

STATE OF WISCONSIN
REAL ESTATE EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : NOTICE OF TIME PERIOD
PROCEEDINGS BEFORE THE : FOR COMMENTS FOR THE
REAL ESTATE EXAMINING BOARD : ECONOMIC IMPACT ANALYSIS
:

NOTICE IS HEREBY GIVEN of the time period for public comment on the economic impact of this proposed rule of the Real Estate Examining Board relating to the use of approved forms and legal advice, including how this proposed rule may affect businesses, local government units and individuals. The comments will be considered when the Department of Safety and Professional Services prepares the Economic Impact Analysis pursuant to § 227.137. Written comments may be submitted to:

Jean MacCubbin, Program Manager
Division of Policy Development
Department of Safety and Professional Services
PO Box 8935
Madison, WI 53708-8935
Jean.MacCubbin@wisconsin.gov

The deadline for submitting economic impact comments is September 23, 2013.

PROPOSED ORDER

An order of the Real Estate Examining Board to repeal REEB 16.03 (2) Note; to renumber REEB 16.02 (1) to REEB 16.02 (1e); to amend REEB 16.03 (2), REEB 16.03 (1) (intro.), (a), (b) and (e), REEB 16.05 (1) and (2), REEB 16.06 (1) (intro.), (a), (b), (e) and (f), REEB 16.03 (2) REEB 16.06 (4) (intro.) and (a) to (b), REEB 16.06 (5) (intro.) and (a) to (c); and REEB 16.06 (6) and (7); to repeal and recreate REEB 16.03 (2) Note, and to create REEB 16.02 (intro.), (1) and Note, (1m), (2e), (2m), (2r), (3m) and (4m), REEB 16.03 (2) Note, relating to use of approved forms and legal advice.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 452.07 (1m), 452.05 (1) (b) and 452.07, Stats.

Statutory authority: ss. 15.405 (11), 227.11 (2), 452.07 (1m), 452.05 (1) (b) and 452.07 (1m), Stats.

Explanation of agency authority:

Examining boards are generally authorized by ss. 15.08 (5) (b) and 227.11 (2) (a), Stats., to promulgate rules for its own guidance and for guidance within the profession and to promulgate rules interpreting any statute enforced or administered by it. Under s. 452.05 (1) (b) the board shall approve forms for real estate practice. Under s. 452.07 (1m), Stats., the board shall promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice.

Related statute or rule:

There are no other statutes or rules other than those listed above.

Plain language analysis:

With the exception of renumbering to reflect the Real Estate Examining Board, this rule has not been updated since 1986. The Board’s intent is to update the rule to reflect current practice, update references to approved forms and define terms. Specifically, this proposed rule-making order clarifies the rules relating to the use of approved forms and legal advice.

SECTIONS 1 to 4: These proposed changes clarify and create various terms used in the industry not previously defined in this rule or in chs. REEB 11 to 26. The terms relate primarily to types of agreements, contracts and listings.

SECTIONS 5 to 7 and 9: These proposed changes relate to board-approved forms for use by licensees. The listing previously was in a Note; the listing will now be maintained on-line for downloading and will reflect the most current titles, numbering and forms. A Note is created to provide information on how to obtain board-approved forms.

SECTION 8. This section merely substitutes the term “provides” for “gives” when referring to legal advice.

SECTIONS 10 to 13: These proposed changes relate to the authority provided to the board in s. 452.05 (1) (b), Stats., regarding approving forms as well as the conditions of use and amending such forms. In addition, rule format changes enacted since the last revision are proposed.

SECTION 14. An effective date is stated as the July 1, 2014 date will be timely for training and examination purposes.

Summary of, and comparison with, existing or proposed federal regulation:

Under the Real Estate Settlement Procedures Act (RESPA) various federally-created forms are required for use in all states, particularly for settlement transactions and closings. An example is a form FmHA, or its successor agency, requires under Public Law 103-354 1940-59, Settlement Statement.

[<http://www.law.cornell.edu/cfr/text/7/1940.406>] There is no indication that current Federal laws dictate the use of approved forms for state use other than those related to federally-backed mortgages, HUD property transactions and radon disclosure.

Comparison with rules in adjacent states: An Internet-based search revealed the following:

Illinois: In Illinois, the Bureau of Real Estate Professions administers and enforces the Illinois Real Estate License Act of 2000, the Real Estate Timeshare Act, the Land Sales Registration Act, the Real Estate Appraiser Licensing Act of 2002, Provisions and Rules of the Uniform Standards of Professional Appraisal Practice, the Auction License Act, and the Home Inspector License Act. The Bureau has responsibility for the licensing and regulating real estate brokers, managing brokers, leasing agents, real estate firms, real estate appraisers, auctioneers, auction firms, home inspectors, and home inspector entities. In Illinois there are 'standard' forms for various real estate transactions; these forms were not found to be state-approved forms, but available from various sources such as legal firms and professional groups. The Internet-based search did not reveal any details relating to Illinois codes and statutes pertaining to state- or board- approved forms or any provisions for relating to legal advice provided by licensees.

