(2) is amended only as to the following 3 forms.

\* \* \*

~~WB-22-Standard-Office-Lease---8/15/74~~

~~WB-23-Standard-Office-Lease-With-Renewal-Clause---8/15/74~~

\* \* \*

~~WB-44 Counter-offer - 5/1/82 optional use date 10/1/86; mandatory use date 1/1/87~~

\* \* \*

SECTION 3. RL 16.06(4) is amended to read:

RL 16.06(4). A licensee may use a pre-prepared addendum or otherwise set forth on attached pages provisions relating to the blanks on an approved form, if the licensee properly incorporates the attachment by reference into the approve form and relates the approved form and the attached pages to one another. For purposes of this subsection a pre-prepared addendum may be prepared by the broke or the broker's attorney.

SECTION 4. RL 18.04(1) is amended to read:

RL 18.04 AUTHORIZATION TO SIGN TRUST ACCOUNT CHECKS. (1) APPLICATION-FOR AUTHORIZATION. A broker may authorize other persons to sign real estate trust account checks, share drafts or drafts drawn on the broker's real estate trust account. ~~provided the broker has filed an application for this authority with the department and the department approves the application in writing.~~

SECTION 5. RL 18.04(2)(a) is repealed.

SECTION 6. RL 18.04(2)(b) is renumbered 18.04(2) and amended to read:

(2) AUTHORIZATION OF OFFICERS AND PARTNERS. ~~(a) Licensed officers of a corporation and licensed partners in a partnership shall not be required to submit an application to the department and obtain department approval to sign real estate trust account checks, share drafts or drafts drawn on their corporate or partnership trust account.~~

~~(b) The department shall~~ A broker may not authorize an inactive partner or an unlicensed officer of a corporation to sign corporate or partnership real estate trust account checks, share drafts or drafts unless the partner owns less than a controlling interest in the partnership or the officer is a minority stockholder in the corporation.

SECTION 7. RL 24.05(1) is amended to read:

RL 24.05. SELF-DEALING. (1) DISCLOSURE OF PROFITS. Licensees shall not accept any commission, rebate or profit on expenditures made for the ~~owner~~ principal without the ~~owner's~~ principal's knowledge and consent.

SECTION 8. RL 24.05(5) is amended to read:

RL 24.05(5). DUAL COMPENSATION. Licensees shall not accept compensation from more than one party to a transaction without the full knowledge and written consent of all parties to the transaction.

SECTION 9. RL 24.07(1) is amended to read:

RL 24.07. DISCLOSURE. (1) DISCLOSURE OF MATERIAL FACTS. Licensees shall ~~avoid not exaggeration exaggerate, misrepresentation misrepresent or concealment~~ conceal material facts in the practice of real estate. Licensees have an affirmative obligation to discover adverse material 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. This provision is not limited to the condition of the property, but includes other facts about a transaction which are material.

SECTION 10. RL 24.07(2) is repealed and recreated to read:

RL 24.07(2). INSPECTION OF A PROPERTY. (a) Listing broker. When listing a property, a licensee shall conduct a reasonably competent and diligent inspection of the property, which shall include a visual inspection to detect observable conditions of the structure, and inquiries of the seller on the condition of the structure, mechanical systems and other relevant aspects of the property.

(b) Selling broker. When negotiating the sale of a property, a licensee with whom it is not listed shall, at anytime before the showing of the property or during the showing of the property, if given access to the property, make a reasonably competent and diligent visual inspection of the property to detect observable conditions.

(c) Inconsistencies. If the licensee's visual inspection reveals conditions inconsistent with or contradictory to the seller's statements regarding the condition of the property, this shall be disclosed to all interested parties.

(d) Disclosure. A licensee shall disclose any adverse factors discovered through the inspection or otherwise to all interested parties.

NOTE: The department does not intend to list in its rule all potential adverse factors. Some adverse factors include but are not limited to: urea-formaldehyde foam insulation, radon, exposed asbestos, underground storage tanks, disposal of toxic chemicals on the property, leaking basement, structural defects, location in a flood plain or wetland, planned or commenced public improvements which may result in special assessments or otherwise materially affect the property, etc.

