

Report From Agency

**STATE OF WISCONSIN
REAL ESTATE EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
REAL ESTATE EXAMINING BOARD : CR 15-010
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I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The Board updated the code chapters relating to applications and education to reflect recent statutory changes, specifically 2013 Acts 133 and 288, and current practices and procedures. In addition, the Board updated the curriculum, with the advice of the Council on Real Estate Curriculum and Examinations, to reflect the current education standards in the profession.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Real Estate Examining Board held a public hearing on February 26, 2015. The following people either testified at the hearing, or submitted written comments:

Cori Lamont representing the Wisconsin Realtors Association
Jennifer Lendsley representing the Wisconsin Realtors Association

The Real Estate Examining Board summarizes the comments received either by hearing testimony or by written submission as follows:

Cori Lamont and Jennifer Lendsley testified in support of the proposed rule. They made some small technical correction recommendations as it relates to clarifying educational requirements. In addition, they identified areas in the rule which would need modification due to the proposed state of Wisconsin budget.

The Real Estate Examining Board explains modifications to its rule-making proposal prompted by public comments as follows:

The Board revised the rule to incorporate the technical changes in the educational requirements. The Board is unable to take a proactive approach to the rule with respect to the proposed budget.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 1: Section 440.08(3)(b), Stats., authorizes examining boards to promulgate rules requiring a credential holder who fails to renew a credential within five years of the credential's renewal date to satisfy requirements in addition to typical renewal requirements before the credential will be reinstated. That section does not expressly authorize a board to prohibit such a credential holder from applying for a new credential using an application process for an initial credential. Rather, the section specifies that additional requirements may not be more extensive than the requirements required to obtain an initial credential. If the agency acts under the authority in s. 440.08(3)(b), Stats., the agency should ensure that s. REEB 12.04(2m) is consistent with the statute.

Response: Section 440.08(3)(b), Stats must be read in the context of the other credentialing statutes. A person applies for an initial credential by meeting specific requirements such as obtaining the initial education. The real estate credentials require continuing education as part of the renewal process each biennium. If a credential holder was not prohibited from applying for a new credential using the application process for an initial credential, the person could avoid completing continuing education by choosing to use the process for an initial credential (based upon the education earned without intervening continuing education). Section 440.08(3)(b), Stats. indicates the board may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential indicating that the action is restoring the original credential and not obtaining a new credential. This rule is clarifying the procedures that once a person has a credential that individual can either renew or reinstate their credential; and a person cannot continue to apply for multiple new credentials of the same type. This rule is consistent with the statute.

Comment 2a: Throughout the proposed rule, the agency has repealed existing rule sections and then created new rule sections that contain much of the same substance as the repealed sections. Generally, when a proposed rule makes changes to an existing rule provision, it is appropriate to amend the existing provision. If major changes are being made to an existing rule provision, the existing provision may be repealed and recreated rather than amended.

Response: The Board has made major reorganizational and formatting changes in these chapters, therefore repealed and created new sections. The Board is mindful of the need to maintain historical references and created new sections instead of recreating the repealed portions.

Comment 2j: The existing rule provision that applies to educational requirements for nonresident broker's license applicants incorporates the elements of the general salesperson's educational course by reference to the rule section that contains those requirements. Section 25 [renumbered to Section 26] creates a new provision that pertains to the educational obligations of nonresident broker's license applicants. Rather than incorporate the elements of the general salesperson's educational course by reference to the rule section containing those requirements, though, the proposed rule lists them separately in s. REEB 25.028(2). The agency might consider incorporating by reference the portions of the general salesperson's education requirements it wishes to apply to nonresident applicants.

Response: The Board rejects this recommendation on the basis that it is clearer to stakeholders to have the requirements listed separately.

Comment 5b: Various Sections of the proposed rule outline educational programs that must consist of a specified number of hours. Is it the agency's intention that these are hours of classroom instruction? If so, the rule should state that.

Response: It is not the Board's intention that the hours be of classroom instruction. The Board recognizes that educational institutions are able to set the hours of instruction to accommodate both traditional classroom instruction as well as instruction using technological methods.

Comment 5c: In various Sections of the proposed rule, the rule states that an applicant shall "read and write" an examination. It would be more direct to state that the applicant must "pass" an examination.

Response: This comment takes the words "read and write" an examination out of contents. The entire phrase is "read and write a comprehensive examination in English". It is the intent of the board to have the applicant not just pass an examination but that the examination is read and written in English.

Comment 5e: Throughout, the proposed rule would benefit from editing to state requirements more clearly and directly. For example in Section 29 [now Section 30], "An applicant who has held an active real estate salesperson's license in another licensing jurisdiction within the 2 year period prior to filing an application for a real estate salesperson's license in this state" could be more directly written as follows: "A person applying for a real estate salesperson's license who was licensed, in good standing, in another jurisdiction within the 2 years immediately preceding the date of his or her application...". Note also that it is unclear what the agency means by the phrase "within the 2 year period". The word "within" in this phrase suggests the person need only have been licensed at some point during that time period. If the agency instead means that the

person must be licensed for the two years immediately preceding the date of his or her application, it should state that directly.

Response: The current rule has similar language in it and the Board's position is it is clearly stated. The Board did not mean the person must be licensed for the two years immediately preceding the date of the application. The person has to have been licensed at some point during that time period.

Comment 5l: In Sections 14 and 15 [now Sections 15 and 16], why has the agency changed all of the references to "applicant" in proposed s. REEB 12.04(1) to "licensee"? This rule provision applies to license renewals occurring after the license renewal date. "Renewal date" is defined, in s. 440.01(1)(dm), Stats., as "the date on which a credential expires and before which it must be renewed for the holder to maintain without interruption the rights, privileges and authority conferred by the credential". Referring to a person who, because he or she has not timely renewed his or her license, may not enjoy the rights, privileges, and authority of the license as a "licensee" would seem to be contrary to this definition. "Applicant" appears to be the more accurate word in this context. This comment also applies to the use of "licensee" in Section 17 [now Section 18]

Response: Section 440.06(3), Stats. addresses late renewal and refers to the individual as "the holder of a credential who fails to renew" indicating the person still holds the credential even if it is expired. A person with an expired credential may not enjoy the rights, privileges and authority of the credential because it is expired, however, the person is still holding a credential albeit an expired credential. The term applicant is more appropriately used for a person who is applying for an initial credential. The use of the term "licensee" is consistent with the language in s. 440.06(3).

Comment 5r: In Section 43 [now Section 44], under what circumstances may the board deny or withdraw approval of a program or course? The agency should explain such circumstances in the text of the proposed rule.

Response: The Board has the discretion to approve courses based upon the rules promulgated, therefore, conversely the board has the discretion to deny or withdraw approval as long as it is not done in an arbitrary or capricious manner. This section provides is stating that the board has the authority to deny or withdraw approval based upon its ability to grant the approval.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

None