

CHAPTER 136.

WISCONSIN REAL ESTATE BROKERS' BOARD.

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**136.01 Definitions.** Terms as used in this chapter are defined as follows:

- (1) "Board" means the Wisconsin Real Estate Brokers' Board.
- (2) "Real estate broker" means any person, firm or corporation, not excluded by subsection (3) of this section, who:
  - (a) For another, and for commission money or other thing of value, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of an interest or estate in real estate; or,
  - (b) Who is engaged wholly or in part in the business of selling real estate, whether or not such real estate is owned by such person, firm or corporation.
  - (c) Negotiates, or offers or attempts to negotiate a loan, secured, or to be secured, by mortgage or other transfer of or incumbrance on real estate.
- (3) The term "real estate broker" does not include:
  - (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court; or,
  - (b) Public officers while performing their official duties; or,
  - (c) Any bank, trust company, building and loan association, or any land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law; or,
  - (d) Employes of persons, companies or associations enumerated in paragraphs (a), (b) and (c) of this subsection, when engaged in the specific performance of their duties as such employes.
- (4) "Real estate salesman" means one who is employed by a real estate broker to perform any act authorized by this chapter to be performed by a real estate broker. [1933 c. 184 s. 2]

**Note:** The licensing board was justified in denying a real estate broker's license to an applicant who was unable to read and write the English language although he operated only in selling real estate owned and platted by himself, since a "real estate broker" is anyone who is engaged wholly or in part in the business of selling real estate whether or not such real estate is owned by himself. State ex rel. Green v. Clark, 235 W 628, 294 NW 25.

Real estate salesman's license is not terminated so as to require new application or second fee by accepting employment by broker not named in his application. 19 Atty. Gen. 175.

Board does not have authority to require periodic reports relative to business engaged in by brokers. 20 Atty. Gen. 92.

Sale of cemetery lot conveys interest in real estate and one engaged wholly or partly in such business must have license. 25 Atty. Gen. 741.

Company which is not bank, trust company, building loan association, land mortgage or farm loan association organized under Wisconsin or federal law and which is formed for purpose of loaning its own money, to be secured by mortgage, is real estate broker under this section. 29 Atty. Gen. 105.

**136.02 Brokers licensed.** No person, firm or corporation shall engage in or follow the business or occupation of, or advertise or hold himself or itself out as or shall act temporarily or otherwise as a real estate broker or real estate salesman in this state, without first procuring a license therefor as provided in this chapter. Licenses shall be granted only to persons who are trustworthy and competent to transact the business of a real estate broker or real estate salesman in such manner as to safeguard the interests of the public, and only after satisfactory proof thereof has been presented to the board.

**Note:** Person engaged by building and loan association or receiver appointed by court to sell or rent real estate on commis-

sion basis is real estate broker and must be licensed in absence of factors which would constitute him employe. 24 Atty. Gen. 735.

**136.03 Brokers' board created.** There is created the "Wisconsin Real Estate Brokers' Board." Within thirty days after this act takes effect, the governor, by and with the advice and consent of the senate, shall appoint three persons, at least two of whom shall be real estate brokers in this state, to be members of said board. One of said members shall be appointed for a term of two years; one for a term of four years; and one for a term of six years. Thereafter the terms of members of said board shall be six years and until their successors are appointed and qualify. Each member of the board shall, before entering upon his duties, take and file the official oath.

**Note:** Members of Wisconsin real estate and are not entitled to benefits of workmen's brokers' board are officials and not employes compensation act. 20 Atty. Gen. 511.

**136.04 Brokers' board.** (1) **ORGANIZATION, QUORUM.** The board, immediately following the qualification of the member appointed in any year, shall organize by appointing a secretary and by selecting from its number a president, vice president and a treasurer, and may promulgate rules and regulations for carrying into effect the provisions of this chapter and for the performance of its duties and functions. A majority of the board shall constitute a quorum for the exercise of the powers or authority conferred on it. In case of a vacancy, the remaining two members of the board shall exercise all the powers and authority of the board until such vacancy is filled.

