

CHAPTER 136.

WISCONSIN REAL ESTATE BROKERS' BOARD.

136.01	Definitions.	136.09	Denial or revocation of license, procedure.
136.011	Cemetery real estate brokers and salesmen.	136.10	Fee-splitting.
136.02	Brokers and salesmen licensed.	136.11	Limitation on actions for commissions.
136.03	Brokers' board.	136.12	Nonresident brokers.
136.04	Brokers' board, duties.	136.13	Evidence, power to obtain.
136.05	Application for license, contents.	136.14	Ineligibility.
136.06	Applications, verification, fees, exceptions.	136.15	Court review.
136.065	License, of whom not required.	136.16	Penalties.
136.07	Licenses.	136.17	Compensation presumed.
136.08	Investigations, revocation of license.	136.18	Certifications as evidence.

136.01 Definitions. As used in this chapter:

- (1) "Board" means the Wisconsin Real Estate Brokers' Board.
- (2) "Real estate broker" means any person not excluded by sub. (6), 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;
 - (b) Is engaged wholly or in part in the business of selling real estate, whether or not such real estate is owned by such person; or
 - (c) Negotiates or offers or attempts to negotiate a loan, secured or to be secured by mortgage or other transfer of or encumbrance on real estate.
 - (d) Engages in any activities of a business opportunity broker set forth in sub. (4).
- (3) "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.
- (4) "Business opportunity broker" means any person not excluded by sub. (6) or who does not hold a real estate broker's license issued by the board, 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 any business, its good will, inventory, fixtures or an interest therein; or
 - (b) Is engaged wholly or in part in the business of selling business opportunities or good will of an existing business or is engaged wholly or in part in the business of buying and selling, exchanging or renting of any business, its good will, inventory, fixtures or an interest therein.
- (5) "Business opportunity salesman" means anyone who is employed by a business opportunity broker to perform any act authorized by this chapter to be performed by a business opportunity broker.
- (6) "Real estate broker" or "business opportunity 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;
 - (b) Public officers while performing their official duties;
 - (c) Any bank, trust company, savings 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) Employees of persons enumerated in pars. (a), (b) and (c) when engaged in the specific performance of their duties as such employees.

History: 1955 c. 7, 359.

One who is licensed only as a business opportunity broker is not authorized to act as broker in connection with the sale of real estate as part of a business. 39 Atty. Gen. 475.

Person proposing to engage in sale of uranium mining leases must be licensed as a real estate broker under ch. 136. 45 Atty. Gen. 20.

An auctioneer selling real estate at public auction should have a license, even though a licensed broker participates. 46 Atty. Gen. 1.

136.011 Cemetery real estate brokers and salesmen. Any cemetery association or corporation which pays any commission or other compensation to any person, including its officers, members or stockholders, for soliciting the sale of its lots or grave spaces on a commercially operated basis, and any salesman employed by it, shall be licensed under this chapter, and the cemetery association or corporation broker's license shall be issued in its name and be governed by all provisions of this chapter relating to corporate licensees.

History: 1957 c. 159.

136.02 Brokers and salesmen licensed. No person shall engage in or follow the business or occupation of, or advertise or hold himself out as or act temporarily or otherwise as a real estate broker or salesman or cemetery salesman or business opportunity broker or salesman without a license. Licenses shall be granted only to persons who are trustworthy and competent to transact such businesses in such manner as to safeguard the interests of the public, and only after satisfactory proof thereof has been presented to the board. If a cemetery salesman engages in the sale of real estate other than cemetery lots or grave spaces, he shall first obtain a real estate salesman's license.

History: 1955 c. 7; 1957 c. 159.

Real estate brokers engaging in the sale of businesses other than as an incident to the sale of real estate must be licensed as business opportunity brokers. Persons engaging in the sale only of personal property which may be useful in a business need not be licensed as business opportunity brokers. 42 Atty. Gen. 130.

A foreign corporation, operating as a business opportunity broker by means of agents in Wisconsin who solicit "offers to list" subject to acceptance by the home office in Chicago, must obtain a license. Its agents must obtain salesmen's licenses. 43 Atty. Gen. 3.

