



2017 ASSEMBLY BILL 534

October 12, 2017 - Introduced by Representatives ALLEN, GANNON, JAGLER and R. BROOKS, cosponsored by Senator LASEE. Referred to Committee on Housing and Real Estate.

1 **AN ACT to renumber** 452.01 (2) (h) and 452.137 (1) (c); **to renumber and amend**
2 452.06 (1), 452.137 (1) (a), 452.137 (2) (a) (intro.), 452.137 (2) (a) 1. and 452.137
3 (2) (a) 2.; **to amend** 452.01 (2) (a), 452.01 (5m) (a), 452.05 (1) (b), 452.133 (title),
4 452.134 (1) (a), 452.137 (2) (c), 452.137 (4) (a), 452.137 (4) (b) (intro.) and 452.25
5 (1) (a); **to repeal and recreate** 452.14 (3) (p); and **to create** 452.01 (2) (d),
6 452.01 (5e), 452.06 (1) (c), 452.07 (3), 452.133 (3) (d), 452.136, 452.137 (1) (am),
7 452.137 (1) (cm), 452.137 (1) (e), 452.137 (2) (am), 452.137 (2) (b) 3., 452.137 (2)
8 (bm), 452.137 (4) (c) and 452.25 (1) (f) of the statutes; **relating to:** various
9 changes regarding the laws governing real estate practice and the licensure of
10 real estate brokers and salespersons and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Current law regulates the practice of real estate, which can only be practiced by real estate brokers and real estate salespersons. Real estate brokers and salespersons (licensees) are licensed by the Real Estate Examining Board, which is attached to the Department of Safety and Professional Services. A real estate broker's license may be issued to either an individual or a business entity. This bill

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makes various changes to real estate practice law, described in further detail as follows:

Cooperative agreements with out-of-state brokers

Generally, under current law, no person may act as a real estate broker in this state unless he or she is licensed as a broker or salesperson by the board. Current law, however, includes an exception to this requirement for a real estate broker who is licensed in another state (out-of-state broker) and is a party to a cooperative agreement with a real estate firm licensed in this state, subject to certain requirements and prohibitions. The bill makes a number of changes and clarifications to the provisions regarding cooperative agreements with out-of-state brokers, including:

1. The bill clarifies the provisions in current law to provide that an out-of-state broker may only enter into a cooperative agreement with a firm that is listing property for sale or lease.

2. In addition to the provisions in current law that allow cooperative agreements with listing firms, the bill also allows an out-of-state broker representing a person who is seeking to buy or rent property located in this state in a commercial transaction, as defined in the bill, to enter into a cooperative agreement with a real estate firm licensed in this state. Each such cooperative agreement must be limited to a type of property, type of function, geographic area, or other criteria specified in the buyer's or tenant's search parameters, and out-of-state brokers who enter into such cooperative agreements are subject to various requirements and prohibitions.

Criminal convictions and licenses

Current law prohibits an applicant from being issued a broker's or salesperson's license from the board if the applicant has been convicted of a felony unless certain conditions have been met, including that three years have elapsed since the date on which the confinement portion of the applicant's sentence was completed or the applicant was released. The bill limits the provision described above regarding felony convictions so that it only disqualifies an individual from being granted an initial license by the board, and does not prohibit an individual from renewing a license previously granted.

Current law also allows the board to revoke, suspend, or limit the license of any licensee, or reprimand the licensee, if it finds that the licensee has been convicted of a felony described above. The bill instead provides that the board may revoke, suspend, or limit the license of any licensee, or reprimand the licensee if the licensee has been convicted of an offense the circumstances of which substantially relate to real estate practice, consistent with the Fair Employment Law, which generally prohibits an agency from refusing to license an individual because the individual has been convicted of a crime unless he or she has been convicted of an offense the circumstances of which substantially relate to the circumstances of the particular licensed activity.

Other changes

The bill makes various other changes regarding real estate practice, including:

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1. The bill explicitly prohibits a licensee from negotiating the sale, exchange, purchase, or rental of personal property (i.e., property other than real estate) unless related to a transaction, as defined under current law.

2. The bill creates statutory provisions to govern the practice of advertising by licensees, including provisions governing when a licensee may advertise property.

3. The bill makes a number of changes to certain definitions in the real estate practice law that are used to define the extent of regulated practices and conduct.