(2) **DUTIES.** The board shall receive applications for, and issue licenses to real estate brokers and real estate salesmen as provided in this chapter, and shall administer the provisions of this chapter.

(3) **MEETINGS, HEARINGS.** The board may hold meetings, hearings or investigations anywhere in the state and any such hearings or investigations may be conducted by any member of the board, the secretary or by any duly authorized employe of the board.

(4) **OFFICIAL BOND.** The secretary and treasurer of the board shall each give a bond in the sum of five thousand dollars with sureties to be approved by the secretary of state, conditioned on the faithful performance of the duties of his office. Such bonds shall be filed in the office of the secretary of state. [1933 c. 470 s. 17]

**136.05 Application for license, contents.** (1) Any person desiring to act as a real estate broker or real estate salesman in this state shall file with the board an application for a license therefor. Said application shall be in such form as shall be prescribed by the board, and shall set forth:

(a) The kind of license desired;

(b) The name and address of the applicant; if the applicant be a firm, the name and address of each member thereof; if the applicant be a corporation, the name and address of each of its officers;

(c) The place or places, including the town, village or city, street number and county where the business is to be conducted, and the manner in which such place of business is designated;

(d) The business or occupation theretofore engaged in by the applicant, or, if a firm, by each member thereof, or if a corporation, by each officer thereof, for a period of at least two years immediately preceding the date of such application;

(e) Such further information as the board may reasonably require to enable it to determine the trustworthiness of each applicant, including each member of the firm, or each officer of the corporation, and his or their competency to transact the business of a real estate broker or salesman in such manner as to safeguard the interests of the public.

(2) In determining competency, the board shall require proof that the applicant for a broker's license has a fair knowledge of the English language, a fair understanding of the general purposes and general legal effect of deeds, mortgages, land contracts of sale, and leases, a general and fair understanding of the obligations between principal and agent, as well as of the provisions of this chapter.

**Note:** A statute requiring that an applicant for a real estate broker's license be competent to transact the business, and that he shall have a fair understanding of the general purposes and general legal effect of deeds, mortgages, land contracts of sale, and leases, and that he shall have a "fair knowledge of the English language" requires ability to read and write the English language. State ex rel. Green v. Clark, 235 W 628, 294 NW 25.

Real estate brokers' board may ask questions of applicant for real estate broker's license regarding his United States citizenship and his intention to become naturalized citizen, but cannot refuse a license on ground of negative answer to either question. 19 Atty. Gen. 488.

Real estate brokers' board has authority to require foreign corporation to comply with chapter 226, Stats., before granting it a broker's license. 19 Atty. Gen. 520.

**136.06 Applications, verification, fees, exemptions.** (1) Such application shall be verified by the applicant; if made by a firm it shall be verified by at least two members thereof; if made by a corporation it shall be verified by the president and secretary thereof. Application for license as real estate broker shall be accompanied by the affidavit of two persons who are citizens and real estate owners in the county in which the applicant resides or has his place of business, certifying that the applicant is trustworthy

and competent. Application for license as real estate salesman shall be accompanied by the affidavit of his employer, if employed, certifying that the applicant is trustworthy and competent.

(2) Each application for a real estate broker's license shall be accompanied by a license fee of ten dollars and for a real estate salesman's license by a fee of five dollars for the calendar year ending on the thirty-first day of December thereafter. Unless the application be withdrawn in writing before the board shall have made any investigation thereon, neither said fee, nor any part thereof, shall be returned to the applicant.

(3) In the case of applications for renewals of licenses the board may dispense with such of the matters contained in paragraphs (a), (b), (c), (d), or (e) of subsection (1) of section 136.05 as it deems unnecessary in view of prior applications.

(5) (a) Any licensed real estate salesman may at any time during the calendar year for which he has been licensed make application upon a form provided by the board for transfer to the employment of another licensed broker. The fee for such transfer shall be fifty cents payable at the time the application therefor is filed.

