

Clearinghouse Rule 21-043

STATE OF WISCONSIN
REAL ESTATE EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : REAL ESTATE EXAMINING BOARD
REAL ESTATE EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Real Estate Examining Board to repeal REEB 24.07 (8) (a) 1. and 1g., 24.13 (2) (b), 24.16, 24.13 (2) (b); to renumber and amend REEB 24.13 (2) (a) and REEB 24.13 (2); to amend REEB 24.01 (2), 24.02 (13m), (14), (16), 24.02 (18) and (19), 24.03 (2) (a) and (c), 24.05 (5) (a) 3., 24.07 (1) (a) and (c), 24.07 (3), 24.07 (8) (a) and (d) (title), 1., 2., 3. and (8) (e) 1., 24.075 (3) (a), (b), and (c), 24.08, 24.085, 24.09, 24.12 (1) and (2), 24.13 (1) and (2) (title), 24.13 (3) (b), and (5), 24.15, 24.17 (1), (2m), and (3); to repeal and recreate REEB 24.04 (1) through (4) and REEB 24.05 (1) (a) and (b); and to create REEB 24.02 (16m), 24.07 (8) (a) 1m., 24.13 (3) (c), relating to the conduct and ethical practices of licensees.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 452.07, 452.136, 452.135, and 452.14, Stats.

Statutory authority: ss. 15.08 (5) (b) and 452.07 (1), Stats.

Explanation of agency authority:

Each examining board shall promulgate rules for its own guidance and for the guidance of the profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular profession. [s. 15.08 (5) (b), Stats.]

The board shall promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice. [s. 452.07 (1), Stats.]

Related statute or rule: Chapter REEB 24

Plain language analysis:

The proposed rule includes a comprehensive review of the chapter to ensure statutory compliance and to ensure it is current with professional standards and practices.

Section 1. is revised to improve grammatical clarity.

Section 2. is revised for updates to the practice.

Section 3. is revised for grammatical clarity.

Section 4. is created to define right of first refusal.

Section 5. is revised for clarity and current practices.

Section 6. is revised to clarify that the role of an assisting licensee.

Section 7. is repeals and recreates provisions to refer to the statutes related to advertising standards of practice.

Section 8. repeals provisions and revises codes related to compensation requirements.

Section 9. revises code provisions to include other parties representing a seller as it relates to disclosure requirements.

Section 10. clarifies that if a licensee is granted access to a property, the licensee shall inspect the real estate.

Section 11. is revised for corrected statutory references.

Section 12. amends the section to include all parties in the delivery of a copy of the written report.

Section 13. deletes the provisions related to negotiations and disclosure to improve consistency with statutory requirements.

Section 14. is created to improve consistency with s. 452.135, Stats. regarding licensees providing a written disclosure statement to customers.

Section 15. is revised to reflect negotiating practice and statutory requirements.

Section 16. is revised to improve the title to reflect provisions in the section and add language to clarify disclosure statement requirements when a buyer's firm has exclusive right to locate and a seller's limited service listing with the seller's firm.

Section 17. is revised to include statutory requirements and clarify the intent includes the agreement with a home builder and a licensee, not a contractor. The current language can be confused with contractor for improvements rather than new home construction.

Section 18. revises rule language to update for current practices and statutory compliance.

Sections 19. and 20. are revised to improve grammatical clarity.

Section 21. is revised for clarity and to remove the “right of first refusal” reference to be consistent with current practice.

Section 22. is revised to identify that specific instructions are written and to improve the title for the section to better address the section content.

Section 23. is renumbered and revised to update that persons assisting or advising buyers under the subsection does not include any inspectors, testers, appraisers, or contractors unless the seller has provided specific written permission.

Section 24. repeals the provision related to written disclosure to be consistent with s. 435.135, Stats.

Section 25. is revised to improve grammatical clarity and to include a licensed broker and broker business entity.

Section 26. creates a provision indicating that licensees must present all written proposals to a customer unless otherwise directed by the customer in writing and must not withhold any written proposal. This provision is added to improve consistency with s. 435.135, Stats.

Section 27. and 28. are revised to improve grammatical clarity.

