

STATE REPRESENTATIVE

DEAN KNUDSON

30TH ASSEMBLY DISTRICT

January 23rd, 2014

Testimony RE: AB 605/SB 457, Out-of-State Brokers

Assembly Committee on Housing and Real Estate

Mr. Chairman and members,

Thank you for holding this hearing, and for giving me the opportunity to testify on SB 457 and its companion bill, AB 605. This legislation would allow for the limited practice of real estate in Wisconsin by out of state brokers, provided that the out of state broker has entered into an agreement with a broker licensed in Wisconsin.

This legislation came about for two reasons: first, this will help curb the illegal practice of real estate by creating a process for those operating in border areas to do so legally. Secondly, it allows for ease and convenience of those looking for property in areas such as my district, which is in the Twin Cities metro area and literally a stone's throw from places like Stillwater and Woodbury, Minnesota.

Wisconsin is open for business, and we want that to apply to every facet of life. Fully half of all residents in both St. Croix and Pierce counties are employed in Minnesota, and a significant, though smaller, percentage of Minnesota residents work in Wisconsin. Thousands of people cross this border, as well as our borders with Illinois and Iowa, on a daily basis and without a second thought. A bill like this makes sense for those thinking about making a home in Wisconsin.

Additionally, while real estate is a well-regulated practice, there are some areas that remain murky. This includes a few unscrupulous realtors in border areas who engage in the practice of real estate without a license in Wisconsin. As Senator Olsen will attest, this bill directly addresses an issue of consumer protection.

Very basically: what does this bill do? It allows a realtor from Stillwater, for example, who wants to show property in Hudson to enter into an agreement with a Wisconsin licensed broker that will allow the Minnesota agent to show property. It does not allow the Minnesota agent to list a property, advertise their services, or perform any other services than what is laid out in the cooperative agreement. The agreement will also set out any methods of compensation.

In short, Mr. Chairman, this is a common-sense, bipartisan measure. I again appreciate your hearing this bill, and I look forward to taking your questions.



To: Assembly Committee on Housing and Real Estate Members

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

Date: January 23, 2014

RE: Regulating Brokerage Services Provided By Out-of-State Real Estate Licensees in Wisconsin – AB605/SB347

OBJECTIVE

To create an alternative opportunity for Out-of-State Licensees (OSL) to provide limited brokerage services in Wisconsin transactions, by requiring the OSL to enter into a written cooperative agreement with a Wisconsin real estate broker.

The legislation will continue to encourage out-of-state purchases of Wisconsin properties, while keeping the in-state-broker (ISL) at the helm of the transaction and protecting both the consumer and the integrity of the transaction.

ISSUE

In a typical residential real estate transaction a property is listed with a real estate company (listing broker) and an agent from another real estate company (cooperating broker) works with the purchaser by showing the property, being present during inspections and tests, assisting in writing the offer to purchase and other negotiations during the transaction.

Recently with greater frequency, OSLs have been entering Wisconsin and providing brokerage services in Wisconsin transactions without a Wisconsin real estate license. Along with violating Wisconsin real estate license law, this activity by OSLs has created significant problems in the transaction:

- Errors in offers to purchase due to the lack of familiarity with Wisconsin forms
- Use of out-of-state forms which the ISL has no familiarity leading to additional consumer cost for attorney review and contract provisions placing the Wisconsin consumer at risk; e.g., earnest money held by the OSL and contract jurisdiction in another state
- Inaccurate information to consumers as to Wisconsin laws

BACKGROUND

Currently, there is no specific legislative structure for brokerage services performed by OSLs in Wisconsin. At this time the position of the Department of Safety and Professional Services is that any OSL may provide brokerage services in Wisconsin as long as the OSL is not physically present in Wisconsin. Examples of violations would include being present and/or conducting a showing of a Wisconsin property. Essentially under current law, as long as the OSL stays in their own state the ISL's hands are tied as to what the ISL can expect of the practices of the OSL.

There are three regulatory models that create the structure for the participation of OSLs in other states - cooperative, physical location and turf. Preliminary discussions deemed

the turf model too restrictive, which is evidenced by the fact only a few states have adopted the model.

Presently, Wisconsin is a physical location state. The OSL may not provide brokerage services while physically located in the state. The OSL may perform services from their home state.

Under the cooperative structure, the OSL may physically enter the state if they have a written cooperation or co-brokerage agreement with an ISL outlining the OSL's duties. Currently 26 states function under the cooperative model.

PROPOSAL

- **Change Wisconsin to a cooperative state** -- Under this proposal Wisconsin would change from a physical location to a cooperative state for all real estate transactions, including leases and sales.
- **Creates a new voluntary option for the ISL** --The proposal allows the ISL to have two voluntary options with the OSL: 1) referral fee arrangement or 2) enter into a written cooperation agreement.
- **Both the ISL and OSL must have a valid broker license** -- The proposal requires both the ISL to have a valid broker license and the OSL to provide evidence of good standing or other proof of licensure to enter into the cooperative agreement.
- **REEB-created agreement creates uniformity and allows customization** --The written agreement will be created by the Real Estate Examining Board (REEB). The basic foundation of the agreement terms will have uniformity; however the brokers will be able to customize the agreement to reflect the arrangement of the two brokers.
- **ISL sets the terms of the OSLs actions as to the ISL's listing** --The REEB-cooperative agreement will allow the ISL to set parameters as to the OSLs limited brokerage services. The basics of those limitations would include the OSLs ability to participate in: showings; advertising; negotiations; and writing offers. In addition, the ISL may choose to require the OSL use WI-approved forms. The brokers may also choose to allow the agents of the OSL broker to participate in the transaction.
- **Cooperative agreement also address other activities of the OSL and laws** -- The cooperative agreement and legislation will require trust funds be deposited in the ISL's trust account, clarification that no person may pay any part of a commission to the OSL unless the OSL has entered into a cooperative agreement, and a statement that the OSL is subject to WI license law and all lawsuits must be filed in WI only, which includes commission disputes.
- **OSL listings will be prohibited** --The proposal disallows an OSL from taking a listing without a Wisconsin real estate broker license.
- **ISL flexibility and control** -- The ISL may only enter into a written cooperative agreement for the ISL's own listings or buyer agency agreements not for any other broker's agreements. Additionally the proposal allows the ISL to choose to enter into a referral agreement for one of their listings and a cooperation agreement for another.
- **Penalties and enforcement** -- The proposal includes language that any violation of the section of the statute is unlawful and is subject to investigation, complaint, and discipline of the REEB and is punishable by a fine of not more than \$5,000 for each offense.
- **REEB shall have the authority to promulgate rules and regulations** -- The proposal will provide the REEB authority to create rules and regulations in establishing the conditions of the cooperative agreement.