

CHAPTER 136.

WISCONSIN REAL ESTATE COMMISSION.

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136.01 Definitions. As used in this chapter:

- (1) "Commission" means the Wisconsin Real Estate Commission.
- (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 to the extent that a pattern of real estate sales is established, 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) 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
 - (e) 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.
- (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.
- (6) "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;
 - (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: 1963 c. 14, 366; 1965 c. 123.

A corporation attempting to rerent its own property after a tenant vacated during the term of a lease does not violate (2) (a) and may recover expenses from the tenant. *St. Regis Apartment Corp. v. Sweitzer*, 32 W (2d) 426, 145 NW (2d) 711.

Sale of corporate business, consisting of real estate, inventory, goodwill, etc., by means of a stock transaction discussed. Respective rights of real estate brokers and licensed securities dealers analyzed. 49 *Atty. Gen.* 4.

Discussion of (6) (d) relative to auc-

ioneer engaged by bank acting as executor and the need for a real estate broker's or salesman's license. 52 *Atty. Gen.* 405.

Real estate broker must be licensed as a securities broker in order to negotiate for sale of corporate business by means of stock transfer except where exempt securities are involved. 55 *Atty. Gen.* 152.

Corporation operating a "sell your own home" service would probably be required to be licensed as a real estate broker but the facts of each case must be evaluated. 55 *Atty. Gen.* 133.

136.011 Cemeteries, cemetery brokers and salesmen. (1) 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 shall register under this chapter. Such cemetery association or corporation shall register annually and pay an annual fee of \$25. Such registration shall be in writing and shall include the names of the officers of the ceme-

tery association or corporation. Any cemetery association or corporation required to register hereunder which knowingly fails to register within 30 days after November 1, 1961 or by February 1 of any subsequent year shall be fined not more than \$100.

(2) Every such registered cemetery association or corporation shall designate a resident real estate broker licensed under this chapter as its broker and any resident licensed broker may be so designated.

(3) Every person engaging in or following the business or occupation of a cemetery salesman shall be registered annually upon the written request of any broker designated under sub. (2) and the payment of an annual fee of \$10. The broker shall in writing certify to the commission that such salesman is trustworthy and competent to act as a cemetery salesman. Such person shall be registered by the commission as a salesman and agent of the broker requesting same and of the cemetery association or corporation designating such broker.

(4) Within 10 days after the certification of any cemetery salesman under sub. (3) such salesman shall verify and furnish to the commission, in such form as the commission prescribes, the following information:

- (a) Name and address;
- (b) Educational qualifications;
- (c) Prior occupations;
- (d) Such further information as the commission may reasonably require to enable it to determine the trustworthiness and competency of such salesman to transact the business of a cemetery salesman in such manner as to safeguard the interest of the public.

(5) Every broker requesting the registration of any cemetery salesman shall be responsible for the acts of any and all such salesmen while acting as cemetery salesmen. The cemetery association or corporation designating such broker shall be equally responsible for the acts of such salesmen while acting as salesmen for such cemetery association or corporation.

(6) A person who is not registered shall not engage in or follow the business or occupation of, or advertise or hold himself out as or act temporarily or otherwise as a cemetery salesman.

(7) No cemetery organized, maintained and operated by towns, villages, cities, churches, fraternal and benevolent societies or by incorporated colleges of religious orders shall be required to register hereunder or be subject to any of the provisions of this chapter.

History: 1961 c. 593, 675; 1965 c. 123.

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 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 commission. 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: 1961 c. 593; 1963 c. 366; 1965 c. 123.

136.03 Real estate commission. The Wisconsin real estate commission 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 commission. 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: 1965 c. 123.

136.04 Real estate commission, duties. (1) **ORGANIZATION, QUORUM.** The commission, 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 commission 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 commission shall exercise all the powers and authority of the commission until such vacancy is filled.

(2) **DUTIES.** (a) The commission shall receive applications for and issue licenses to real estate brokers and salesmen and shall administer this chapter.

(b) The commission may issue letters and bulletins, and conduct clinics disseminating information to its licensees.

(c) The commission may expend moneys for research and educational projects for its licensees and the protection of the public, including the publication or revision of real estate study manuals.

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

(4) OFFICIAL BOND. The secretary of the commission or anyone administering the funds of the commission, shall 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 bond shall be filed in the office of the secretary of state.

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

History: 1963 c. 520; 1965 c. 12, 123, 249, 433.

