

## CHAPTER 452

### REAL ESTATE PRACTICE

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**Cross–reference:** See definitions in s. 440.01.

**Cross Reference:** See also chs. [RL 11](#), [12](#), [15](#), [16](#), [17](#), [18](#), [22](#), [23](#), [24](#), [25](#), and [26](#), Wis. adm. code.

#### 452.01 Definitions. In this chapter:

**(1e)** “Adverse fact” means any of the following:

(a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

1. Significantly and adversely affecting the value of the property.
2. Significantly reducing the structural integrity of improvements to real estate.
3. Presenting a significant health risk to occupants of the property.

(b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations under a contract or agreement made concerning the transaction.

**(1m)** “Agency agreement” means a written agreement between a broker and a client in which the client authorizes the broker to provide brokerage services to the client.

**(1s)** “Board” means real estate board.

**(2)** “Broker” means any person not excluded by sub. (3), who does any of the following:

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

(b) Is engaged wholly or in part in the business of selling or exchanging interests or estates in real estate or businesses, including businesses’ goodwill, inventory, or fixtures, whether or not the business includes real property, to the extent that a pattern of sales or exchanges is established, whether or not the person owns the real estate or businesses. Five sales or exchanges in one year or 10 sales or exchanges in 5 years is presumptive evidence of a pattern of sales or exchanges.

(bm) For another person, and for commission, money, or other thing of value shows real estate or a business or its inventory or fixtures, whether or not the business includes real property, except that this paragraph does not include showing a property that is offered exclusively for rent.

(h) For another person, and for commission, money, or other thing of value, promotes the sale, exchange, purchase, option, rental, or leasing of real estate, a time share, or a business or its goodwill, inventory, or fixtures, whether or not the business includes real property. This paragraph does not apply to a person

who only publishes or disseminates verbatim information provided by another person.

**(3)** “Broker” does not include any of the following:

(a) Receivers, trustees, personal representatives, 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 bank, savings and loan association, insurance company, 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.

(d) Employees of persons enumerated in pars. (a) to (c) and (f) when engaged in the specific performance of their duties as such employees.

(dm) Any employee of an attorney under par. (h) if all of the following are true:

1. The employee’s activities are directly supportive of the attorney’s provision of legal services to the attorney’s client.
2. The employee’s activities are activities that the attorney may perform under par. (h).
3. The employee is under the direction and supervision of the attorney.

(e) Any custodian, janitor, employee or agent of the owner or manager of a residential building who exhibits a residential unit therein to prospective tenants, accepts applications for leases and furnishes such prospective tenants with information relative to the rental of such unit, terms and conditions of leases required by the owner or manager, and similar information.

(f) Any credit union which negotiates loans secured by real estate mortgages or any licensee under ch. 138 which negotiates loans secured by real estate mortgages or any licensed attorney who, incidental to the general practice of law, 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.

(g) A person registered as a mortgage banker under s. 224.72 who does not engage in activities described under sub. (2).

(h) Attorneys licensed to practice in this state while acting within the scope of their attorney’s license.

**(3e)** “Brokerage service” means any service described under sub. (2) provided by a broker to another person.

**(3j)** “Business entity” means any organization or enterprise, other than a sole proprietorship, which is operated for profit or that is nonprofit and nongovernmental, including an association, business trust, corporation, joint venture, limited liability company, limited liability partnership, partnership or syndicate.

**(3k)** “Business representative” means a director, manager, member, officer, owner or partner of a business entity.

**(3m)** “Client” means a party to a transaction who has an agency agreement with a broker for brokerage services.

**(3s)** “Customer” means a party to a transaction who is provided brokerage services by a broker but who is not a client.

**(3w)** “Designated agency” means a multiple representation relationship in which each client of the broker in the multiple representation relationship receives negotiation services from the broker only from employees of the broker who are not providing negotiation services to any other client of the broker in the transaction.

**(4)** “Disciplinary proceeding” means a proceeding against one or more licensees or registrants in which the board may revoke, suspend or limit a license or registration, reprimand a licensee or registrant, issue a private letter of warning to a licensee or registrant, or assess a forfeiture or require education or training under s. 452.14 (4m).

**(4d)** “Employ,” when used in reference to a broker employing another broker, a salesperson, or a time–share salesperson, means engaging the services of another broker, a salesperson, or a time–share salesperson to provide brokerage services to the broker’s clients and customers on behalf of the broker and under the broker’s supervision, including engaging a broker, salesperson, or time–share salesperson as an independent contractor.

**(4h)** “Employee,” when used in reference to an employee of a broker, means another broker, a salesperson, or a time–share salesperson who provides brokerage services to the broker’s clients and customers on behalf of the broker and under the broker’s supervision, including a broker, salesperson, or time–share salesperson engaged by the broker as an independent contractor.

**(4p)** “Employer,” when used in reference to a broker who is the employer of another broker, a salesperson, or a time–share salesperson, means a broker who engages the services of another broker, a salesperson, or a time–share salesperson to provide brokerage services to the broker’s clients and customers on behalf of the broker and under the broker’s supervision, including a broker who engages the services of another broker, salesperson, or time–share salesperson as an independent contractor.

**(4t)** “Employment,” when used in reference to a broker’s employment of another broker, a salesperson, or a time–share salesperson, means the state of being engaged by a broker to provide services to the broker’s clients and customers on behalf of the broker and under the broker’s supervision, including being engaged by the employing broker as an independent contractor.

**(5)** “Licensee” means any person licensed or registered under this chapter, other than an inactive licensee registered under s. 452.12 (6).

**(5g)** “Material adverse fact” means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party’s decision to enter into a contract or agreement concerning a transaction or affects or would affect the party’s decision about the terms of such a contract or agreement.

**(5j)** “Multiple representation relationship” means a relationship between a broker and 2 or more of the broker’s clients in which the clients are parties in the same transaction.

**(5m)** “Negotiate” means to provide to a party assistance within the scope of the knowledge, skills, and training required under this chapter in developing a proposal or agreement relating to a transaction, including doing any of the following:

(a) Acting as an intermediary by facilitating or participating in communications between parties related to the parties’ interests in a transaction. In this paragraph, providing advice or opinions on matters that are material to a transaction in which a person is engaged or intends to engage or showing a party real estate does

not, in and of itself, constitute acting as an intermediary by facilitating or participating in communications between parties.

(b) Completing, when requested by a party, appropriate department–approved forms or other writings to document the party’s proposal consistent with the party’s intent.

(c) Presenting to a party the proposals of other parties to the transaction and giving the party a general explanation of the provisions of the proposal.

**(5r)** “Party” means a person seeking to engage in a transaction.

**(5w)** “Principal broker” means a broker who engages a subagent to provide brokerage services in a transaction.

**(6)** “Real estate practice” means engaging in conduct which requires a license under this chapter.

**(7)** “Salesperson” means any person other than a broker or time–share salesperson who is employed by a broker.

**(7r)** “Subagent” means a broker who is engaged by another broker to provide brokerage services in a transaction, but who is not the other broker’s employee.

**(8)** “Time share” has the meaning given in s. 707.02 (24).

**(9)** “Time–share salesperson” means a person, other than a person licensed under s. 452.09, who is employed by a licensed broker to sell or offer or attempt to negotiate an initial sale or purchase of a time share but who may not perform any other acts authorized by this chapter to be performed by a broker or salesperson.

**(10)** “Transaction” means the sale, exchange, purchase or rental of, or the granting or acceptance of an option to sell, exchange, purchase or rent, an interest in real estate, a business or a business opportunity.