(b) The suspension or revocation of a license issued to a broker shall automatically suspend the license of every salesman employed by such broker at the time of the suspension or revocation of such broker's license. Such salesman shall have the right to apply for transfer to some other licensed broker by complying with the provisions of this chapter, provided such salesman is not a party to the proceeding bringing about the suspension or revocation of the license of his broker. [1933 c. 184 s. 3]

**Note:** Real estate broker may be licensed as salesman upon application and payment of fee therefor; may not be required to first surrender his broker's license. 19 Atty. Gen. 335.

**136.07 Licenses.** (1) **EXPIRATION.** A license issued by the board shall entitle the holder thereof to act as a real estate broker, or if the application is for a real estate salesman's license, to act as a real estate salesman in this state up to and including the thirty-first day of December following issuance of such license.

(2) **CORPORATE LICENSEE.** (a) If the licensee is a corporation, the license issued to it shall entitle the president thereof or such other officer as may be designated by such corporation, to act as a real estate broker. For each other officer who desires to act as a real estate broker in behalf of such corporation, an additional license shall be applied for and issued, the annual fee for which shall be one dollar for a real estate broker's license. No license as a real estate salesman shall be issued to any officer of a corporation nor to a member of a copartnership to whom a license was issued as a real estate broker. If the licensee is a copartnership, the license issued to it shall entitle one member thereof to act as a real estate broker, and for each other member of the copartnership who desires to act as a real estate broker an additional license shall be applied for and issued, the annual fee for which shall be one dollar for a real estate broker's license.

(3) **BROKERS' LIABILITY FOR ACTS OF SALESMEN.** Each real estate broker shall be responsible for the acts of any and all of his or its salesmen while acting as his or its agents.

(4) **ROSTER OF BROKERS.** The board shall from time to time prepare and publish in convenient form the names of all real estate brokers and salesmen licensed under this chapter. There shall also be included in such publication the names of all real estate brokers and salesmen whose licenses have been revoked at any time within one year prior to the issue thereof. [1931 c. 435 s. 1; 1933 c. 184 s. 1]

**136.08 Investigations, revocation of license.** (1) The board may on its own motion make investigations and conduct hearings in regard to the action of any real estate broker or real estate salesman, or any person, firm, or corporation who it has reason to believe is acting or has acted in either such capacity within this state, and may make findings, after a hearing held on ten days' notice, whether such person, firm, or corporation has acted as a real estate broker or salesman, which findings shall be subject to review as provided in section 136.15. In such review any additional evidence which may be presented and which is material may be considered. The board may also on its own motion, or upon complaint in writing, duly signed and verified by the complainant, and upon not less than ten days' notice to the real estate broker or salesman, suspend any real estate broker's or salesman's license if it has reason to believe, and may revoke such license in the manner provided hereafter, if it finds that the holder of such license has:

- (a) Made a material misstatement in the application for such license;
- (b) Made any substantial misrepresentation with reference to a transaction injurious to a seller or purchaser wherein he acts as agent;
- (c) Made any false promises of a character such as to influence, persuade or induce the seller or purchaser to their injury or damage;
- (d) Pursued a continued and flagrant course of misrepresentation or made false promises through agents or salesmen or advertising;

(e) Acted for more than one party in a transaction without the knowledge of all parties for whom he acts;

(f) Accepted a commission or valuable consideration as a real estate salesman for the performance of any of the acts specified in this chapter, from any person except his employer;

(g) Represented or attempted to represent a real estate broker other than the employer, without the express knowledge and consent of the employer;

(h) Failed, within a reasonable time, to account for or remit any moneys coming into his possession which belong to another person;

(i) Demonstrated untrustworthiness or incompetency to act as a real estate broker or salesman in such manner as to safeguard the interests of the public;

(j) Paid or offered to pay a commission or valuable consideration to any person for acts or services in violation of the provisions of this chapter;

(k) Been guilty of any other conduct, whether of the same or a different character from that specified herein, which constitutes improper, fraudulent or dishonest dealing; or

(1) Violated any provision of this chapter.

(2) If a broker is a company it shall be sufficient cause for the suspension or revocation of a broker's license that any officer, director or trustee of the company, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing a broker's license to such person as an individual.