SECTION 11. RL 24.07(4) is created to read:

RL 24.07(4). DISCLOSURE OF AGENCY. (a) General Requirements.

1. At the first meeting during which a prospective buyer's specific needs are discussed, each licensee acting as an agent of the seller shall clearly disclose in writing whom the licensee represents and request from the prospective buyer in a real estate or business opportunity transaction written acknowledgment of the disclosure using the following wording:

"I understand that this <sup>broker</sup> buyer and salespeople working with this broker are representing the seller's interests and owe duties of loyalty and faithfulness to the seller, but are obligated to treat all parties fairly.

I understand that this broker, without breaching his or her loyalty to the client, may provide me with information about the attributes of properties and available financing, show properties and assist me in preparing an offer to purchase. This broker also has a duty to respond accurately and honestly to my questions and disclose material facts about properties, submit promptly all offers to purchase and offer properties without unlawful discrimination."

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NOTE: The intent of this section is to require disclosures when the broker begins to exercise his or her discretion by identifying or showing properties to a prospective buyer based upon the locational, financial, and special requirements. The "first meeting" between the broker and the prospect which triggers the disclosure requirement would not include clearly casual or preliminary contacts such as those occurring at the open house, a club meeting, or other non-real estate gatherings.

2. At the first meeting during which a prospective seller's specific sales objectives are discussed, each licensee acting as an agent of the buyer shall clearly disclose in writing whom the licensee represents and request from the prospective seller in a real estate or business opportunity transaction written acknowledgment of the disclosure using the following wording:

"I understand that this broker and salespeople working with this broker are representing the buyer's interests and owe duties of loyalty and faithfulness to the buyer, but are obligated to treat all parties fairly.

I understand that this broker, without breaching his or her loyalty to the buyer, may provide me with information about the transaction. This broker also has a duty to respond accurately and honestly to my questions and disclose material facts about the transaction, submit promptly all offers to purchase through proper mechanisms and serve without unlawful discrimination."

Note: Business opportunity is referred to in s. 452.01(2)(e), Stats.

3. A change in a licensee's representation that makes the initial disclosure incomplete, misleading, or inaccurate requires that a new disclosure be given, as in subd. 1 or 2.

(b) Listing contracts.

1. Listing brokers or their salespeople shall explain the responsibilities of seller's agents, buyer's agents and subagents to the seller before entering into a listing contract.

2. Listing brokers or their salespeople shall request the seller's authorization to permit other brokers to act as subagents in the sale of a property or business opportunity. This authorization shall be stated in the listing contract.

(c) Offers to purchase and option contracts. Licensees shall reconfirm, in the offer to purchase or option contract, whom the licensee represents as an agent in a real estate or business opportunity transaction.

SECTION 12. RL 24.08 is amended to read:

RL 24.08. AGREEMENTS TO BE IN WRITING. Licensees shall put in writing all listing contracts, guaranteed sales agreements, buyer agency agreements, offers to purchase, property management agreements, option contracts, financial obligations and any other commitments regarding transactions, expressing the exact agreement of the parties.

SECTION 13. RL 24.13(3)(a) is amended to read:

RL 24.13(3) FAIR PRESENTATION OF OFFERS. (a) Licensees shall present ~~each offer~~ all written proposals in an objective and unbiased manner to their principals. Licensees shall inform ~~the owner~~ their principals of the advantages and disadvantages of all submitted ~~offers to purchase, exchange agreements and option contract~~ written proposals.

SECTION 14. RL 24.17(2) and (3) are renumbered (3) and (4).

SECTION 15. RL 24.17(2) is created to read:

RL 24.17(2) CONVICTION. The board may discipline a licensee on the basis of a conviction of any crime, the circumstances of which substantially relate to the practice of real estate. A certified copy of a judgment of a court of record showing such conviction, within this state or without, shall be presumptive evidence of conviction.

Dated: 5/20/88

Agency:

Marlene A. Cummings  
Marlene A. Cummings, Secretary  
Department of Regulation and Licensing

JOH:gad  
RULES-60  
5/19/88