**History:** 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102; 2005 a. 87.

A foreign corporation that entered into a brokerage contract to sell a radio station without being licensed in this state could not sue for its commission. The licensing requirement is not an unlawful burden on interstate commerce. *Chapman Company, Inc. v. Service Broadcasting Corporation*, 52 Wis. 2d 32, 187 N.W.2d 794 (1971).

Units of interest in a limited partnership are personality and not real estate, and no real estate broker’s license is required for their sale. 60 Atty. Gen. 254.

Although sub. (2) (d) speaks of the sale or purchase of a “business,” it is not defined. However, “business entity” is defined in sub. (3j) as any organization or enterprise, other than a sole proprietorship, operated for profit or operated not for profit but nongovernmental. A natural reading of the statute is that “business” differs from “business entity.” Reading “business” in the context of the rest of the statute, it must be separate from or broader than “business entity.” Because sales of corporate stock are specifically governed by securities laws suggests strongly that they are outside the intended scope of ss. 452.01 and 452.20. *Bertha v. Remy International, Inc.*, 414 F. Supp. 2d 869 (2006).

The “New” Chapter 452: Defining Real Estate Broker Practice. Leible. Wis. Law. June 2006.

**452.025 Time–share salespersons. (1)** (a) A person desiring to act as a time–share salesperson shall submit to the department an application for a certificate of registration.

(b) The application for registration as a time–share salesperson shall be in the form prescribed by the department and shall include all of the following:

1. The name and address of the applicant.
2. The prior occupations of the applicant.
3. Certification from the licensed broker employing the applicant that the applicant is competent to act as a time–share salesperson.
4. Any other information which the department reasonably requires to enable it to determine the competency of the person to transact business as a time–share salesperson in a manner which safeguards the interests of the public.

(c) Each application for registration as a time–share salesperson shall be accompanied by an initial fee specified in s. 440.05 (1) or the applicable renewal fee specified under s. 440.08 (2) (a), whichever is appropriate.

**(2)** A person shall not engage in the business or occupation of, or advertise or hold himself or herself out as, a time–share sales-

person unless the person is registered under this section or licensed under s. 452.09.

(3) (a) A time–share salesperson registered under this section may act as a time–share salesperson only when employed by a licensed broker.

(b) 1. Except as provided in subd. 2., a time–share salesperson registered under this section shall not draft or complete a purchase agreement, offer to purchase, or other contract or document related to the sale of a time share.

2. A time–share salesperson registered under this section may complete a form purchase agreement or offer to purchase, if the form purchase agreement or offer to purchase has been approved by the department and includes only the following:

- a. The name, address and telephone number of the purchaser.
- b. The name of the time–share project.
- c. Identification and price of the time share being purchased and the amount of the downpayment and where it will be held.
- d. Financing alternatives.
- e. Disclosures under subch. III of ch. 422 and the federal consumer credit protection act, 15 USC 1601 to 1693r.
- f. The date of closing.
- g. The signature of the time–share salesperson and the name of the employing broker.
- h. The date of execution.
- i. Information required under s. 707.46 to be included in a contract for the purchase of a time share.

(4) A time–share salesperson registered under this section may apply at any time to transfer employment to another licensed broker by submitting to the department an application in the form prescribed by the department and the transfer fee specified in s. 440.05 (7).

(5) (a) The renewal date for certificates of registration granted by the department under this section is specified under s. 440.08 (2) (a).

(b) An application to renew a certificate of registration granted under this section shall be submitted with the applicable renewal fee specified under s. 440.08 (2) (a) on or before the applicable renewal date specified under s. 440.08 (2) (a).

**History:** 1987 a. 399; 1989 a. 31; 1991 a. 39.

**452.03 Brokers and salespersons licensed.** No person may engage in or follow the business or occupation of, or advertise or hold himself or herself out as, or act temporarily or otherwise as a broker or salesperson without a license. Licenses shall be granted only to persons who are competent to transact such businesses in a manner which safeguards the interests of the public, and only after satisfactory proof of the person's competence has been presented to the department.

**History:** 1981 c. 94, 391; 1989 a. 307.

Under s. 452.03 an agreement to pay a real estate brokerage commission to a person not licensed as a broker is void at its inception. Using a licensed broker who provides no actual services as a conduit for a fee to an unlicensed person does not create a co–brokerage arrangement authorized by s. 452.19. *Badger III Ltd. v. Howard, Needles, Tammen & Bergendoff*, 196 Wis. 2d 891, 539 N.W.2d 904 (Ct. App. 1995), 94–2531.

Officers of a corporation or partners of a partnership can act for the corporation or partnership in the rental of real estate owned by the entity without being licensed as real estate brokers. 60 Atty. Gen. 1 (1971).

Actions of a tenants union on behalf of its members may require a real estate broker's license. 60 Atty. Gen. 118 (1971).

The permitted limits of nonlicensed independent contractor agents are discussed. 70 Atty. Gen. 23.

**452.04 Duties of board.** In addition to the other duties and responsibilities of the board under this chapter, the board shall:

(1) Advise the secretary on matters relating to real estate practice. The board may conduct public hearings on matters relating to the approval of forms used in real estate practice.

(2) Advise the secretary on rule making relating to licensees and relating to the board as provided by s. 452.07.

**History:** 1981 c. 94.

**452.05 Duties and powers of department.** (1) In addition to the other duties and responsibilities of the department under this chapter, the department shall:

(a) Grant and issue licenses to brokers and salespersons and registrations to time–share salespersons.

(b) Approve forms for use in real estate practice.

(c) After consultation with the council on real estate curriculum and examinations and subject to the procedure under s. 452.07, promulgate rules establishing criteria for the approval of educational programs and training sessions under s. 452.09 (2) and approve such programs and sessions in accordance with the established criteria.

(d) After consultation with the council on real estate curriculum and examinations, the board, brokers and salespersons licensed under this chapter and interested members of the public, establish criteria for the approval of continuing educational programs and courses in real estate related subjects required for renewal under s. 452.12 (5) (c) 1.

(e) After consultation with the council on real estate curriculum and examinations, prepare, develop and grade examinations under s. 452.12 (5) (c) 2.

(g) Approve continuing educational programs and courses in accordance with the criteria established under par. (d). In order to be approved, a continuing educational program or course must require brokers and salespersons to pass an examination on the information presented at the program or course in order to successfully complete and receive continuing education credit for the program or course under s. 452.12 (5) (c) 1.

(1m) (a) In this subsection:

1. “Certified local register of historic property” means a register of historic property that is part of a historic preservation ordinance enacted by a city, village, town or county if the ordinance is certified by the state historical society under s. 44.44.

2. “Commercial real property” means real property that is classified as commercial under s. 70.32 (2) (a) 2.

3. “Historic building” means a building that fulfills at least one of the following requirements:

a. Is listed on a certified local register of historic property, if that fact is specified in a statement recorded in the office of the register of deeds for the county in which the commercial real estate is located.

b. Is included in a district that is listed on a certified local register of historic property, if that fact is specified in a statement recorded in the office of the register of deeds for the county in which the commercial real estate is located, and has been determined by the city, village, town or county to contribute to the historic significance of the district.

(b) In preparing the form for the offer to purchase commercial real property under sub. (1) (b), the department shall include a statement that the seller represents to the buyer that the seller has no notice or knowledge that the commercial real property is a historic building.

(2) The department may prepare letters and bulletins and conduct clinics disseminating information to its licensees.