Licensing of real estate brokers is a matter of state-wide concern. Municipalities may not validly enact ordinances setting up local licensing provisions for such brokers and agents. 44 Atty. Gen. 146.

136.03 Brokers' board. The Wisconsin real estate brokers' board consists of 3 persons, at least 2 of whom shall be real estate brokers in this state. The governor, by and with the advice and consent of the senate, shall appoint the members of said board. The terms of members shall be 6 years and until their successors are appointed and qualify. Each member shall, before entering upon his duties, take and file the official oath.

History: 1955 c. 7.

136.04 Brokers' board, duties. (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 administering 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 2 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 salesmen and business opportunity brokers and salesmen and shall administer this chapter.

(3) MEETINGS, HEARINGS. The board may hold meetings, hearings or investigations anywhere in the state which 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 \$5,000 with sureties to be approved by the secretary of state, conditioned for the faithful performance of the duties of his office. The bonds shall be filed in the office of the secretary of state.

(5) PER DIEM. Each member of the board shall be paid \$10 per day when actually and necessarily engaged in his duties.

History: 1951 c. 319 s. 243; 1955 c. 7.

Under (1) the board has power to make a rule prohibiting the demand for and receipt of nonreturnable advance retainer fees by either class of brokers. 43 Atty. Gen. 1.

136.05 Application for license, contents. (1) Any person desiring to act as a real estate broker or salesman or cemetery salesman or business opportunity broker or salesman shall file with the board an application for a license. Said application shall be in such form as the board prescribes and shall set forth:

(a) The kind of license desired;

(b) The name and address of the applicant; if the applicant is a partnership, the name and address of each member; if the applicant is 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 the place of business is designated;

(d) The business or occupation theretofore engaged in by the applicant, or if a partnership, by each member, or if a corporation, by each officer, for a period of at least 2 years immediately preceding the date of the application;

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

(2) In determining competency, the board shall require proof:

(a) That the applicant for a real estate 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, and a general and fair understanding of the obligations between principal and agent, as well as of this chapter.

(b) That the applicant for a business opportunity broker's or salesman's license has a fair knowledge of the English language, a fair understanding of the general purposes and general legal effects of bills of sale, chattel mortgages, conditional sales contracts, the provisions of the bulk sales law, leases, and a general and fair understanding of the obligations between principal and agent, as well as of this chapter.

(c) That the applicant for a cemetery salesman's license has a fair knowledge of the English language, a fair understanding of the general purposes and general legal effect of cemetery deeds, contracts for the sale of lots or grave spaces, and of trust funds in connection with perpetual care trust fund agreements, and of the obligations between principal and agent, as well as of this chapter.

History: 1955 c. 7; 1957 c. 159.

A person licensed as a broker can do some joint activity, they should obtain a business under more than one trade name license as a partnership, under which one of without obtaining a separate license under them could operate without further fee. 46 each trade name, but if 2 brokers engage in Atty. Gen. 1.

136.06 Applications, verification, fees, exceptions. (1) Such application shall be verified by the applicant; if made by a partnership it shall be verified by at least 2 members; if made by a corporation it shall be verified by the president and secretary. Application for license as real estate or business opportunity broker shall be accompanied by the affidavit of 2 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 or business opportunity salesman shall be accompanied by the affidavit of his employer, if employed, certifying that the applicant is trustworthy and competent.

(2) (a) Each application for a real estate broker's license shall be accompanied by a fee of \$10 and for a real estate salesman's license by a fee of \$5 for the calendar year ending on December 31 thereafter.

(b) Each application for a business opportunity broker's license shall be accompanied by a fee of \$10 and for a business opportunity salesman's license by a fee of \$5 for the calendar year ending on June 30 thereafter.

(c) Unless the application is withdrawn in writing before the board has made any investigation thereon, neither the fee nor any part thereof shall be returned.

(3) In the case of applications for renewals of licenses the board may dispense with such matters contained in s. 136.05 (1) as it deems unnecessary in view of prior applications.