4. The bill makes various changes regarding the approval by the board of forms used in real estate practice and the creation of councils to assist the board in performing that function.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 452.01 (2) (a) of the statutes is amended to read:

2 452.01 **(2)** (a) For another person, and for commission, money, or other thing
3 of value, negotiates or offers or attempts to negotiate, whether directly or indirectly,
4 a sale, exchange, purchase, or rental of, or the granting or acceptance of an option
5 to sell, exchange, purchase, or rent, an interest or estate in real estate, a time share,
6 or a business or its goodwill, inventory, or fixtures, whether or not the business
7 includes real property.

8 **SECTION 2.** 452.01 (2) (d) of the statutes is created to read:

9 452.01 **(2)** (d) Issues a written report of property value that is prepared for
10 another person and that is not an appraisal, as defined in s. 458.01 (1).

11 **SECTION 3.** 452.01 (2) (h) of the statutes is renumbered 452.01 (2) (c).

12 **SECTION 4.** 452.01 (5e) of the statutes is created to read:

13 452.01 **(5e)** “Listing firm” means a firm that has entered into an agency
14 agreement with a seller or landlord pursuant to which the firm lists property for sale
15 or lease.

16 **SECTION 5.** 452.01 (5m) (a) of the statutes is amended to read:

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1 452.01 (5m) (a) Acting, whether directly or indirectly, as an intermediary by
2 facilitating or participating in communications between parties related to the
3 parties' interests in a transaction. In this paragraph, providing advice or opinions
4 on matters that are material to a transaction in which a person is engaged or intends
5 to engage or showing a party real estate does not, in and of itself, constitute acting
6 as an intermediary by facilitating or participating in communications between
7 parties.

8 **SECTION 6.** 452.05 (1) (b) of the statutes is amended to read:

9 452.05 (1) (b) Approve forms for use in real estate practice. The board may
10 conduct public hearings on matters relating to the approval of forms used in real
11 estate practice. The board may also solicit comments relating to forms used in real
12 estate practice from the council on forms created under s. 452.06 (1) (a) or from a
13 professional trade association whose members consist primarily of licensees actively
14 engaged in real estate practice.

15 **SECTION 7.** 452.06 (1) of the statutes is renumbered 452.06 (1) (a) and amended
16 to read:

17 452.06 (1) (a) The board shall create ~~one or more councils~~ a council on forms
18 which ~~that~~ shall meet ~~on a regular basis~~ when directed by the board, be chaired by
19 a member of the board, and report to the board.

20 (b) Any proposed change in a form relating to real estate practice shall be
21 referred to the ~~appropriate~~ council on forms for review before the form is approved.

22 **SECTION 8.** 452.06 (1) (c) of the statutes is created to read:

23 452.06 (1) (c) The board may direct the council on forms to create or modify a
24 form relating to real estate practice and submit that form to the board for approval.

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1 If the board directs the council to create or modify a form, the board shall establish
2 a deadline for the council to submit the form to the board.

3 **SECTION 9.** 452.07 (3) of the statutes is created to read:

4 452.07 (3) The board may promulgate rules regarding advertising by brokers
5 or salespersons that do not conflict with s. 452.136.

6 **SECTION 10.** 452.133 (title) of the statutes is amended to read:

7 **452.133 (title) Duties of licensees; prohibitions.**

8 **SECTION 11.** 452.133 (3) (d) of the statutes is created to read:

9 452.133 (3) (d) Negotiate the sale, exchange, purchase, or rental of personal
10 property unless related to the transaction. The licensee may use a form approved by
11 the board under s. 452.05 (1) (b) for the conveyance of the seller's interest in the
12 personal property. In this paragraph, "use a form" has the meaning given in s. 452.40
13 (1) (a).

14 **SECTION 12.** 452.134 (1) (a) of the statutes is amended to read:

15 452.134 (1) (a) Subject to par. (b), a firm and any licensees associated with the
16 firm may provide brokerage services to any party to a transaction, whether or not the
17 firm has entered into an agency agreement with a party to the transaction or the firm
18 has been engaged to provide brokerage services in the transaction as a subagent.

19 **SECTION 13.** 452.136 of the statutes is created to read:

20 **452.136 Advertising by licensees. (1) FALSE ADVERTISING.** A licensee may
21 not advertise in a manner that is false, deceptive, or misleading.