Board has authority to promulgate rule name of licensed broker in advertisements, requiring individuals or partnerships doing signs and business cards. 53 Atty. Gen. 210. business under a trade name to list the

136.05 Application for license, contents. (1) Any person desiring to act as a real estate broker or salesman shall file with the commission an application for a license. Said application shall be in such form as the commission 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 commission 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 broker or salesman in such manner as to safeguard the interests of the public.

(2) In determining competency, the commission shall require proof that the applicant for a real estate broker's or salesman'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, leases, bills of sale, chattel mortgages, conditional sales contracts, the provisions of the bulk sales law and a general and fair understanding of the obligations between principal and agent, as well as of this chapter.

(3) APPRENTICESHIPS. Any person who is a resident of this state and a citizen of the United States, 20 years of age or over, may upon application filed in accordance with sub. (1) be indentured to a licensed resident broker in accordance with rules promulgated by the commission. These rules shall be drawn so as to protect the public and may limit the real estate sales and brokerage activity of the apprentice. The commission further may require a preliminary examination covering general knowledge and prescribe the character and extent of his work during his apprenticeship. The commission is authorized to issue a temporary salesman's permit to said individual for a period of not to exceed one year upon payment of a \$15 fee. This temporary permit shall not be renewable.

History: 1961 c. 593; 1963 c. 366, 459; 1965 c. 123; 1967 c. 26.

A director of a business corporation is a broker by a corporation otherwise qualified an officer of the corporation within the meaning of 136.05 (1) (d) and (e) and 136.07 (2), and may be designated to act as

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 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 salesman shall be accompanied by the affidavit of his employer, if employed, certifying that the applicant is trustworthy and competent.

(2) (a) Each new application for a real estate broker's license or for a real estate salesman's license or cemetery registration shall be for the remainder of the calendar

year. Each new applicant shall receive a free copy of the current study manual.

(b) Each renewal application shall be for the ensuing calendar year.

(c) Unless an application is withdrawn in writing before the commission has made any investigation thereon, no part of the fee shall be returned.

(3) The commission may by rule establish fees which shall accompany applications for new and renewal licenses, but such fees shall not exceed the following:

(a) For a new real estate broker's license, \$20; and for a new real estate salesman's license, \$15.

(b) For renewal of a real estate broker's license, \$15; and of a real estate salesman's license, \$10.

(4) (a) Any licensed real estate salesman may at any time during the calendar year for which he is licensed make application upon form provided by the commission for transfer to the employment of another licensed broker. The fee for transfer by a real estate salesman is 50 cents, 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 136.075, 136.08, 136.09, 136.10, 136.13, 136.14, 136.15, 136.16, 136.17 and 136.18, as they apply to real estate salesmen, shall apply with equal effect to cemetery salesmen.

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

History: 1961 c. 593, 675; 1963 c. 10, 366; 1965 c. 123.

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.

136.07 Licenses. (1) **EXPIRATION.** A license issued by the commission 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.

(2) **CORPORATIONS; PARTNERSHIPS.** 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 is \$1 for a real estate broker's license. No license as a real estate 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 is \$1 for a real estate broker's license.

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

(b) If a real estate broker maintains any branch offices within this state, each branch office must be under the direct full-time supervision of a licensed real estate broker (who is also a licensed salesman of employer licensee) residing in the county in which said branch office is located. The employer broker shall be responsible for the acts and conduct of all licensed employees of the branch office, including the broker who is supervisor of the branch office.

(4) **ROSTER OF BROKERS.** The commission 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.

(5) **RENEWAL.** After January 1, 1960, renewal applications for all licenses for the ensuing year shall be submitted with the required fee on or before August 31 of the current year. If a renewal application is filed with the commission after August 31 it shall be accompanied by a late filing fee of \$10 in addition to the required renewal fee. If an application for renewal is not filed with the commission on or before December 31 of the current license year, the applicant shall be prohibited from engaging in any of the ac-

tivities covered by such license until his license is renewed or a new license issued. The commission shall accept renewal applications at any time during the year after the license expired upon payment of the renewal fee and penalty. The commission shall not thereafter issue a license until the applicant passes the required written examination.

History: 1963 c. 366; 1965 c. 123.

See note to 136.05, citing 50 Atty. Gen. 191.