Section 29. is repealed as an outdated requirement.

Section 30. improves grammatical clarity and consistency with s. 452.25, Stats. related to conviction of a felony to bar licensure related to the Real Estate Examining Board orders.

Section 31. is the effective date of the changes.

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

None

Comparison with rules in adjacent states:

Illinois: Illinois provides criteria for unprofessional conduct for real estate brokers, salespersons, and other real estate professions as governed under the Illinois Real Estate License Act of 2000 and updated in 2019 under 225 ILCS 454/Art. 20. Further administrative rules outline additional direction for the provisions found under the laws.

<https://www.ilga.gov/commission/jcar/admincode/068/068014500I09000R.html>

Iowa: Iowa provides for unprofessional conduct for real estate brokers and salesperson under IC §543B. (<https://www.legis.iowa.gov/DOCS/ACO/IC/LINC/Chapter.543b.pdf>.)

Iowa’s Administrative Rules 193E.18 further detail disciplinary and investigatory review in matters such as grounds for discipline and sanctions.

<https://www.legis.iowa.gov/law/administrativeRules/rules?agency=193E&chapter=18&pubDate=01-13-2021>

Michigan: Michigan Laws under 299-1980, Section 339.501-339.559 and Michigan Administrative Rule R 339 Article 5 outlines provisions concerning complaints, disciplinary procedures, and other related issues for real estate professions. Complaints on violations of the occupational codes in Michigan can be filed through the Bureau of Professional Licensing in the Department of Licensing and Regulatory Affairs.

[http://www.legislature.mi.gov/\(S\(1ikbjpybafgho5pahhxyzkcp\)\)/mileg.aspx?page=getObject&objectName=mcl-299-1980-5](http://www.legislature.mi.gov/(S(1ikbjpybafgho5pahhxyzkcp))/mileg.aspx?page=getObject&objectName=mcl-299-1980-5)

Minnesota: Minnesota has adopted standards of conduct for real estate professionals found under s. 82.73, MN Statutes. <https://www.revisor.mn.gov/statutes/cite/82.73> and disciplinary procedures entitled “Denial, Suspension and Revocation of Licensure” under s. 82.82, Stats. <https://www.revisor.mn.gov/statutes/cite/82.82>

Summary of factual data and analytical methodologies:

The Board hears and reviews disciplinary cases related to conduct and ethical practices of real estate licensees under s. 452.14, Stats. This proposed order clarifies and updates professional conduct and ethical practices rule provisions to meet current practice and statutory changes.

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

The proposed rules will be posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals.

Fiscal Estimate and Economic Impact Analysis:

A fiscal estimate and economic impact analysis will be conducted.

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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Kassandra Walbrun, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-4463; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Kassandra Walbrun, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held on a future date to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. REEB 24.01 (2) is amended to read:

REEB 24.01 (2) The intent of the board in adopting the rules in this chapter is to establish minimum standards of conduct for real estate licensees and to define ~~that~~ conduct which that may result in board discipline pursuant to s. 452.14, Stats.

SECTION 2. REEB 24.02 (13m) and (14) are amended to read:

REEB 24.02 (13m) "Principal firm" means a firm ~~who~~ that engages a subagent to provide brokerage services in a transaction.

REEB 24.02 (14) "Qualified third party" means a federal, state or local governmental agency, or any person whom the ~~broker, salesperson~~ licensee 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 third party in order to prepare the written report described in s. 452.23 (2) (b), Stats.

SECTION 3. REEB 24.02 (16) is amended to read:

REEB 24.02 (16) "Real estate practice" means engaging in conduct ~~which~~ that requires a license under ch. 452, Stats.

SECTION 4. REEB 24.02 (16m) is created to read:

REEB 24.02 (16m) "Right of first refusal" means the right of a person to have the first opportunity to purchase or lease real property.

SECTION 5. REEB 24.02 (18) and (19) are amended to read:

REEB 24.02 (18) "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.

REEB 24.02 (19) "Written proposal" means any written document provided by one party to another during the course of a transaction, including ~~but not limited to~~ notices, offers, counteroffers, options, exchanges, rental agreements, and amendments.