(4) (a) Any licensed real estate or business opportunity salesman may at any time during the calendar year for which he is licensed make application upon a form provided by the board for transfer to the employment of another licensed broker. The fee for transfer by a real estate salesman shall be 50 cents, and by a business opportunity salesman shall be \$1, payable at the time the application is filed.

(b) Suspension or revocation of a license issued to a broker shall automatically suspend the license of every salesman employed by the broker at the time of the suspension or revocation of the broker's license. The salesman may apply for transfer to some other licensed broker by complying with this chapter, provided the salesman is not a party to the activities causing the suspension or revocation of the license of his broker.

(5) Sections 136.06 to 136.18, as they apply to real estate salesmen, shall apply with equal effect to cemetery salesmen.

History: 1955 c. 7; 1957 c. 159.

An applicant for a real estate or business opportunity broker's or salesman's license is not entitled to a refund of his fees unless the withdrawal of his application takes place before any investigation has been made thereon. The Wisconsin real estate brokers' board is not required to allow any specified time to elapse between the receipt of an application for a license and the commencement of its investigation thereon. 41 Atty. Gen. 16.

136.065 License, of whom not required. No cemetery salesman's license shall be required of any person soliciting the sale of lots or grave spaces in a cemetery organized, maintained and operated by towns, villages and cities, by churches, by fraternal and benevolent societies, or by incorporated colleges of religious orders.

History: 1957 c. 159.

136.07 Licenses. (1) **EXPIRATION.** A license issued by the board entitles the holder:

(a) To act as a real estate broker or salesman, as the case may be, up to and including December 31 following issuance of the license.

(b) To act as a business opportunity broker or salesman, as the case may be, up to and including June 30 following issuance of the license.

(2) CORPORATE LICENSEE. If the licensee is a corporation, the license issued to it entitles the president thereof or such other officer as may be designated by such corporation to act as a broker. For each other officer who desires to act as a broker in behalf of such corporation, an additional license shall be obtained, the annual fee for which shall be \$1 for a real estate broker's license and \$10 for a business opportunity broker's license. No license as a real estate or business opportunity salesman shall be issued to any officer of a corporation or member of a partnership to which a license was issued as a broker. If the licensee is a partnership, the license issued to it entitles one member to act as a broker, and for each other member who desires to act as a broker an additional license shall be obtained, the annual fee for which shall be \$1 for a real estate broker's license and \$10 for a business opportunity broker's license.

(3) BROKER'S LIABILITY FOR ACTS OF SALESMEN. Each broker shall be responsible for the acts of any and all of his salesmen while acting as his agents.

(4) ROSTER OF BROKERS. The board shall from time to time prepare and publish in convenient form the names of all brokers and salesmen licensed under this chapter. There shall also be included in such publication the names of all brokers and salesmen whose licenses have been revoked at any time within one year prior to the issue thereof.

History: 1955 c. 7.

A director of a corporation who is not also an officer can be licensed as a salesman, since directors are not corporate officers. 46 Atty. Gen. 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 or business opportunity broker or salesman, or any person 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 10 days' notice, whether such person has acted as a broker or salesman. The findings shall be subject to review as provided in s. 136.15. In such review any additional material evidence presented may be considered.

(2) 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 10 days' notice to the broker or salesman, suspend any broker's or salesman's license if it has reason to believe, and may revoke such license as 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 his 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 salesman for the performance of any act specified in this chapter from any person except his employer;
- (g) Represented or attempted to represent a 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 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 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.

(3) 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 of a partnership, or anyone who has financial interest in or is in any way connected with the operation of a brokerage business, has been guilty of any act or omission which would be cause for refusing a broker's license to such person as an individual.

(4) A copy of the complaint, together with notice of suspension of the license, if ordered by the board, shall forthwith be served upon the broker or salesman complained against by personal service or by mailing same to his last known business address. If 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 with the board within 10 days after such service and serve a copy of his answer on the complainant. The board shall thereupon set the matter for hearing as promptly as possible and within 30 days after the date of filing the complaint. Either party may appear at the hearing in person or by attorney or agent.

History: 1955 c. 7.

