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REPRESENTATIVE • 97TH ASSEMBLY DISTRICT

Testimony on AB 534, SB 455

Relating to various changes regarding real estate practice

OCTOBER 17, 2017

Chairman Jagler and Chairman Lasee, members of the Assembly Housing and Real Estate Committee, and Senate Insurance Housing, and Trade Committee:

Thank you for the opportunity to testify today on AB 534/SB 455, relating to various changes regarding the laws governing real estate practice and licensure. As you may remember, last session, the legislature updated chapter 452 and incorporated court precedents dating back to 1963. This bill finds further efficiencies in the real estate practice code by clarifying definitions and expanding economic opportunity.

One of the more prevalent opportunities presented in this bill regards cooperative agreements. Cooperative agreements between out-of-state brokers and real estate firms licensed in Wisconsin are utilized to connect purchasers and sellers across state lines. However, when Wisconsin created this cooperation option in 2015 it only permitted cooperation between a Wisconsin listing firm and the out-of-state broker. Unfortunately, this limited commercial practitioners who are often approached by out-of-state brokers who represent purchasers and tenants of commercial properties who want to cooperate with Wisconsin firms on a buyer/tenant side not from the seller's side. This bill modifies current law to allow cooperation between Wisconsin firms and out-of-state brokers representing buyers and tenants in commercial transactions. This change encourages the sale and leasing of Wisconsin commercial properties without forfeiting consumer protection.

AB 534/SB 455 also makes a few other modifications to reflect current practice. I'd like to touch just briefly on some of the provisions, as many of them are self-explanatory:

It prohibits a licensee from negotiating the sale, exchange, purchase, or rental of personal property unless related to a transaction.

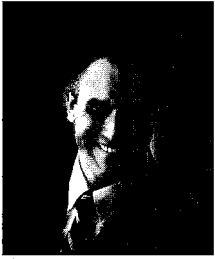
It strengthens consumer protection by prohibiting false, deceptive, or misleading advertising.

It prohibits a firm and licensees from advertising a property unless the firm is the listing firm, or consent to advertise the property has been obtained.

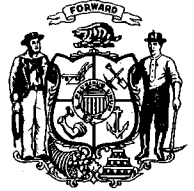
Finally, AB 534/SB 455 clarifies that the three-year hold on felons applies to new applicants only, as current licensees are subject to discipline by the Real Estate Examining Board.

I'd like to thank the Wisconsin Association of Realtors for working with us in drafting this bill. I don't know of another commercial activity which touches literally every square inch of Wisconsin. This bill is a win-win-win as it assists consumers, protects the public, and expands economic opportunities.

I ask you to recommend AB 534/SB 455 out of committee.



Frank Lasee
WISCONSIN STATE SENATOR
FIRST SENATE DISTRICT



Senator Lasee's Testimony
Senate Bill 455 / Assembly Bill 534
Technical Changes to Wisconsin Real Estate Laws

The practice of real estate is important to every land and homeowner in Wisconsin and as the practices in the industry evolve with the times, the legislature needs to make changes to the law so that the consumers and the real estate professionals have the best regulatory environment possible.

SB 455/AB 534 represents a technical update to several sections in real estate law that will keep Wisconsin Real Estate laws back up to date.

Some noteworthy provisions include:

- Closing of a loophole in the law regarding Cooperative Agreements with out-of-state brokers that will better protect Wisconsin consumers while removing hurdles that discourage the sale or lease of Wisconsin commercial property
- Clarifies language about the Real Estate Examining Board's obligation to revoke licenses of licensees that have been convicted of a felony
- The forms that are used in real estate transactions are highly regulated. This bill will allow an update of those forms.
- The bill creates new standard practices and consumer protections for truthful advertising, amends certain definitions of the law, and creates new prohibitions about the sale of non-real estate property that will improve the practice for licensed professionals and consumers alike

Please join me in my support of SB 455/AB 534.



To: Senate Committee on Insurance, Housing and Trade
Assembly Committee on Housing and Real Estate

From: Cori Lamont, Director of Corporate and Regulatory Affairs
Tom Larson, Senior Vice President of Legal and Public Affairs

Date: October 17, 2017

RE: SB 455/AB 534 – changes relating to real estate practice

The Wisconsin REALTORS® Association (WRA) supports SB 455/AB 534. The objective of this bill is to provide statutory clarity as to common activities in the practice of real estate, create efficiencies in the state-approved forms process, and update statutory definitions. The following is a brief summary of the changes reflected in the proposed draft.

Advertising

Require a listing contract if the seller's property is being promoted or advertised for sale or for lease.