22 **(2) DISCLOSURE OF NAME.** (a) Except for advertisements for the rental of real
23 estate owned by the licensee, a licensee shall in all advertising disclose the firm's
24 name exactly as printed on the license of the licensed individual broker or licensed
25 broker business entity or disclose a trade name previously filed by the firm with the

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1 department and shall in either case clearly indicate that the firm is a business
2 enterprise and not a private party.

3 (b) Except for advertisements for the rental of real estate owned by the licensee,
4 a licensee associated with a firm shall advertise under the supervision of and in the
5 name of the firm. The firm's name as used in advertising shall be clear and
6 conspicuous. This paragraph does not apply to a licensee engaged in independent
7 practice as provided in s. 452.30 (6).

8 (c) Notwithstanding pars. (a) and (b), a licensee may advertise the occasional
9 sale of real estate owned by the licensee or may engage in the occasional solicitation
10 of real estate for purchase by the licensee without complying with pars. (a) and (b),
11 provided that the licensee clearly identifies himself, herself, or itself as a real estate
12 licensee in the advertisement.

13 **(3) ADVERTISING WITHOUT AGENCY AGREEMENT PROHIBITED.** A firm and any
14 licensees associated with the firm may not advertise a property unless one of the
15 following applies:

16 (a) The firm is the listing firm for the property.

17 (b) The firm or a licensee associated with the firm has obtained consent to
18 advertise the property from the listing firm for the property.

19 **(4) ADVERTISED PRICE.** A licensee may not advertise property at a price other
20 than that agreed upon with the owner, except that the price may be stated as a range
21 or in general terms if it reflects the agreed upon price.

22 **SECTION 14.** 452.137 (1) (a) of the statutes is renumbered 452.137 (1) (d) and
23 amended to read:

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1 452.137 (1) (d) “Cooperative agreement” means the an agreement established
2 by the board under sub. (4) entered into between an out-of-state broker and a firm
3 as provided in this section.

4 **SECTION 15.** 452.137 (1) (am) of the statutes is created to read:

5 452.137 (1) (am) Notwithstanding s. 452.01 (1m), “agency agreement” includes
6 a written agreement between an out-of-state broker and a client in which the client
7 authorizes the out-of-state broker to provide brokerage services to the client.

8 **SECTION 16.** 452.137 (1) (c) of the statutes is renumbered 452.137 (1) (h).

9 **SECTION 17.** 452.137 (1) (cm) of the statutes is created to read:

10 452.137 (1) (cm) 1. “Commercial transaction” means a transaction concerning
11 any real property, other than real property containing 1 to 4 dwelling units or real
12 property zoned for agricultural use.

13 2. “Commercial transaction” does not include any transaction concerning a
14 dwelling unit that is a part of real property containing more than 4 dwelling units
15 and that is being sold on a unit-by-unit basis.

16 **SECTION 18.** 452.137 (1) (e) of the statutes is created to read:

17 452.137 (1) (e) “Dwelling unit” has the meaning given in s. 440.97 (3).

18 **SECTION 19.** 452.137 (2) (a) (intro.) of the statutes is renumbered 452.137 (2)
19 (a) and amended to read:

20 452.137 (2) (a) ~~Except as provided in par. (b), an~~ An out-of-state broker may
21 act as a broker in this state only as provided in par. (ag) or (am).

22 (ag) An out-of state broker may, subject to par. (b), act as a broker in this state
23 if the out-of-state broker does all of the following:

24 **SECTION 20.** 452.137 (2) (a) 1. of the statutes is renumbered 452.137 (2) (ag) 1.
25 and amended to read:

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1 452.137 (2) (ag) 1. Enters into a cooperative agreement with a listing firm and
2 cooperates with the listing firm on the listing agreement that is subject to the
3 cooperative agreement. Each cooperative agreement may cover only one listing
4 agreement.

5 **SECTION 21.** 452.137 (2) (a) 2. of the statutes is renumbered 452.137 (2) (ag) 2.
6 and amended to read:

7 452.137 (2) (ag) 2. Submits to the listing firm evidence that the out-of-state
8 broker is licensed in good standing to engage in real estate brokerage in a jurisdiction
9 other than this state.

