

rl016_EmR0811.pdf **Regulation and Licensing – Amends s. RL 16.06 – EmR0811**
ORDER OF THE DEPARTMENT OF REGULATION AND LICENSING

To amend RL 16.06 (1) (a), (b) and (d), relating to how to use approved forms for the practice of real estate.

Analysis prepared by the Department of Regulation and Licensing.

Statutes interpreted:

Sections 452.04 (2), 452.05 (1) (b) and 452.07, Stats.

Statutory authority:

Sections 15.405 (11), 227.11 (2), 452.04 (2), 452.05 (1) (b) and 452.07, Stats.

Explanation of agency authority:

The Department of Regulation and Licensing has authority under ss. 452.05 (1) (b) and 452.07, Stats., to promulgate rules for the guidance of the real estate profession and to approve forms for use in real estate practice. The emergency rule has also been reviewed and approved by the council on forms which is currently meeting to review and revise forms for real estate transactions as provided in s. 452.06, Stats., as well as reviewed by the Real Estate Board as required by s. 452.07 (3), Stats., and recommended by the board for promulgation.

Related statute or rule:

Section RL 16.06.

Plain language analysis:

The purpose of this emergency rule is to prohibit the altering of approved real estate forms such that blank lines are inserted between provisions of department approved text, similar in form, content and appearance, such that the inserted provisions create the implication that they are approved by the department.

Section RL 16.06 (1) (a) amends a paragraph relating to the appearance and numbering of lines appearing on a page of an approved form. Section RL 16.06 (1) (b) amends a paragraph changing the words “spaces” and “blanks” to “blanks” and “blank lines.” And Section RL 16.06 (1) (d) amends a paragraph to prohibit the altering of a form except for modifying margins or font size.

Summary of, and comparison with, existing or proposed federal regulation:

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states:

Iowa:

Iowa does not have rules or statutory authority relating to governmental approval of forms.

Illinois:

Illinois does not have rules or statutory authority relating to governmental approval of forms.

Michigan:

Michigan does not have rules or statutory authority relating to governmental approval of forms.

Minnesota:

Minnesota does not have rules or statutory authority relating to governmental approval of forms.

Summary of factual data and analytical methodologies:

The department reviewed a proposed draft of a modified form of the residential real estate listing contract, WB-1, which contained inserted text that appeared to be or could be construed to be approved by the department. The modified form was forwarded to the department as an example of work product that was purportedly to be the subject of a continuing education class demonstrating the allowed means to modify an approved form. The modified form was shown to industry stakeholders, the department’s council on forms, and the Real Estate Board, for review and comment. All parties agreed that the modified form was, or could be, construed to be misleading based upon its formatting that the modified text was approved by the department, when in actuality, it was not. This potential for consumer confusion was agreed to be a cause for immediate rule-making to prevent modification of forms such as WB-1 in the manner submitted.

The proposed changes to s. RL 16.06 are designed to prohibit the altering of the format of approved forms and the subsequent addition of textual content, rather such changes must be made by either filling in blank lines currently inserted into the text of a form for such purpose, or by the attachment of an addendum where proper under the currently existing rules.

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

This rule will more clearly specify that department approved real estate contract forms cannot be substantively altered. At the start of the biennium, there were 13,090 real estate brokers licensed in Wisconsin and 15,914 real estate salespersons licensed in Wisconsin. A significant percentage of these real estate brokers and salespersons work in small businesses. This rule change should not have an effect on small business as the department is aware of only one individual that is currently altering the substantive content of department approved real estate contract forms.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

The department estimates that this rule will require staff time in the Division of Board Services and the Office of Legal Counsel. The total one-time salary and fringe costs in the Division of Professional Credentialing and Office of Legal Counsel are estimated at \$1,600.

Effect on small business:

These proposed rules will have no significant 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 larry.martin@drl.state.wi.us, or by calling (608) 266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Phone: (608) 266-0495. Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received no later than June 2, 2008.

TEXT OF RULE

SECTION 1. RL 16.06 (1) (a), (b) and (d) are amended to read:

RL 16.06 (1) (a) Shall assure that the numbering of lines ~~and~~, line contents and the lines appearing on each page are identical to those on the department’s forms.

(b) May not reproduce the form in such a manner that optional provisions are left out and blank ~~spaces~~ lines are filled in without any indication of where the optional provisions and ~~blanks~~ blank lines occur on the department’s form.

(d) May not add additional blank lines, ~~provided that such lines remain unnumbered and the contents and line numbers on the department’s form are not altered~~ or add additional lines containing textual content, or alter the format of the form in any other manner. “Alter the format” does not include modifying margins or font size consistent with par. (a). To add

textual content or additional provisions, a licensee shall only fill in blank lines provided for that purpose on a form or add addenda containing additional or altered provisions as provided in subs. (4) and (5).

FINDING OF EMERGENCY

The Department of Regulation and Licensing finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments into effect prior to the time the amendments would take if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

The department reviewed a proposed draft of a modified form of the residential real estate listing contract, WB-1, which contained inserted text that appeared to be or could be construed to be approved by the department. The modified form was forwarded to the department as an example of work product that was purportedly to be the subject of a continuing education class demonstrating the allowed means to modify an approved form. The modified form was shown to industry stakeholders, the department's council on forms, and the Real Estate Board, for review and comment. All parties agreed that the modified form was, or could be, construed to be misleading based upon its formatting that the modified text was approved by the department, when in actuality, it was not. This potential for consumer confusion was agreed to be a cause for immediate rule-making to prevent modification of forms such as WB-1 in the manner submitted.

This rule shall take effect on April 16, 2008 (date of publication in Wisconsin State Journal).

Dated April 4, 2008

Agency: Secretary Celia M. Jackson
Department of Regulation and Licensing