(3) The department may, after consultation with the board, enter into reciprocal agreements with officials of other states or territories of the United States for licensing brokers and salespersons and grant licenses to applicants who are licensed as brokers or salespersons in those states or territories according to the terms of the reciprocal agreements.

**History:** 1981 c. 94, 391; 1985 a. 305 ss. 1t, 7; 1987 a. 399; 1989 a. 307, 341; 1991 a. 39; 1993 a. 141; 1995 a. 27; 1997 a. 27; 2003 a. 168.

A corporation cannot be licensed as a real estate salesperson. 71 Atty. Gen. 38.

**452.06 Councils and committees.** (1) The secretary shall create a council on forms under s. 15.04 (1) (c) which shall meet on a regular basis, be chaired by a member of the board and report to the board and the secretary. Any proposed change in a form

relating to real estate practice shall be referred to the council on forms for review before the form is approved.

(2) The council on real estate curriculum and examinations shall do all of the following:

(a) Advise the secretary on the promulgation of rules under s. 452.05 (1) (c) and on establishing continuing education requirements under s. 452.05 (1) (d).

(b) Periodically, but not less than annually, review subjects covered on examinations for licensure under this chapter and the qualifications for instructors of and performance evaluations for educational and continuing educational programs, training sessions and courses approved under this chapter.

(3) If the secretary creates any councils or committees under s. 15.04 (1) (c) to provide advice to the department or board on matters relating to real estate practice other than the council under sub. (1), such councils or committees shall be chaired by a member of the board, if available, and shall report to the board and the secretary.

(4) The secretary shall provide staff and other support required for the operation of councils and committees created under this section or under s. 15.04 (1) (c) to provide advice to the department or board, as appropriate, on matters relating to real estate practice.

**History:** 1981 c. 94; 1989 a. 341; 1991 a. 39.

**452.07 Rules; review of rules.** (1) The department shall promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice.

(1m) The department shall promulgate rules that specify the supervisory duties of brokers under s. 452.12 (3).

(2) Before submitting any proposed rules relating to real estate practice to the legislative council staff under s. 227.15, the department shall submit the proposed rules to the board for comment. The board shall have 30 days to submit comments on the proposed rules to the secretary.

(3) When promulgating emergency rules under s. 227.24, the department shall provide a copy of the rules to the board prior to publication of the rules in the official state newspaper.

(4) The chairperson of the board, or his or her designee from the board, may cochair with the secretary, or the secretary's designee, any public hearing held by the department on proposed rules relating to licensees or the board.

(5) The department shall submit to the board a copy of the report required under s. 227.19 (2) on any proposed final rules relating to licensees or the board. The board may prepare a dissenting report stating its recommendations on the proposed final rules. Any dissenting report shall be prepared within 10 days from the date of receipt of the department's report, be attached to the department's report and be sent to the presiding officer of each house of the legislature and distributed under s. 227.19 (2). The department shall cause a statement to appear in the Wisconsin administrative register to the effect that a dissenting report of the board has been submitted to the presiding officer of each house of the legislature.

(6) The department shall provide staff to assist the board in the review of administrative rules and preparation of comments or dissenting reports.

(7) The board may petition the department under s. 227.12 for the adoption, amendment or repeal of rules relating to licensees or the board. This subsection does not limit the rights of other persons to petition the department under s. 227.12.

**History:** 1981 c. 94; 1985 a. 182 s. 57; 1987 a. 403 s. 256; 2001 a. 16.

**Cross Reference:** See also chs. RL 11, 12, 15, 16, 17, 18, 22, 23, 24, 25, and 26, Wis. adm. code.

**452.08 Board receipt of proposed legislation.** The secretary shall submit to the board in writing any legislation proposed

by the department relating to licensees or the board prior to introduction in the legislature.

**History:** 1981 c. 94.

**452.09 Application for license, contents.** (1) FORM OF APPLICATION. Any person desiring to act as a broker or salesperson shall submit to the department an application for a license. The application shall be in such form as the department prescribes and shall include the following:

(a) The kind of license desired.

(b) The name and address of the applicant; if the applicant is a business entity, the name and address of each business representative.

(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 engaged in by the applicant, or if a business entity, by each business representative, for a period of at least 2 years immediately preceding the date of the application.

(e) Any other information which the department may reasonably require to enable it to determine the competency of each applicant, including each business representative of the business entity, to transact the business of a broker or salesperson in a manner which safeguards the interests of the public.

(2) EDUCATIONAL REQUIREMENTS FOR APPLICANTS FOR LICENSES. (a) Except as provided in a reciprocal agreement under s. 452.05 (3), each applicant for a salesperson's license shall submit to the department evidence satisfactory to the department of successful completion of educational programs approved for this purpose under s. 452.05 (1) (c). The department may waive the requirement under this paragraph upon proof that the applicant has received 10 academic credits in real estate or real estate related law courses from an accredited institution of higher education.

(c) Except as provided in par. (d) or a reciprocal agreement under s. 452.05 (3), each applicant for a broker's license shall do all of the following:

1. Satisfy or obtain a waiver of the requirement under par. (a) or submit proof of licensure as a salesperson under this chapter.

2. Submit to the department evidence satisfactory to the department of successful completion of educational programs in business management approved for this purpose under s. 452.05 (1) (c). No educational programs applied to satisfy the requirement under subd. 1. may be applied to satisfy the requirement under this subdivision.

(d) The department may waive the requirements under par. (c) upon proof that the applicant has received 20 academic credits in real estate or real estate related law courses from an accredited institution of higher education or that the applicant is licensed to practice law in this state.

(3) COMPETENCY OF APPLICANT. (a) In determining competency, the department shall require proof that the applicant for a broker's or salesperson'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. An applicant receiving a failing grade, as established by rules of the department, on any examination given under this section shall be denied a license, but any applicant may review his or her examination results in a manner established by rules of the department.

(b) The department shall determine competency under par. (a) by means of only an oral examination for any applicant who is unable to write because of a physical handicap.

(c) Examinations shall reliably measure an applicant's ability to competently engage in real estate practice.

(d) Except as provided in a reciprocal agreement under s. 452.05 (3), the department may not grant a broker's license to an applicant who does not hold a salesperson's license unless the applicant passes the salesperson's examination and the broker's examination.

(e) An applicant is not eligible for examination unless the applicant has satisfied the applicable requirements under sub. (2).

**(5) APPRENTICESHIPS.** Any person who is a resident of this state and 18 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 department. These rules shall be promulgated so as to protect the public and may limit the real estate sales and brokerage activity of the apprentice. The department may require a preliminary examination covering general knowledge and prescribe the character and extent of his or her work during apprenticeship. The department may issue a temporary salesperson's permit to the individual for a period not to exceed one year upon payment of the fee under s. 440.05 (6). The temporary permit is not renewable.

**History:** 1981 c. 94, 391; 1983 a. 273; 1985 a. 305; 1989 a. 341; 1995 a. 400; 1997 a. 27; 2003 a. 168.

**Cross Reference:** See also chs. RL 12, 22, 23, and 25, Wis. adm. code.

#### 452.10 Applications, verification, fees, exceptions.

**(1)** An application shall be verified by the applicant. If made by a business entity it shall be verified by a business representative.

**(2) (a)** Each new application for a broker's or salesperson's license shall be for the remainder of the biennial license period.

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

**(3)** The fees for examinations and licenses granted or renewed under this chapter are specified under ss. 440.05 and 440.08.