Iowa: In Iowa, the Professional Licensing Division (IPLD) oversees the real estate industry through the following rules: Iowa Code ch. 543B, Real Estate Brokers and Salespersons; ch. 543C, Sales of Subdivided Land Outside of Iowa; and ch. 557A, Iowa Time-Share Act. These rules are published in the Iowa Administrative Code ch. 193E. Under the jurisdiction of the IPLD, the Iowa Real Estate Commission regulates and administers the real estate laws in Iowa. An index of state-approved forms used in the real estate industry is found at:

http://www.state.ia.us/government/com/prof/sales/forms_indexNew.html. Other than recommending buyers to obtain the advice of an attorney prior to signing contracts or offers, the rules were silent regarding allowing or prohibiting licensees providing legal advice.

Michigan: In Michigan Article 25 of Public Act 299 of 1980, licenses and regulates the real estate industry. The Board of Real Estate Brokers and Salespersons approves forms, which are listed on:

<http://www.dleg.state.mi.us/dms/results.asp?docowner=BCSC&doccat=Real+Estate&doccata=LicDiv&Search=Search>. No information was found to determine if the Michigan Board of Real Estate Brokers and Salespersons limits or allows licensees to provide legal advice.

Minnesota: The Minnesota statutes licensing and regulating the real estate industry is Article 25 of Public Act 299 of 1980, published in ch. 384. The Board of Real Estate Brokers and Salespersons, part of the Department of Commerce, approves forms; these are listed on:
<http://www.dleg.state.mi.us/dms/results.asp?docowner=BCSC&doccat=Real+Estate&doccata=LicDiv&Search=Search>. No information was found regarding licensees providing legal advice.

Summary of factual data and analytical methodologies:

The primary purpose of the proposed rule is to update and clarify rule provisions to reflect current practice. Other than the Board undertaking a review of their rules, no specific data or analytical methodology was used.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

Data was obtained from the Division of Professional Credential Processing regarding the number of licensees that would be affected by this regulatory change. As of 4/15/2013, there were 6,139 active licensed real estate salespersons and 10,373 active licensed real estate brokers. There were 1,051 licensed real estate business entities. The majority of real estate licensees work in small business environments; however, the proposed rules do not include any policy changes which would impact licensees or small business.

Fiscal Estimate and Economic Impact Analysis:

The Board is currently soliciting information and advice from businesses, local government units and individuals in order to prepare the Economic Impact Analysis.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Greg.Gasper@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Jean MacCubbin, Program Manager, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone (608) 266-0955; email at Jean.MacCubbin@wisconsin.gov; or by telecommunications relay services at 711.

TEXT OF RULE

SECTION 1. REEB 16.02 (intro.) is created to read:

REEB 16.02 Definitions. Definitions contained in s. REEB 11.02 shall also apply to this chapter. In this chapter:

SECTION 2. REEB 16.02 (1) is renumbered REEB 16.02 (1e).

SECTION 3. REEB 16.02 (1) and Note, (1m), (2e), (2m), (2r), (3m) and (4m) are created to read:

REEB 16.02 (1) “Agency agreement” has the meaning given in s. 452.01 (1m), Stats.

Note: Section 452.01 (1m) reads: "Agency agreement" means a written agreement between a broker and a client under s. 452.135 (1).

(1m) “Buyer agency/tenant representation agreements” means a written agency agreement authorizing a broker to provide brokerage services to the client for the procurement of an interest in property and providing the terms whereby the broker may earn a commission.

(2e) “Exclusive right to locate buyer agency/tenant representation agreement” means a written buyer agency/tenant representation agreement giving the broker the exclusive right to locate an interest in property for the client.

(2g) “Exclusive right to locate and negotiate buyer agency/tenant representation agreement” means a written buyer agency/tenant representation agreement giving the broker the exclusive right to locate an interest in property and to negotiate the procurement of an interest in property for the client.

(2m) “Exclusive right to negotiate buyer agency/tenant representation agreement” means a written buyer agency/tenant representation agreement giving broker the exclusive right to negotiate the procurement of an interest in a property for the client.

(3m) “Listing contract” means a written agency agreement authorizing a broker to provide brokerage services to the client for the sale or rental of property and providing the terms whereby the broker may earn a commission.

(4m) “One-party listing” means a written listing contract containing all of the elements of an exclusive right to sell listing, except that listing broker is entitled to a commission only if the property is sold by the owner, by the broker or by anyone else to a specific party or parties identified in the written listing contract.

SECTION 4. REEB 16.02 (3) is amended to read:

REEB 16.02 (3) “Exclusive right to sell listing” means a written listing ~~agreement appointing contract making~~ a broker the exclusive agent for the sale of property for a specific period of time, and which entitles the listing broker to a commission if the property is sold by the owner, by the broker or by anyone else.