(3) A copy of the complaint, together with notice of suspension of the license, if ordered by the board, shall forthwith be served upon the real estate broker or salesman complained against by personal service or by mailing same to his last known business address, and in case the complaint is against a salesman a copy of the complaint and notice shall also be served upon the broker for whom he is acting. The person so served shall file his answer thereto with the board within ten days after such service and also serve a copy of such answer on the complainant. The board shall thereupon set the matter for hearing as promptly as possible and within thirty days after the date of filing of the complaint. Either party may appear at such hearing in person or by attorney or agent. [1931 c. 435 s. 1; 1933 c. 159 s. 26; 1933 c. 184 s. 2]

**Revisor's Note, 1933:** The purpose is to repeal the implication of repeal by chapter 435, Laws 1931. (Bill No. 52 S, s. 26)

Subsection (1) was amended by chapter 435, Laws 1931, but the act did not print any of the paragraphs thereof lettered from (a) to (l). Those paragraphs are printed in the statutes; and attention is called to the form of the act for the purpose of informing all those who have occasion to consult this section of the form of the amendment.

Statements by the trial court in a broker's

unsuccessful action against H. for commissions, which statements were not findings or determinations, did not preclude the real estate brokers' board from drawing such inferences as were warranted by the facts adduced in subsequent proceedings before it in which it revoked the broker's license on the ground that he had harassed H. for commissions knowing that none was owing. State ex rel. Pallange v. Wis. R. E. B. Board, 241 W 77, 4 NW (2d) 167.

**136.09 Denial or revocation of license, procedure.** (1) No order denying or revoking a license shall be made until after a public hearing or hearings held before the board, or before any member thereof, or before any duly authorized employe whose report the board shall have adopted. Such hearing or hearings shall be held in the county wherein the applicant for a license or the real estate broker complained of or whose salesman is complained of has his place of business. In the event that said broker or salesman is a nonresident, such hearing shall be held at such place as may be designated by the board.

(2) At least ten days prior to the date of hearing, the board shall send written notice of the time and place of such hearing to the applicant for a license or to the complainant and to the party complained against and to their respective attorneys or agents of record by mailing same to the last known address of such persons. The testimony presented and proceedings had at such hearing shall be taken in shorthand and preserved as the records of the board. The board shall as soon thereafter as possible, and within ninety days after the date of filing of a complaint, make its findings and determination thereon and shall send a copy thereof to each interested party.

**136.10 Fee splitting.** No licensed broker shall pay a commission or any part thereof for performing any of the acts specified in this chapter to any person who is not a licensed broker or a licensed salesman under the provisions of this chapter or who is not regularly engaged in the real estate brokerage business in another state.

**136.11 Limitation on actions for commissions.** No person, firm or corporation engaged in the business or acting in the capacity of a real estate broker or real estate salesman within this state shall bring or maintain an action in the courts of this state for the collection of a commission or compensation for the performance of any of the acts mentioned in this chapter without alleging and proving that such person, firm or corporation was a duly licensed real estate broker or real estate salesman at the time the alleged cause of action arose.

**Note:** An agreement to pay a commission on a loan from a foreign corporation secured by a real estate mortgage, which loan is negotiated by a nonresident loan agent through a resident insurance agent, neither of whom is licensed in Wisconsin, is invalid and precludes a recovery of the commission. *Livingston v. Linker R. Co.*, 202 W 232, 231 NW 626.

A real estate agent suing for commission must allege and prove that he was a licensed broker or salesman at the time the alleged

cause of action arose. Remedial statutes may be of retrospective nature when they do not impair contracts or disturb vested rights. Since the statute already required a salesman to have a license, an amendment placing on him the necessity of showing such license, becoming effective after bringing action for commission but prior to trial, did not take away any right or remedy, and he was bound thereby; hence lack of proof of such license precluded recovery. *Levy v. Birnschein*, 206 W 486, 240 NW 140.

**136.12 Nonresident brokers.** (1) A nonresident of this state may become a real estate broker or a real estate salesman by conforming to all of the provisions of this chapter, except that such nonresident broker shall maintain an active place of business in the state in which he holds a license.

(2) The board may recognize in lieu of the affidavit required to accompany an application for license, the license issued to a nonresident broker or salesman in such other state, upon payment of a license fee and the filing by the applicant with the board of a certified copy of the applicant's license issued by such other state.