136.09 Denial or revocation of license, procedure. (1) No order denying or revoking a license shall be made until after a public hearing held before the board, or before any member thereof, or before any duly authorized employe whose report the board has adopted. The hearing shall be held in the county wherein the applicant for a license or the broker complained of or whose salesman is complained of has his place of business. If the broker or salesman is a nonresident the hearing shall be held at such place as the board designates.

(2) At least 10 days prior to the date of hearing the board shall send written notice of the time and place of the 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 the hearing shall be taken in shorthand and preserved as the records of the board. The board shall as soon thereafter as possible, and within 90 days after the date of filing of a complaint, make its findings and determination thereon and shall send a copy to each interested party.

History: 1955 c. 7.

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

History: 1955 c. 7.

136.11 Limitation on actions for commissions. No person engaged in the business or acting in the capacity of a real estate or business opportunity broker or 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 act mentioned in this chapter without alleging and proving that he was a duly licensed broker or salesman at the time the alleged cause of action arose.

History: 1955 c. 7.

Illinois broker not licensed in Wisconsin Since Wisconsin court would not entertain sued Wisconsin resident for commission for action, federal court will dismiss. Reed v. sale of defendant's Wisconsin property. Kelly, 177 F (2d) 473.

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

(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 of a certified copy of the license issued by such other state.

(3) Every nonresident applicant shall file an irrevocable consent that actions may be commenced against him in the proper court of any county of the state in which a cause of action arises or 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. The consent shall stipulate and agree that such service is valid and binding as due service upon said applicant in all courts in this state. The consent shall be duly acknowledged and, if made by a corporation, shall be authenticated by the corporate seal.

(4) Duplicate copies of any process or pleading shall be served upon the board or its duly authorized employe. One copy 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 whom the process or pleading is directed. No default in any such proceeding or action shall be taken unless 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. No judgment by default shall be taken in any action or proceeding within 20 days after the date of mailing the process or pleading to the nonresident defendant.

History: 1955 c. 7.

A foreign corporation engaged in the real estate business is required to comply with 136.12 and 180.801. 46 Atty. Gen. 1.

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) The board may also take depositions in the manner prescribed by law for taking depositions in actions in circuit court.

(3) 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. Witnesses appearing for and on behalf of the board shall be paid from the funds deposited pursuant to s. 20.700 (41), upon vouchers approved by its president and secretary. The fees and mileage of all other witnesses shall be paid by the party demanding their attendance.

History: 1955 c. 7.

136.14 Ineligibility. No license shall be issued to any person whose license has been revoked until the expiration of a period not to exceed 2 years from the date the revocation became finally effective, the period to be determined in each case by the board.

History: 1955 c. 7.

136.15 Court review. Orders of the board shall be subject to review as provided in ch. 227.

History: 1951 c. 261 s. 10; 1955 c. 7.

136.16 Penalties. (1) Any person who engages in or follows the business or occupation of, or advertises or holds himself out as or acts temporarily or otherwise as a real estate broker or salesman in this state without a license, or who otherwise violates any provision of this chapter, shall be fined not less than \$25 nor more than \$5,000 or imprisoned not less than 10 days nor more than 6 months or both.

(2) Any person who engages in or follows the business or occupation of, or advertises or holds himself out as or acts temporarily or otherwise as a business opportunity broker or salesman in this state without a license, or who otherwise violates any provision of this chapter, shall be fined not less than \$25 nor more than \$200 or imprisoned not less than 10 days nor more than 6 months or both.

History: 1955 c. 7.

136.17 Compensation presumed. In any prosecution for violation of this chapter proof that a person acted as a broker or agent or salesman is prima facie proof that compensation therefor was received or promised.

History: 1955 c. 7.

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 its secretary or assistant secretary, under its official seal, shall be received in evidence in all cases the same as the originals.

(2) The certificate of the secretary or assistant secretary of the board to the effect that a specified individual, partnership or corporation is not or was not on a specified date the holder of a real estate broker's or salesman's license or a business opportunity broker's or salesman's license, or that a specified license was not in effect on a date specified, or as to the issuance, suspension or revocation of any license, the filing or withdrawal of any application or its existence or nonexistence, is prima facie evidence of the facts therein stated for all purposes in any action or proceeding.

History: 1955 c. 7.