Under current law, an agent can advertise or market a property without a listing contract as long as they have the owner's consent. However, with the far reach of technology consumers are often confused as to the agent's relationship with the seller when the agent is marketing a property.

For instance, an agent advertises the property without a listing contract on social media. The buyer sees the agent's social media post and reaches out to the agent. Under current law it is murky as to what may or may not be said to, or actions that may be taken by the agent, regarding this prospective buyer. Prospective buyers are often confused because they thought the agent is acting on the seller's behalf. In reality the agent is only marketing or promoting the property, they are not the seller's agent and therefore cannot negotiate on the seller's behalf. However, because most agents misunderstand their inability to represent the seller they begin to provide brokerage services on behalf of the seller without entering into the listing contract.

By requiring a licensee to have a listing contract in order to promote or advertise the sale or rental of a property offers prospective buyers a better understanding as to the relationship between the seller and firm. Additionally, this requirement offers a clear understanding to sellers and agents as to when the licensee represents and may provide brokerage services on the seller's behalf.

Include the advertising rules of Wis. Admin. Code § REEB 24.04 into the statute.

Currently all rules relating to advertising are housed in administrative code. Placing the administrative rules in the statute will raise industry awareness as to advertising guidelines. In addition, current law requires a firm's name to be included in all advertising; this bill further requires the firm's name to be clear and conspicuous in the advertising. Lastly, this bill provides the Real Estate Examining Board (REEB) authority to promulgate rules relating to advertising, if needed.

Negotiation Relating to Personal Property – Clarify licensees may negotiate the sale, exchange, purchase or rental of personal property when related to the real estate transaction. The sale or leasing of personal property is a common part of a negotiated real estate transaction. Personal property could include items such as refrigerator, washer, dryer, boat lift, etc. This bill codifies a licensees' limited ability to negotiate such when it's related to the real estate transaction.

Cooperation with Out-of-State Licensee (OSL) - Modify current law to permit a Wisconsin firm to cooperate with commercial OSLs working with or representing buyers and/or tenants. In 2015, Wisconsin joined 26 other states to become a cooperative state which allowed cooperation between a Wisconsin listing firm and an OSL. See 2013 Wis. Act 259.

Current law prohibits OSLs with commercial purchasers or tenants to cooperate with a Wisconsin firm that does not represent the seller. Commercial tenants and purchasers often have a relationship with their out-of-state firm and want to benefit from the expertise of a non-Wisconsin listing firm and have a relationship exist between their firm and the Wisconsin firm. This limitation created by the current structure unnecessarily restricts the commercial practitioner and discourages the sale or lease of Wisconsin commercial property.

This bill allows a Wisconsin firm that does not represent the seller to cooperate with an OSL representing a commercial buyer or tenant purchasing or leasing real estate in Wisconsin. Further, this bill requires the REEB to create a new form to facilitate this commercial OSL cooperation. Lastly, since this new cooperation opportunity is limited to the sale or lease of Wisconsin commercial real estate, it poses limited risk to Wisconsin consumers.

DSPS Forms Council - Create a more responsive form-approval process to meet the needs of a changing real estate market by updating the statutory language pertaining to the DSPS Forms Council (Council) by allowing the REEB the ability to consult the Council and/or a trade association whose members consist primarily of real estate licensees actively engaged in the practice of real estate or both when a state-approved (WB) form is being modified or created.

Under the current format, the DSPS must arrange and budget for the Council to meet 6-7 times a year, pay for the Council members' mileage, lunch and allocate staff time for the 5-6 hour meeting. Therefore, the Council's flexibility to meet is held to meeting room availability, staff availability, potential cost limitations and Council member availability. To offer the Council as the REEB's only resource for feedback as to recommended changes to a form unnecessarily ties the hands of the REEB. This change offers flexibility to REEB while maintain the REEB's final approval of the form.

3-year Felony Hold - Include a technical change that clarifies Wis. Stat. § 452.25(1) was meant to apply only to those applying for an initial real estate license, not to those renewing a real estate license. Wis. Stat. § 452.25(1) bars licensure if the applicant has been convicted of a felony and three years has not passed since the confinement portion. The REEB has and continues to have discretion to determine if the license should be renewed, restricted or reprimanded.

Definitions - Update a variety of definitions in the statute relating to the practice of real estate. For example, the definition of broker in Wis. Stat. § 452.01(2) is updated to include that if an opinion of value is being provided then a Wisconsin real estate or Wisconsin appraiser license is required. Additionally, the bill creates the definition of listing firm since it is now referenced in the commercial OSL cooperation provision.