**(4) (a)** Any licensed salesperson or broker may transfer to the employment of a licensed broker by first paying the transfer fee specified in s. 440.05 (7) and filing a transfer form with the department.

**(b)** No salesperson, time-share salesperson or broker may be employed by a broker whose license has been suspended or revoked during the period of suspension or revocation. The salesperson, time-share salesperson or broker may apply for transfer to some other licensed broker by complying with this chapter, provided the salesperson, time-share salesperson or broker is not a party to the activities causing the suspension or revocation of the license of the broker.

**(6)** In the case of applications for renewals of licenses the department may dispense with such matters contained in s. 452.09 (1) as it deems unnecessary in view of prior applications.

**History:** 1981 c. 94, 314, 391; 1983 a. 27, 273; 1985 a. 305; 1987 a. 264, 399; 1989 a. 307; 1991 a. 39; 1995 a. 400.

**Cross Reference:** See also ch. RL 12 and 23, Wis. adm. code.

The real estate examining board cannot prescribe the name to be used on an application for a real estate broker's license. 66 Atty. Gen. 21.

**452.11 Nonresident applicants and licensees. (1)** A nonresident may become a broker, salesperson or time-share salesperson by conforming to all the provisions of this chapter.

**(3)** Every nonresident applicant, and every resident licensee who becomes a nonresident, shall file with the department an irrevocable consent that actions may be commenced against the applicant or licensee 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 department or any duly authorized employee. The consent shall stipulate and agree that such service is valid and binding as due service upon the applicant or licensee 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)** Any process or pleading under this section shall be served in duplicate upon the department or its duly authorized employee. One copy shall be filed with the department and the other immediately forwarded by certified mail to the nonresident licensee against whom the process or pleading is directed at the last address provided to the department by the nonresident licensee. No default in any such proceeding or action may be taken unless it appears by affidavit of the secretary or any duly authorized employee that a copy of the process or pleading was mailed to the nonresident licensee as required in this subsection. No judgment by default may be taken in any action or proceeding within 20 days after the date of mailing the process or pleading to the nonresident licensee.

**History:** 1981 c. 94; 1983 a. 27; 1987 a. 399; 1991 a. 207.

**Cross Reference:** See also ch. RL 12, Wis. adm. code.

**452.12 Licenses. (1) EXPIRATION.** A license granted by the department entitles the holder to act as a broker or salesperson, as the case may be, until the applicable renewal date specified under s. 440.08 (2) (a).

**(2) BUSINESS ENTITIES. (a)** A license may be issued to a business entity if the business entity has at least one business representative licensed as a broker. The license issued to the business entity entitles each business representative of the business entity who is a licensed broker to act as a broker on behalf of the business entity.

**(c)** Application for a business entity license shall be made on forms prescribed by the department, listing the names and addresses of all business representatives, and shall be accompanied by the fee specified in s. 440.05 (1). If there is a change in any of the business representatives, the change shall be reported to the department, on the same form, within 30 days after the effective date of the change.

**(3) BROKER'S LIABILITY FOR ACTS OF EMPLOYEES.** Each broker shall supervise, and is responsible for, the brokerage services provided on behalf of the broker by any broker, salesperson, or time-share salesperson who is an employee of the broker.

**(4) REGISTER OF BROKERS AND SALESPERSONS.** The department shall maintain the register required by s. 440.035 (4). The names of all brokers and salespersons whose licenses have been revoked at any time within 2 years prior to the issuance thereof shall be included in the register. The register shall be available for purchase at cost.

**(5) RENEWAL. (a)** Renewal applications for all licenses shall be submitted with the applicable renewal fee specified under s. 440.08 (2) (a) on or before the applicable renewal date specified under s. 440.08 (2) (a).

**(b)** If an application for renewal is not filed with the department on or before the renewal date, the applicant may not engage in any of the activities covered by the license until the license is renewed or a new license is issued.

**(c) 1.** At the time of renewal, each broker or salesperson shall submit proof of attendance at and successful completion of continuing education programs or courses approved under s. 452.05 (1) (g), except as provided in subd. 2.

**2.** Not later than June 30 of each even-numbered year, the department shall conduct an examination on those subjects required for continuing education under s. 452.05 (1) (d). Any broker or salesperson who passes the examination under this subdivision is not required to comply with subd. 1.

**(6) INACTIVE LICENSEES. (a)** Any licensee, except a time-share salesperson registered under s. 452.025, may apply for registration as an inactive licensee on or before the license renewal date. This paragraph does not apply after October 31, 1995.

**(b)** Unless an applicant's license has been revoked or suspended under s. 452.14 (3), the department may register the applicant under par. (a) as an inactive licensee upon payment of a \$15 fee.

**(c)** Inactive licensees may not engage in real estate practice.

(d) If an inactive licensee files an application for reinstatement before January 1, 1996, the department shall reinstate the inactive licensee's original license in accordance with the requirements for late renewal under s. 440.08 (3).

(e) Except as provided in ss. 440.03 (11m) (b), 440.12 and 440.13 (2) (a), the department shall reinstate an inactive licensee's original license as follows:

1. If a person has registered as an inactive licensee before November 1, 1990, the department shall reinstate the person's original license if that person applies to the department for reinstatement of his or her original license, pays the fees specified under s. 440.05 (1) (a) and (b), passes an examination under s. 452.09 (3) and completes the education requirements established by the department under par. (f).

2. If a person has registered as an inactive licensee on or after November 1, 1990, the department shall reinstate the person's original license if that person applies to the department for reinstatement of his or her original license, pays the renewal fee specified under s. 440.08 (2) (a) for the original license and completes 12 hours of continuing education as established by the department under par. (f). A person who is eligible for reinstatement of his or her original license under this subdivision shall complete the requirements for reinstatement under this subdivision before January 1, 1996, or within 5 years after the date on which the person registered as an inactive licensee, whichever is later.

3. If a person who is eligible for reinstatement of his or her original license under subd. 2. does not complete the requirements for reinstatement within the time specified under subd. 2., the department shall reinstate the original license of that person if he or she meets the requirements specified under subd. 1.

(f) The department shall promulgate rules establishing the education requirements that applicants for reinstatement of original licenses under par. (e) must satisfy.

**History:** 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 264, 399; 1989 a. 307, 341; 1991 a. 39; 1995 a. 27, 400; 1997 a. 27, 191, 237; 2001 a. 16; 2005 a. 87.

**Cross Reference:** See also chs. RL 17, 23, and 25, Wis. adm. code.

#### 452.13 Trust accounts. (1) DEFINITIONS. In this section:

(a) "Client funds" means all downpayments, earnest money deposits or other money related to a conveyance of real estate that is received by a broker, salesperson or time-share salesperson on behalf of the broker's, salesperson's or time-share salesperson's principal or any other person. "Client funds" does not include promissory notes.

(b) "Depository institution" means a bank, savings bank, savings and loan association or credit union that is authorized by federal or state law to do business in this state and that is insured by the federal deposit insurance corporation or by the national credit union share insurance fund.

(2) INTEREST-BEARING COMMON TRUST ACCOUNT. (a) A broker who holds client funds shall establish an interest-bearing common trust account in a depository institution. The interest-bearing common trust account shall earn interest at a rate not less than that applicable to individual accounts of the same type, size and duration and for which withdrawals or transfers can be made without delay, subject to any notice period that the depository institution is required to observe by law or regulation.

(b) Any broker who maintains an interest-bearing common trust account shall do all of the following:

1. Register with the department of regulation and licensing the name and address of the depository institution and the number of the interest-bearing common trust account.