(3) Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of the state in which a cause of action may arise in which the plaintiff resides, by the service of any process or pleading authorized by the laws of this state, on the board, any member thereof or any duly authorized employe, said consent stipulating and agreeing that such service of such process or pleading shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant in this state. Said consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by the seal of such corporation.

(4) In case any process or pleadings are served upon the board or its duly authorized employe, it shall be by duplicate copies, one of which shall be filed in the office of the board and the other immediately forwarded by registered mail to the main office of the applicant against which said process or pleadings are directed, and no default in any such proceeding or action shall be taken except when it appears by affidavit of the secretary of the board or any duly authorized employe that a copy of the process or pleading was mailed to the defendant as herein required, and no judgment by default shall be taken in any such action or proceeding within twenty days after the date of mailing of such process or pleading to the nonresident defendant.

**136.13 Evidence, power to obtain.** (1) The board may subpoena and compel the attendance and testimony of witnesses within this state, and the production of books, papers and documents, and each member of the board and its duly authorized representative may administer oaths to witnesses.

(2) In case of the refusal of any person to comply with any subpoena issued hereunder or to testify to any matter regarding which he may lawfully be interrogated, the circuit court of any county or the judge thereof, on application of any member of the board, shall issue an order requiring such person to comply with such subpoena and to testify, or either, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(3) The board may also take depositions in the manner described by law for the taking of depositions in actions pending in circuit court.

(4) Each witness who appears before the board pursuant to its subpoena, order or request, shall be paid the fees and mileage provided by law for witnesses in courts of record. Only witnesses appearing for and on behalf of the board shall be paid from the funds deposited pursuant to section 20.575, upon vouchers approved by the president and secretary of the board, and fees and mileage of all other witnesses shall be paid by the party demanding their attendance. [1933 c. 184 s. 2]

**136.14 Ineligibility.** No license shall be issued to any person, firm or corporation whose license shall have been previously revoked, until the expiration of a period of not to exceed two years from the date such revocation becomes finally effective, such period to be determined in each case by the board.

**Note:** Real estate brokers' board may not refuse to grant salesman's license for period of two years because applicant's broker's license has been revoked. 20 Atty. Gen. 510.

**136.15 Court review.** (1) Orders of the board shall be subject to review in the manner provided in chapter 227.

(2) If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portion of said chapter. [1931 c. 435 s. 2, 3; 1943 c. 375 s. 53]

**136.16 Penalties.** Any person, firm, or corporation who shall engage in or follow the business or occupation of, or advertise or hold himself or itself out as or act tempo-

rarily or otherwise as a real estate broker or real estate salesman in this state without first having obtained a license therefor as required and provided by this chapter, or who otherwise violates any provisions of this chapter, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than twenty-five nor more than five thousand dollars or by imprisonment in the county jail for not less than ten days nor more than six months or by both such fine and imprisonment. [1933 c. 184 s. 2]

**136.17 Compensation presumed.** In any prosecution for violation of this chapter proof of facts otherwise established that a person, firm or corporation acted as a broker or agent or salesman shall be prima facie proof that compensation therefor was received or promised. [1933 c. 184 s. 3]

**136.18 Certifications as evidence.** (1) Copies of all documents, orders, resolutions and certificates made, executed or issued by the board, and of all papers filed in its office, when certified by the secretary or assistant secretary of the board, under its official seal, shall be received in evidence in all cases in like manner and with the same effect as the originals.

(2) The certificate of the secretary or assistant secretary of the board to the effect that a specified individual, copartnership or corporation is not or was not on a specified date the holder of a mortgage broker's license, real estate broker's license or real estate salesman's license, or that a specified license was not in effect on a date specified, and the certificate of the secretary or assistant secretary of the board as to the issuance, suspension, or revocation of any such license, or as to the filing or withdrawal of any application therefor, or as to the existence or nonexistence thereof, shall be prima facie evidence of the facts therein stated for all purposes in any action or proceeding in the courts of this state. [1933 c. 184 s. 3]