SECTION 6. REEB 24.03 (2) (a) and (c) are amended to read:

REEB 24.03 (2) (a) Licensees shall not provide services ~~which that~~ the licensee is not competent to provide unless the licensee engages the assistance of ~~one~~ another person who is competent. Any person engaged to provide such assistance shall be identified and that person's contribution shall be described in the documents or records related to the transaction.

REEB 24.03 (c) Licensees shall be knowledgeable regarding laws, public policies and current market conditions on real estate matters and shall assist, guide, and advise the buying or selling public based upon parties on these factors.

SECTION 7. REEB 24.04 (1), (2), (3) and (4) are repealed and recreated to read:

REEB 24.04 **Advertising.** A licensee shall follow the requirements for advertising as specified under s. 452.136, Stats.

SECTION 8. REEB 24.05 (1) (a) and (b) is repealed and recreated to read:

REEB 24.05 (1) COMPENSATION. A licensee shall follow the requirements for compensation as specified under s. 452.133 (3) (a) and (b), Stats.

SECTION 9. REEB 24.05 (5) (a) 3. is amended to read:

REEB 24.05 (5) (a) 3. Any other negotiation with the seller, ~~or~~ the listing firm or other party or firm representing the other party.

SECTION 10. REEB 24.07 (1) (a) and (c) are amended to read:

REEB 24.07 (1) (a) *General requirement.* A licensee, when engaging in real estate practice ~~which that~~ involves real estate improved with a structure, shall conduct a reasonably competent and diligent inspection of accessible areas of the structure and immediately surrounding areas of the property to detect observable, material adverse facts. A licensee, when engaging in real estate practice ~~which that~~ involves vacant land, shall, if the vacant land is accessible, conduct a reasonably competent and diligent inspection of the vacant land to detect observable material adverse facts.

REEB 24.07 (c) *Other licensees.* Licensees, other than listing firms, shall inspect the real estate as required ~~by sub. (1) under this subsection prior to or during the showing of the property,~~ unless the licensee is not given able to access for a showing the real estate or is not given access to the real estate. If the licensee is not granted access, the licensee shall inspect the real estate as required by sub. (1) this subsection prior to closing.

SECTION 11. REEB 24.07 (3) is amended to read:

REEB 24.07 (3) DISCLOSURE OF INFORMATION SUGGESTING MATERIAL ADVERSE FACTS. A licensee, when engaging in real estate practice, who becomes aware of information suggesting the possibility of material adverse facts to the transaction, shall be practicing competently if the licensee discloses to the parties the information suggesting the possibility of material adverse facts to the transaction in writing and in a timely fashion, recommends the parties obtain expert

assistance to inspect or investigate for possible material adverse facts to the transaction, and, if directed by the parties, drafts appropriate inspection or investigation contingencies. This provision is not limited to the condition of the property, but includes other material adverse facts to the transaction, including but not limited to defects and conditions included within the report form under ss. ~~703.33 and 709.03~~ and 709.33, Stats. A licensee is not required to retain third party inspectors or investigators to perform investigations of information suggesting the possibility of a material adverse fact to the transaction.

SECTION 12. REEB 24.07 (5) is amended to read:

(5) RELIANCE UPON THIRD PARTY INSPECTIONS AND INVESTIGATIONS. If a licensee or a party in a transaction engages the services of a qualified third party to conduct a property inspection or investigation of material facts, the licensee may rely on the results of the inspection or investigation providing the licensee obtains a written report of the inspection or investigation and delivers a copy of the report to all ~~interested~~ parties in a timely manner.

SECTION 13. REEB 24.07 (8) (a) 1. and 1g. is repealed.

SECTION 14. REEB 24.07 (8) (a) 1m. created to read:

REEB 24.07 (8) (a) General requirements. ~~1.~~ 1m. A firm or licensee shall provide a written disclosure statement as prescribed under s. 452.135, Stats.