2. Notify the department of regulation and licensing when any of the information required under subd. 1. is changed.

3. Furnish the department of regulation and licensing with a letter authorizing the department of regulation and licensing and the department of commerce to examine and audit the interest-bearing common trust account whenever the department of regulation and licensing or the department of commerce considers it necessary.

(bm) The department of regulation and licensing shall forward to the department of commerce the information and documents furnished under par. (b).

(c) A broker shall deposit all client funds in the interest-bearing common trust account.

(d) The department of commerce is the beneficial owner of the interest accruing to the interest-bearing common trust account, minus any service charges or fees.

(e) For each interest-bearing common trust account, the broker shall direct the depository institution to do all of the following:

1. Annually, before February 1, remit to the department of commerce the total interest or dividends, minus service charges or fees, earned on the average daily balance in the interest-bearing common trust account during the 12 months ending on the previous December 31. A depository institution is not required to remit any amount if the total interest or dividends for that period is less than \$10 before any deduction for service charges or fees.

2. When the interest remittance is sent, furnish to the department of commerce and to the broker maintaining the interest-bearing common trust account a statement that includes the name of the broker for whose account the remittance is made, the rate of interest applied, the amount of service charges or fees deducted, if any, and the account balance for the period that the statement covers.

(f) A depository institution:

1. May not assess a service charge or fee that is due on an interest-bearing common trust account against any broker or, except as provided in subd. 3., against any other account, regardless of whether the same broker maintains the other account.

2. May not assess a service charge or fee for an interest-bearing common trust account against the department of commerce.

3. May deduct a service charge or fee from the interest earned by an interest-bearing common trust account, and if a balance remains, may deduct the remaining charge or fee from the interest earned on any other interest-bearing common trust account maintained in that depository institution, before remitting interest to the department of commerce.

4. May not deduct a service charge or fee from the principal of an interest-bearing common trust account.

(3) DEPOSIT PROVISIONS. A broker who deposits client funds in an interest-bearing common trust account in compliance with this section may not be held liable to the owner or beneficial owner of the client funds for damages due to compliance with this section. A broker, salesperson or time-share salesperson who deposits client funds in an interest-bearing common trust account in compliance with this section is not required to disclose alternative depository arrangements that could be made by the parties or to disclose that a deposit will be made under this section.

(4) TRUST ACCOUNT OPTIONAL. This section does not require a broker to hold client funds or require a person to transfer client funds to a broker.

(5) RULES. In consultation with the department of regulation and licensing, the department of commerce shall promulgate rules necessary to administer this section.

**History:** 1981 c. 94, 391; 1985 a. 305; 1987 a. 399; 1989 a. 307; 1991 a. 221; 1993 a. 33; 2005 a. 25.

**Cross Reference:** See also chs. Comm 155 and RL 18, Wis. adm. code.

Security deposits by a tenant usually create a debtor-creditor relationship. A broker retaining a deposit should deposit it in his or her trust account. 60 Atty. Gen. 1.

The Federal National Mortgage Association is exempt from the requirements of this section, but private mortgage bankers or mortgage brokers licensed as real estate brokers under ch. 452, and servicing mortgages for FNMA must deposit loan, insurance and tax escrow moneys in an authorized trust account in a bank located in Wisconsin, subject to audit by the board. 60 Atty. Gen. 514.

**452.133 Duties of brokers. (1) BROKER'S DUTIES TO ALL PERSONS IN A TRANSACTION.** A broker who is providing brokerage services to a person in a transaction owes all of the following duties to the person:

(a) The duty to provide brokerage services honestly and fairly.

(b) The duty to provide brokerage services with reasonable skill and care.

(c) The duty to timely disclose in writing all material adverse facts that the broker knows and that the person does not know or cannot discover through reasonably vigilant observation, unless the disclosure of a material adverse fact is prohibited by law.

(d) The duty to keep confidential any information given to the broker in confidence, or any information obtained by the broker that he or she knows a reasonable person would want to be kept confidential, unless the information must be disclosed by law or the person whose interests may be adversely affected by the disclosure specifically authorizes the disclosure of particular information. A broker shall continue to keep the information confidential after the transaction is complete and after the broker is no longer providing brokerage services to the person.

(e) The duty to provide accurate information about market conditions that affect the person's transaction, within a reasonable time after the person's request, unless disclosure of the information is prohibited by law.

(f) The duty to safeguard trust funds and other property held by the broker as required by rules promulgated by the department under s. 452.13 (5).

(g) When the broker is negotiating on behalf of a party, the duty to present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

**(2) BROKER'S DUTIES TO A CLIENT.** A broker providing brokerage services to his or her client owes the client the duties that the broker owes to a person under sub. (1) and all of the following additional duties:

(a) The duty to loyally represent the client's interests by doing all of the following:

1. Placing the client's interests ahead of the broker's interests.
2. Placing the client's interests ahead of the interests of persons in the transaction who are not the broker's clients by not disclosing to persons in the transaction other than the broker's clients information or advice the disclosure of which is contrary to the interests of a client of the broker, unless the disclosure is required by law.

(am) The duty to provide, when requested by the client, information and advice to the client on matters that are material to the client's transaction and that are within the scope of the knowledge, skills, and training required under this chapter.

(b) The duty to disclose to the client all information known by the broker that is material to the transaction and that is not known by the client or discoverable by the client through reasonably vigilant observation, except for confidential information under sub. (1) (d) and other information the disclosure of which is prohibited by law.

(c) The duty to fulfill any obligation required by the agency agreement, and any order of the client that is within the scope of the agency agreement, that is not inconsistent with another duty that the broker has under this chapter or any other law.

(d) The duty to negotiate on behalf of the client.

**(3) PROHIBITED CONDUCT.** In providing brokerage services, a broker may not do any of the following:

(a) Accept any fee or compensation related to the transaction from any person other than the broker's client, unless the broker has the written consent of all parties to the transaction.

(b) Act in a transaction on the broker's own behalf, on behalf of the broker's immediate family, or on behalf of any organization or business entity in which the broker has an interest, unless the broker has the written consent of all parties to the transaction.

(c) Except as provided in s. 452.19, refer, recommend or suggest to a party to the transaction the services of an individual or entity from which the broker may receive compensation for a referral or in which the broker has an interest, unless the broker has disclosed the fact that he or she may receive compensation or has

disclosed his or her interest in the individual or entity providing the services.

**(4) SUBAGENT'S DUTIES.** (a) A subagent owes all persons to whom a broker is providing brokerage services in a transaction the duties specified in sub. (1) but does not owe the clients of the principal broker the duties under sub. (2).

(b) A subagent may not do any of the following:

1. Place the subagent's interests ahead of the interests of the clients of the principal broker in the transaction in which the subagent has been engaged by the principal broker.

2. Provide advice or opinions to parties in the transaction if providing the advice or opinions is contrary to the interests of the clients of the principal broker in the transaction in which the subagent has been engaged by the principal broker, unless required by law.

**(5) DUTIES WITHOUT AGENCY OR SUBAGENCY RELATIONSHIP.** If a broker is providing brokerage services to a person who is a party or a prospective party to a transaction, and the broker does not have an agency agreement with the person and is not a subagent of another broker in the transaction, then the broker owes the person the duties under sub. (1) and may not, unless required by law, provide advice or opinions relating to the transaction in which the person is receiving brokerage services if providing the advice or opinions is contrary to the interests of a party to a current or prospective transaction with the person receiving the brokerage services.