SECTION 5. REEB 16.03 (1) (intro.), (a), (b) and (e) are amended to read:

REEB 16.03 Approved forms. (1) In addition to forms prepared and approved by the board pursuant to s. 452.05 (1) (b), Stats., the board approves the following forms for use by brokers:

(a) Forms prepared and approved by the state bar of Wisconsin for deeds, mortgages, mortgage notes, truth-in-lending disclosures, land contracts, release of mortgage, satisfaction of mortgage, assignment of mortgage and assignment of land contract;

(b) Uniform commercial code forms: 1, 2, 3, 4, 11, 410, 411, 430, 445, 450 and 451;

(e) Forms to be used for a property management agreement between a broker and a landlord, prepared by the broker entering into the agreement, ~~the broker's~~ an attorney, or the landlord, that contain provisions relating to leasing, managing, marketing and overall management of the landlord's property.

SECTION 6. REEB 16.03 (2) is amended to read:

REEB 16.03 (2) In addition to forms prepared and approved by the board pursuant to s. 452.05 (1) (b), Stats., the board grants approval of the forms in sub. (1) (c), (d) and (e) and sub. (3) for use by ~~salespersons~~ licensees. Board-approved contractual forms for use in real estate practice may be used by licenses and shall be available on the department's webpage.

SECTION 7. REEB 16.03 (2) Note is repealed and recreated to read:

REEB 16.03 (2) Note 1: Copies of these forms are accessible for printing and downloading from the department's webpage: <http://dsps.wi.gov>. These forms, form numbers, and form titles are subject to change; for the most current listing refer to the department's webpage. Copies of the board-approved contractual forms for use by real estate licensees are available upon request to the Department of Safety and Professional Services; Division of Professional Credentialing Processing; PO Box 8935; Madison, WI 53708-8935; phone (608) 262-2112.

SECTION 8. REEB 16.05 (1) and (2) are amended to read:

REEB 16.05 Legal advice and practice of law. (1) A licensee may not ~~give~~ provide advice or opinions concerning the legal rights or obligations of parties to a transaction, the legal effect of a specific contract or conveyance, or the state of title to real estate.

(2) Notwithstanding sub. (1), a licensee may ~~give~~ provide a general explanation of the provisions in an approved form to the parties to a transaction at the time of completing the form or when delivering an approved form for the seller's or buyer's acceptance.

SECTION 9. REEB 16.06 (1) (intro.), (1) (a), (b), (e) and (f), are amended to read:

REEB 16.06 How to use approved forms. (1) ~~A~~ All of the following apply to a licensee who reproduces or arranges for printing a contractual form prepared and approved by the board pursuant to s. 452.05 (1) (b), Stats.:

(a) Shall assure that the numbering of lines, line contents and the lines appearing on each page are identical to those on the ~~department's~~ board-approved forms.

(b) May not reproduce the form in such a manner that optional provisions are left out and blank lines are filled in without any indication of where the optional provisions and blank lines occur on the ~~department's~~ board-approved form.

(e) Shall retain the ~~department's~~ board's approval statement and date in the upper left corner exactly as these appear on the ~~department's~~ board-approved form.

(f) Shall assure that the formatting of the form is substantially identical to that on the ~~department's~~ board-approved form.

SECTION 10. REEB 16.06 (4) (intro.), and (a) to (b) are amended to read:

REEB 16.06 (4) Except as provided in sub. (5), a licensee may use a pre-prepared addendum form and attach it to an approved form under all of the following circumstances:

(a) The addendum has been prepared by the broker or ~~the broker's~~ an attorney who is identified on the addendum; ~~and~~.

(b) The addendum is incorporated by reference into the approved form and the approved form and the addendum are properly related to one another; ~~and~~.

SECTION 11. REEB 16.06 (5) (intro.) and (a) to (c) are amended to read:

REEB 16.06 (5) A licensee may use a pre-prepared addendum which supplants or alters the printed provisions of an approved form only if the following are met:

(a) The addendum has been drafted by an attorney who is identified on the addendum;

(b) There are no optional or multiple choice provisions in the addendum;

(c) There are no ~~blanks~~ blank lines or fill-in provisions in the addendum except for spaces for the signatures of the parties and those items required under par. (d); ~~and~~.

SECTION 12. REEB 16.06 (6) and (7) are amended to read:

REEB 16.06 (6) A licensee may alter an approved ~~exclusive right to sell~~ exclusive right to sell listing contract to create an exclusive agency listing or, an open listing or a one-party listing.

(7) A licensee shall use the latest approved version of ~~an~~ a board-approved form.

SECTION 13. REEB 16.06 (8) is created to read:

REEB 16.06 (8) A licensee may alter an approved buyer agency/tenant representation agreement in order to create an exclusive right to negotiate, exclusive right to locate, or an exclusive right to locate and negotiate buyer agency/tenant representation agreement.

SECTION 14. EFFECTIVE DATE. The rules adopted in this order shall take effect on July 1, 2014 following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Board Chairperson
Real Estate Examining Board