10 **SECTION 22.** 452.137 (2) (am) of the statutes is created to read:

11 452.137 (2) (am) An out-of-state broker representing a person who is seeking
12 to buy or rent property located in this state in a commercial transaction may, subject
13 to pars. (b) and (bm), act as a broker in this state if the out-of-state broker does all
14 of the following:

15 1. Enters into a cooperative agreement with a firm and cooperates with the
16 firm. Each cooperative agreement shall be limited to a type of property, type of
17 function, geographic area, or other criteria specified in the buyer's or tenant's search
18 parameters.

19 2. Submits to the firm evidence that the out-of-state broker is licensed in good
20 standing to engage in real estate brokerage in a jurisdiction other than this state.

21 3. Either the out-of-state-broker or the firm enters into an agency agreement
22 with the prospective buyer or tenant. The cooperative agreement shall acknowledge
23 whether the out-of-state broker or firm has the agency agreement. If the
24 out-of-state broker has entered into the agency agreement with the prospective
25 buyer or tenant, the out-of-state broker and the prospective buyer or tenant shall,

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1 notwithstanding s. 452.01 (3m) and (5w), be considered to be a principal firm and
2 client for purposes of this chapter, and the firm shall be a subagent and shall provide
3 the out-of-state broker with a copy of the disclosure statement under s. 452.135 (2)
4 to be given to the client. The out-of-state broker is not required to request that the
5 client sign the statement.

6 **SECTION 23.** 452.137 (2) (b) 3. of the statutes is created to read:

7 452.137 (2) (b) 3. Enter into a cooperative agreement with a person who is not
8 licensed under this chapter as authority to sell, lease, rent, exchange, or attempt to
9 sell, lease, rent, or exchange property in this state.

10 **SECTION 24.** 452.137 (2) (bm) of the statutes is created to read:

11 452.137 (2) (bm) An out-of-state broker acting under par. (am) may not do any
12 of the following:

13 1. Negotiate with a seller or landlord, unless authorized under the cooperative
14 agreement. If a property is not listed with a listing firm, the firm shall conduct all
15 negotiations with the seller or landlord of that property.

16 2. View or show commercial property in this state for sale or lease without the
17 firm or a licensee associated with the firm being present, unless authorized under
18 the cooperative agreement. If a property is not listed with a listing firm, the firm
19 shall view or show the property with the out-of-state broker.

20 3. Have contact with another firm or another firm's seller or landlord, unless
21 otherwise agreed to in the cooperative agreement.

22 **SECTION 25.** 452.137 (2) (c) of the statutes is amended to read:

23 452.137 (2) (c) An out-of-state broker who is a party to a cooperative
24 agreement with a firm, and any out-of-state salesperson of the out-of-state broker,
25 are not required to be licensed under this chapter but shall otherwise be treated as

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1 licensees for purposes of this chapter and shall comply with the laws of this state as
2 they apply to licensees, and the out-of-state broker shall file with the board an
3 irrevocable consent that actions may be commenced against the out-of-state broker
4 in the proper court of any county in this state in which a cause of action arises or the
5 plaintiff resides, by the service of any process or pleading authorized by the laws of
6 this state on the board or any duly authorized employee. The consent shall stipulate
7 and agree that such service is valid and binding as due service upon the out-of-state
8 broker in all courts in this state. The consent shall be duly acknowledged and, if
9 made by a corporation, shall be authenticated by the corporate seal.

10 **SECTION 26.** 452.137 (4) (a) of the statutes is amended to read:

11 452.137 (4) (a) The board shall establish ~~a form~~ one or more forms to be used
12 for ~~a cooperative agreement~~ agreements under this section, which shall include any
13 required terms for such an agreement.

14 **SECTION 27.** 452.137 (4) (b) (intro.) of the statutes is amended to read:

15 452.137 (4) (b) (intro.) A cooperative agreement may be entered into only
16 through the use of ~~the~~ a form established by the board under par. (a) and shall do at
17 least all of the following:

18 **SECTION 28.** 452.137 (4) (c) of the statutes is created to read:

19 452.137 (4) (c) A cooperative agreement under sub. (2) (am) shall describe the
20 type, function, location, approximate size, and functional or geographic limitations
21 of the property being sought. A separate cooperative agreement shall be entered into
22 for each type of property.

23 **SECTION 29.** 452.14 (3) (p) of the statutes is repealed and recreated to read:

24 452.14 (3) (p) Subject to ss. 111.321, 111.322, and 111.335, been convicted of an
25 offense the circumstances of which substantially relate to real estate practice.