**(6) WAIVER OF DUTIES.** The duties imposed by subs. (1), (2) (a), (am), (b), and (c), (4), and (5) may not be waived. A client may waive, in part or in full, the broker's duty under sub. (2) (d), except that a waiver under this subsection is not effective unless the broker provides to the client a written disclosure containing all of the following:

(a) A copy of the text of sub. (2) (d) and s. 452.01 (5m), and a statement that, as a consequence of the client's waiver, the broker will have no legal duty to perform the duty imposed by sub. (2) (d).

(b) A statement that as a consequence of the client's waiver, the client may require the assistance of an attorney or another service provider to fulfill the client's goals and contractual duties in the transaction.

**History:** 1993 a. 127; 1995 a. 400; 2005 a. 87.

**Cross Reference:** See also ch. RL 24, Wis. adm. code.

The New Real Estate Agency Law: Redefining the Role of Real Estate Brokers. Smith and Staff. Wis. Law. Oct. 1994.

The 'New' Chapter 452: Defining Real Estate Broker Practice. Leible. Wis. Law. June 2006.

#### **452.134 Agency relationships; multiple representation relationships.** (1) AGENCY RELATIONSHIP NOT REQUIRED.

(a) Subject to par. (b), a broker may provide brokerage services to any person in a transaction, whether or not the broker has entered into an agency agreement with a party to the transaction or the broker has been engaged to provide brokerage services in the transaction as a subagent.

(b) A broker may not negotiate on behalf of a party to a transaction unless a party to the transaction is one of the following:

1. The broker's client.
2. A client of a principal broker who has engaged the broker as a subagent.

**(2) MULTIPLE REPRESENTATION RELATIONSHIPS; CONSENT REQUIRED.** A broker may not provide brokerage services in a multiple representation relationship unless all of the broker's clients in the multiple representation relationship have consented to a multiple representation relationship in writing.

**(3) DESIGNATED AGENCY; CONSENT REQUIRED.** (a) A broker in a multiple representation relationship may not engage in designated agency unless all of the broker's clients in the relationship have consented to designated agency in writing. A client may withdraw consent to designated agency by written notice to the broker at any time.

(b) If a broker is engaged in designated agency, the broker's employee who is negotiating on behalf of a client of the broker in the transaction may provide to the client on whose behalf the employee is negotiating information, opinions, and advice to assist the client in the negotiations, whether or not the information, opinions, and advice place the interests of one of the broker's clients ahead of the interests of another client of the broker.

**(4) MULTIPLE REPRESENTATIONS RELATIONSHIP WITHOUT DESIGNATED AGENCY.** If a broker's client in a multiple representation relationship does not consent to designated agency or withdraws consent to designated agency, the broker and the broker's employees may not place the interests of any client ahead of the interests of any other in the negotiations.

**History:** 2005 a. 87.

The 'New' Chapter 452: Defining Real Estate Broker Practice. Leible. Wis. Law. June 2006.

**452.135 Disclosure of duties. (1)** (a) A broker may not negotiate on behalf of a party who is not the broker's client unless the broker provides to the party a copy of the following written disclosure statement:

#### BROKER DISCLOSURE TO CUSTOMERS

You are a customer of the broker. The broker is either an agent of another party in the transaction or a subagent of another broker who is the agent of another party in the transaction. The broker, or a salesperson acting on behalf of the broker, may provide brokerage services to you. Whenever the broker is providing brokerage services to you, the broker owes you, the customer, the following duties:

The duty to provide brokerage services to you fairly and honestly.

The duty to exercise reasonable skill and care in providing brokerage services to you.

The duty to provide you with accurate information about market conditions within a reasonable time if you request it, unless disclosure of the information is prohibited by law.

The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the information is prohibited by law.

The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential information or the confidential information of other parties.

The duty to safeguard trust funds and other property the broker holds.

The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

Please review this information carefully. A broker or salesperson can answer your questions about brokerage services, but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax advisor, or home inspector.

This disclosure is required by section 452.135 of the Wisconsin statutes and is for information only. It is a plain-language summary of a broker's duties to a customer under section 452.133 (1) of the Wisconsin statutes.

(b) If a broker is providing brokerage services as a subagent to a principal broker, the broker shall provide a copy of the written disclosure statement under par. (a) to any person who is not the principal broker's client and who receives brokerage services from the broker within the scope of the agreement between the broker and the principal broker.

**(2)** (a) Except as provided in par. (b), a broker shall provide to a client a copy of the following written disclosure statement not later than the time the broker enters into an agency agreement with the client:

#### BROKER DISCLOSURE TO CLIENTS

Under Wisconsin law, a broker owes certain duties to all parties to a transaction:

The duty to provide brokerage services to you fairly and honestly.

The duty to exercise reasonable skill and care in providing brokerage services to you.

The duty to provide you with accurate information about market conditions within a reasonable time if you request it, unless disclosure of the information is prohibited by law.

The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the information is prohibited by law.

The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential information or the confidential information of other parties.

The duty to safeguard trust funds and other property the broker holds.

The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

Because you have entered into an agency agreement with a broker, you are the broker's client. A broker owes additional duties to a client.

The broker will provide, at your request, information and advice on real estate matters that affect your transaction, unless you release the broker from this duty. The broker must provide you with all material facts affecting the transaction, not just adverse facts.

The broker will fulfill the broker's obligations under the agency agreement and fulfill your lawful requests that are within the scope of the agency agreement.

The broker will negotiate for you, unless you release the broker from this duty.

The broker will not place the broker's interests ahead of your interests. The broker will not, unless required by law, give information or advice to other parties who are not the broker's clients, if giving the information or advice is contrary to your interests.

If you become involved in a transaction in which another party is also the broker's client (a "multiple representation relationship"), different duties may apply.

#### MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY

A multiple representation relationship exists if a broker has an agency agreement with more than one client who is a party in the same transaction. In a multiple representation relationship, if all of the broker's clients in the transaction consent, the broker may provide services to the clients through designated agency.

Designated agency means that different salespersons employed by the broker will negotiate on behalf of you and the other client or clients in the transaction, and the broker's duties will remain the same. Each salesperson will provide information, opinions, and advice to the client for whom the salesperson is negotiating, to assist the client in the negotiations. Each client will be able to receive information, opinions, and advice that will assist the client, even if the information, opinions, or advice gives the client advantages in the negotiations over the broker's other clients. A salesperson will not reveal any of your confidential information to another party unless required to do so by law.

If a designated agency relationship is not in effect you may authorize or reject a multiple representation relationship. If you authorize a multiple representation relationship the broker may provide brokerage services to more than one client in a transaction but neither the broker nor any of the broker's salespersons may assist any client with information, opinions, and advice which may favor the interests of one client over any other client. If you do not consent to a multiple representation relationship the broker will not be allowed to provide brokerage services to more than one client in the transaction.

INITIAL ONLY ONE OF THE THREE LINES BELOW:

\_\_\_\_\_ I consent to designated agency.

\_\_\_\_\_ I consent to multiple representation relationships, but I do not consent to designated agency.

\_\_\_\_\_ I reject multiple representation relationships.

NOTE: YOU MAY WITHDRAW YOUR CONSENT TO DESIGNATED AGENCY OR TO MULTIPLE REPRESENTATION RELATIONSHIPS BY WRITTEN NOTICE TO THE BROKER AT ANY TIME. YOUR BROKER IS REQUIRED TO DISCLOSE TO YOU IN YOUR AGENCY AGREEMENT THE COMMISSION OR FEES THAT YOU MAY OWE TO YOUR BROKER. IF YOU HAVE ANY QUESTIONS ABOUT THE COMMISSION OR FEES THAT YOU MAY OWE BASED UPON THE TYPE OF AGENCY RELATIONSHIP YOU SELECT WITH YOUR BROKER YOU SHOULD ASK YOUR BROKER BEFORE SIGNING THE AGENCY AGREEMENT.