136.075 Trust accounts. All down payments, earnest money deposits or other trust funds received by a broker or salesman on behalf of his principal or any other person, shall be deposited in a common trust account, maintained by said broker for such purpose in a bank designated by the broker, pending the consummation or termination of the transaction, except as such moneys may be paid to one of the parties pursuant to such contract or option. The name of said bank shall at all times be registered with the commission, along with a letter authorizing the commission to examine and audit said trust account when said commission deems it necessary.

History: 1965 c. 123.

Discussion of 136.075 and REB 6.01 relative to mortgage broker, licensed as real estate broker, collecting and depositing loans and payments. 51 Atty. Gen. 94.

136.08 Investigations, revocation of license. (1) The commission may on its own motion make investigations and conduct hearings in regard to the action of any real estate broker, salesman or cemetery 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, salesman or cemetery salesman. The findings shall be subject to review under s. 136.15. In such review any additional material evidence presented may be considered.

(1a) In lieu of the procedure set forth in sub. (1), if the commission has reason to believe that a person is acting as a broker or salesman without a license and that the continuation of such activity might cause injury to the public interest, the commission or its staff counsel at the direction of the commission may petition the circuit court for a temporary restraining order, an injunction or a writ of ne exeat as provided in ch. 268. The provisions of s. 136.16 shall not apply to this subsection.

(2) The commission 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 or registration if it has reason to believe, and may revoke such license or registration as provided hereafter, if it finds that the holder of such license or registration has:

- (a) Made a material misstatement in the application for such license or in any information furnished to the commission;
- (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, salesman or cemetery 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 or reg-

istration, if ordered by the commission, shall forthwith be served upon the broker, salesman or cemetery salesman complained against by personal service or by mailing same to his last known business address. If the complaint is against a salesman or a cemetery 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 commission within 10 days after such service and serve a copy of his answer on the complainant. The commission 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: 1961 c. 593, 675; 1963 c. 14, 366; 1965 c. 123.

A finding that a broker was an agent for purchase justified revocation of his license. purposes of locating and buying land and Hilboldt v. Wisconsin R. E. Brokers' Board, that he concealed a profit he made on the 28 W (2d) 474, 137 NW (2d) 482.

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

(2) At least 10 days prior to the date of hearing the commission shall send written notice of the time and place of the hearing to the applicant for a license or registration 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 commission. The commission 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: 1961 c. 675; 1965 c. 123.

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

History: 1961 c. 675; 1963 c. 366.

136.11 Limitation on actions for commissions. No person engaged in the business or acting in the capacity of a real estate 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: 1963 c. 366.

136.12 Nonresident brokers. (1) A nonresident of this state may become a real estate 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 said nonresident real estate brokers shall not employ real estate salesmen in this state.

(2) The commission 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 commission, 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 commission or its duly authorized employe. One copy shall be filed in the office of the commission 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 proceed-

ing or action shall be taken unless it appears by affidavit of the secretary of the commission 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: 1963 c. 366; 1965 c. 123.

Discussion relative to licensing and hiring nonresidents either licensed or not in state of residence. 60 Atty. Gen. 93.

136.13 Evidence, power to obtain. (1) The commission 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 commission and its duly authorized representative may administer oaths to witnesses.

(2) The commission 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 commission 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 commission shall be paid from the funds deposited pursuant to s. 20.165 (2) (k), 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: 1965 c. 123, 433 s. 121; 1967 c. 291 s. 14.

136.14 Ineligibility. No license or registration shall be issued to any person whose license or registration 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 commission.

History: 1961 c. 675; 1965 c. 123.

An attack on the board's order because grounded on this section. *Hilboldt v. Wisconsin R. E. Brokers' Board*, 28 W (2d) 474, as to the period of revocation could not be 137 NW (2d) 482.

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

History: 1965 c. 123.

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 prosecuted by the district attorney in the county where violation occurs and may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(3) Any person who is not registered who engages in or follows the business or occupation of, or advertises or holds himself out as or acts temporarily or otherwise as a cemetery salesman in this state or who otherwise violates any provision of this chapter, shall be prosecuted by the district attorney in the county where the violation occurs and may 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: 1961 c. 675; 1963 c. 14, 366.

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.

136.18 Certifications as evidence. (1) Copies of all documents, orders, resolutions and certificates made, executed or issued by the commission, 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 commission 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 registration, or that a specified license or registration was not in effect on a date specified, or as to the issuance, suspension or revocation of any license or registration, 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 proceedings.

History: 1961 c. 675; 1963 c. 366; 1965 c. 123.