#### SUBAGENCY

The broker may, with your authorization in the agency agreement, engage other brokers who assist your broker by providing brokerage services for your benefit. A subagent will not put the subagent's own interests ahead of your interests. A subagent will not, unless required by law, provide advice or opinions to other parties if doing so is contrary to your interests.

Please review this information carefully. A broker or salesperson can answer your questions about brokerage services, but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax advisor, or home inspector.

This disclosure is required by s. 452.135 of the Wisconsin statutes and is for information only. It is a plain-language summary of a broker's duties to you under section 452.133 (3) of the Wisconsin statutes.

(b) If a client enters into an agency agreement with a broker to receive brokerage services related to real estate primarily intended for use as a residential property containing one to 4 dwelling units, and the written disclosure statement under par. (a) is not incorporated into the agency agreement, the broker shall request the client's signed acknowledgment that the client has received a copy of the written disclosure statement.

**History:** 1993 a. 127; 2005 a. 87.

The 'New' Chapter 452: Defining Real Estate Broker Practice. Leible. Wis. Law. June 2006.

**452.138 Brokers providing services in more than one transaction.** A broker may provide brokerage services simultaneously to more than one party in different transactions unless the broker agrees with a client that the broker is to provide brokerage services only to that client. If the broker and a client agree that the broker is to provide brokerage services only to that client, the agency agreement shall contain a statement of that agreement.

**History:** 1993 a. 127; 2005 a. 87.

**Cross Reference:** See also ch. RL 24, Wis. adm. code.

**452.139 Changes in common law duties and liabilities of brokers and parties. (1) COMMON LAW DUTIES OF BROKER.** The duties of a broker specified in this chapter or in rules promulgated under this chapter shall supersede duties or obligations under common law to the extent that those common law duties or obligations are inconsistent with the duties specified in this chapter or in rules promulgated under this chapter.

(2) MISREPRESENTATION BY BROKER. (a) A client is not liable for a misrepresentation made by a broker in connection with the broker providing brokerage services, unless the client knows or should have known of the misrepresentation or the broker is repeating a misrepresentation made to him or her by the client.

(b) A broker who is providing brokerage services to a client and who retains another broker to provide brokerage services to that client is not liable for a misrepresentation made by the other broker, unless the broker knew or should have known of the other broker's misrepresentation or the other broker is repeating a misrepresentation made to him or her by the broker.

(c) Nothing in this subsection limits the liability of a broker under s. 452.12 (3) for misrepresentations made by an employee who is a broker. Nothing in this subsection limits the liability of a client for a misrepresentation that the client makes in connection with brokerage services.

**History:** 1993 a. 127; 2001 a. 16; 2005 a. 87.

**Cross Reference:** See also ch. RL 24, Wis. adm. code.

#### 452.14 Investigation and discipline of licensees.

(1) The department shall, upon motion of the board or upon its own determination, conduct investigations and, as appropriate, may hold hearings and make findings, if the department receives credible information that a broker, salesperson or time-share salesperson has violated this chapter or any rule promulgated under this chapter.

(2) The department shall present the findings of any investigation of a licensee or registrant to the board for its consideration. The department shall upon motion of the board, and may, upon its own determination, commence disciplinary proceedings on any matter under investigation concerning a licensee or registrant. No investigation of a licensee or registrant may be closed without motion of the board.

(3) Disciplinary proceedings shall be conducted by the board according to rules adopted under s. 440.03 (1). The board may revoke, suspend or limit any broker's, salesperson's or time-share salesperson's license or registration, or reprimand the holder of the license or registration, if it finds that the holder of the license or registration has:

(a) Made a material misstatement in the application for a license or registration, or in any information furnished to the board or department;

(b) Made any substantial misrepresentation with reference to a transaction injurious to a seller or purchaser in which the broker, salesperson or time-share salesperson acts as agent;

(c) Made any false promises of a character such as to influence, persuade or induce the seller or purchaser to his or her injury or damage;

(d) Pursued a continued and flagrant course of misrepresentation or made false promises through agents or salespersons or advertising;

(f) Accepted from any person except the broker's, salesperson's, or time-share salesperson's employer, if the broker, salesperson, or time-share salesperson is employed as a salesperson or time-share salesperson by a broker, a commission or valuable consideration as a salesperson or time-share salesperson for the performance of any act specified in this chapter or as compensation for referring a person to another broker, salesperson, or time-share salesperson or to any other person in connection with a transaction;

(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 the broker's, salesperson's or time-share salesperson's possession which belong to another person;

(i) Demonstrated incompetency to act as a broker, salesperson or time-share salesperson in a manner which safeguards 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;

(jm) Intentionally encouraged or discouraged any person from purchasing or renting real estate in a particular area on the basis of race. If the board finds that any broker, salesperson or time-share salesperson has violated this paragraph, the board shall, in addition to any temporary penalty imposed under this subsection, apply the penalty provided in s. 452.17 (4);

(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;

(L) Violated any provision of this chapter;

(m) Failed to use forms approved under s. 452.05 (1) (b); or

(n) Treated any person unequally solely because of sex, race, color, handicap, national origin, ancestry, marital status or lawful source of income.

(4) If a broker is a business entity it shall be sufficient cause for reprimand or for the limitation, suspension or revocation of a broker's license that any business representative of the business entity, or anyone who has a 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.

(4m) In addition to or in lieu of a reprimand, the issuance of a private letter of warning or a revocation, limitation or suspension of a license or certificate of registration under sub. (3), the board may do any of the following:

(a) Assess against a person who is licensed or registered under this chapter a forfeiture of not more than \$1,000 for each violation enumerated under sub. (3).

(b) Require a licensee to successfully complete education or training, in addition to any education or training required for licensure or registration or for renewal of a license or certificate under this chapter, as a condition of continued licensure or registration or reinstatement of a license or certificate.

(5) The department may seek judicial review under ch. 227 of any final decision of the board. The department shall be represented in such review proceedings by an attorney within the department. Upon request of the board, the attorney general may represent the board. If the attorney general does not represent the board, the board may retain special counsel which shall be paid for out of the appropriation under s. 20.165 (1) (g).

**History:** 1981 c. 94, 391; 1983 a. 27 s. 2202 (44); 1983 a. 354; 1985 a. 305; 1987 a. 399; 1989 a. 307, 341, 359; 1991 a. 32, 163; 1993 a. 127; 1995 a. 400; 2005 a. 87.

**Cross Reference:** See also chs. RL 15, 16, and 24, Wis. adm. code.

Real estate brokers may engage in guaranteed sales plans if there is full disclosure and the broker does not engage in fraud, misrepresentation, or improper dealing. 61 Atty. Gen. 3.

Neither s. 440.20, 452.10 (2), 1977 stats., nor the rules of the department of regulation and licensing require the board to hold a hearing when a citizen files a verified complaint with the board requesting institution of disciplinary proceedings against a licensee. 68 Atty. Gen. 30.

**452.15 Ineligibility.** No license or certificate of registration may be issued under this chapter to any person whose license or certificate under this chapter has been revoked until the expiration of a period determined in each case by the board or, in the case of revocation under s. 452.17 (4) (a) 2., a period determined in each case by the board of not less than 5 years from the date the revocation became finally effective.

**History:** 1981 c. 94; 1983 a. 354; 1989 a. 341.

**452.17 Penalties. (1)** Any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as a broker or salesperson in this state without a license under this chapter shall be prosecuted by the district attorney in the county where the violation occurs or by the attorney general and may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(2) Any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as, a time-share salesperson in this state without being registered with the department 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.

(3) Any person who otherwise violates any provision of this chapter may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(4) (a) If the board finds that any broker, salesperson or time-share salesperson has violated s. 452.14 (3) (jm), the board:

1. Shall, for the first offense, suspend the license or registration of the broker, salesperson or time-share salesperson for not less than 90 days.

2. Shall, for the 2nd offense, revoke the license or registration of the broker, salesperson or time-share salesperson.

(b) This penalty may be imposed in addition to any penalty imposed under this chapter or s. 66.1011 or 106.50.

**History:** 1981 c. 94; 1983 a. 354; 1987 a. 399; 1989 a. 95, 307, 341; 1995 a. 27; 1999 a. 82; 1999 a. 150 s. 672.

**452.18 Court review.** Except as provided in s. 73.0301 (2) (b) 1. a. and 2., orders of the board and department shall be subject to review as provided in ch. 227.

**History:** 1981 c. 94; 1997 a. 237.

**452.19 Fee-splitting.** No licensed broker may pay a fee or a commission or any part thereof for performing any act specified in this chapter or as compensation for a referral or as a finder's fee to any person who is not licensed or registered under this chapter or who is not regularly and lawfully engaged in the real estate brokerage business in another state, a territory or possession of the United States or a foreign country.

**History:** 1981 c. 94; 1983 a. 464; 1985 a. 128; 1989 a. 307.

Under s. 452.03 an agreement to pay a real estate brokerage commission to a person not licensed as a broker is void at its inception. Using a licensed broker who provides no actual services as a conduit for a fee to an unlicensed person does not create a co-brokerage arrangement authorized by s. 452.19. *Badger III Ltd. v. Howard, Needles, Tammen & Bergendoff*, 196 Wis. 2d 891, 539 N.W.2d 904 (Ct. App. 1995), 94-2531.

**452.20 Limitation on actions for commissions.** No person engaged in the business or acting in the capacity of a broker, salesperson or time-share salesperson within this state may 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 or she was a duly licensed broker, salesperson or registered time-share salesperson at the time the alleged cause of action arose.

**History:** 1981 c. 94; 1987 a. 399; 1989 a. 56.

A foreign corporation that contracts to sell a radio station without being licensed in this state cannot sue for its commission. The licensing requirement is not an unlawful burden on interstate commerce. *Chapman Co. v. Service Broadcasting Corp.* 52 Wis. 2d 32, 187 N.W.2d 794.

The prohibition against paying a commission to an unlicensed person acting as a broker is absolute and not conditioned on the innocence or lack of sophistication of the other contracting parties. Because a contract for a commission with a person not licensed as a broker is void from its inception, estoppel is not available to avoid the effect of the statute. *Greenlee v. Rainbow Auction/Realty Co.* 202 Wis. 2d 653, 553 N.W.2d 257 (Ct. App. 1996), 95-1463.

This section not applicable since broker as owners' agent was not attempting to negotiate the lease when conferring with his alleged principal in Wisconsin and therefore was not acting in the capacity of a broker in Wisconsin. Negotiation of lease occurred when broker met and conferred with prospective lessee either in Illinois or Tennessee. *Paulson v. Shapiro*, 490 F.2d 1.

**452.21 Compensation presumed.** In any prosecution for violation of this chapter, proof that a person acted as a broker, agent, salesperson or time-share salesperson is prima facie proof that compensation therefor was received or promised.

**History:** 1981 c. 94; 1987 a. 399.

**452.22 Certifications as evidence. (1)** Copies of all documents, orders, resolutions and certificates made, executed or granted by the department or board, and of all papers filed with the department when certified by the secretary or his or her designee, under the official seal, shall be received in evidence in all cases the same as the originals.

(2) The certificate of the secretary or his or her designee to the effect that a specified individual or business entity is not or was not on a specified date the holder of a broker's, salesperson's or time-share salesperson's license or registration, or that a specified license or registration was not in effect on a date specified, or as to the issuance, limitation, suspension or revocation of any license or registration or the reprimand of any holder thereof, 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:** 1981 c. 94; 1987 a. 399; 1995 a. 400.

**452.23 Disclosures, investigations and inspections by brokers and salespersons.** (1) A broker or salesperson may not disclose to any person in connection with the sale, exchange, purchase or rental of real property information, the disclosure of which constitutes unlawful discrimination in housing under s. 106.50 or unlawful discrimination based on handicap under 42 USC 3604, 3605, 3606 or 3617.

(2) A broker or salesperson is not required to disclose any of the following to any person in connection with the sale, exchange, purchase or rental of real property:

(a) That the property was the site of a specific act or occurrence, if the act or occurrence had no effect on the physical condition of the property or any structures located on the property.

(b) Except as provided in sub. (3), information relating to the physical condition of the property or any other information relating to the real estate transaction, if a written report that discloses the information has been prepared by a qualified 3rd party and provided to the person. In this paragraph, “qualified 3rd party” means a federal, state or local governmental agency, or any person whom the broker, salesperson or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the 3rd party in order to prepare the written report.

(c) The location of any adult family home, as defined in s. 50.01 (1), community-based residential facility, as defined in s. 50.01 (1g), or nursing home, as defined in s. 50.01 (3), in relation to the location of the property.

(d) Except as provided in s. 452.24, any information related to the fact that a particular person is required to register as a sex offender under s. 301.45 or any information about the sex offender registry under s. 301.45.

(3) A broker or salesperson shall disclose to the parties to a real estate transaction any facts known by the broker or salesperson that contradict any information included in a written report described under sub. (2) (b).

(4) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a broker or salesperson shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson under this chapter.

**History:** 1989 a. 341; 1995 a. 27; 1999 a. 82, 89.

An independent inspection by a qualified third party operates to relieve a broker from liability for disclosures related to the physical condition of the property. *Conell v. Coldwell Banker*, 181 Wis. 2d 894, 512 N.W.2d 239 (Ct. App. 1994).

Sub. (2) (b) relieves a broker from the obligation to disclose information disclosed in a 3rd party report. Sub. (2) (b) does not apply to a separate affirmative act of negligence and does not preclude a broker’s liability for a breach of other duties. *Johnson v. Neuville*, 226 Wis. 2d 365, 595 N.W.2d 100 (Ct. App. 1999), 98–1680.

**452.24 Disclosure duty; immunity for providing notice about the sex offender registry.** (1) If, in connection with the sale, exchange, purchase or rental of real property, a licensee receives a request from a person to whom the licensee is providing brokerage services in connection with the sale, exchange, purchase or rental for information related to whether a particular person is required to register as a sex offender under s. 301.45 or any other information about the sex offender registry under s. 301.45, the licensee has a duty to disclose such information, if the licensee has actual knowledge of the information.

(2) Notwithstanding sub. (1), the broker or salesperson is immune from liability for any act or omission related to the disclosure of information under sub. (1) if the broker or salesperson in a timely manner provides to the person requesting the information written notice that the person may obtain information about the sex offender registry and persons registered with the registry by contacting the department of corrections. The notice shall include the appropriate telephone number and Internet site of the department of corrections.

**History:** 1999 a. 89.