SECTION 15 REEB 24.07 (8) (a) 1r. is amended to read:

REEB 24.07 (8) (a) General requirements. ~~1r.~~ 1r. If a ~~client enters into an agency agreement with a firm is negotiating on behalf of a party who is not the client of another firm and the negotiations are to receive brokerage services~~ related to real estate primarily intended for use as a residential property containing one to 4 dwelling units, ~~and the disclosure to clients is not incorporated into the agency agreement,~~ the firm shall request the party's signed acknowledgement that the client party has received a copy of the written disclosure statement ~~required in s. 452.135 (2), Stats.~~

SECTION 16. REEB 24.07 (8) (d) (title), 1., 2., 3. and (8) (e) 1. are amended to read:

REEB 24.07 (8) (d) (title) ~~Subagency arrangements~~ Disclosure statements.

REEB 24.07 (8) (d) 1. A listing firm shall provide a disclosure statement to a customer as required in s. 452.135 (1), Stats., to the buyer if negotiations are being conducted directly with the buyer and not through a buyers firm unless the buyer's firm has an exclusive right to locate buyer agency agreement to remove the exclusive right to negotiate.

REEB 24.07 (8) (d) 2. A buyer's firm shall provide a disclosure statement to a customer as required in s. 452.135 (1), Stats., to a seller if negotiations are being conducted directly with the seller and not through a seller's firm, unless the seller has waived the firm's duty to negotiate under s. 452.133(6), Stats.

REEB 24.07 (8) (d) 3. A subagent shall provide a disclosure statement to a customer as required in s. 452.135 (1), Stats., with whom ~~he or she~~ the licensee is working but not to the principal firm's client.

REEB 24.07 (8) (e) 1. A licensee who is entering into agency agreements for lease or property management contracts shall provide to ~~his or her clients~~ the client the disclosure statement as required in s. 452.135 (2), Stats.

SECTION 17. REEB 24.075 (3) (a), (b) and (c) are amended to read:

REEB 24.075 (3) (a) The builder owns a bona fide interest in the real estate; and there is full disclosure as specified under s. ~~REEB 24.05 (1) (b)~~ 452.133 (3) (c), Stats.

REEB 24.075 (3) (b) The builder and the licensee or the builder and the owner of the real estate are the same person or are commonly controlled corporations and whose business is selling improved property and not vacant land; and there is full disclosure as specified in s. ~~REEB 24.05 (1) (b)~~ 452.133 (3) (c), Stats.

REEB 24.075 (3) (c) The agreement is a bona fide effort to maintain development quality or architectural uniformity and no consideration passes from ~~contractor~~ a builder to a licensee for soliciting this agreement.

SECTION 18. REEB 24.08 is amended to read:

REEB 24.08 **Agreements to be in writing.** A licensee shall put in writing all listing contracts, guaranteed sales agreements, buyer agency agreements, offers to purchase, property management agreements, ~~option contracts~~ options, financial obligations and any other ~~commitments~~ written proposals regarding transactions, expressing the exact agreement of the parties unless the writing is completed by the parties or their attorneys or the writing is outside the scope of the licensee's authority under ch. REEB 16.

SECTION 19. REEB 24.085 is amended to read:

REEB 24.085 **False portrayal of interest, prohibited.** No licensee shall draft or use any document ~~which~~ that the licensee knows falsely portrays an interest in real estate.

SECTION 20. REEB 24.09 is amended to read:

REEB 24.09 **Securing agency agreements.** A Licensees licensee may not mislead a potential client regarding the benefits ~~which~~ that might be realized ~~through the use of~~ by using the licensee's services. A licensee also may not mislead a potential client regarding the market value of real estate or a business opportunity to be leased, rented, purchased, optioned, or sold under an agency agreement.

SECTION 21. REEB 24.12 (1) and (2) are amended to read:

REEB 24.12 (1) Except as provided in sub. (2), a licensee acting as a principal or an agent in a real estate or business opportunity transaction shall not disclose any of the terms of one prospective buyer's offer to purchase, exchange agreement or option ~~contract proposal~~ to any other prospective buyer or to any person with the intent that this information be disclosed to any other prospective buyer. Licensees shall encourage all prospective buyers to submit their best offers. A licensee may, but is not required to, disclose information known by the licensee regarding the existence of other offers on the property, ~~the fact~~ that a seller has accepted an offer, that the offer is subject to contingencies, and that the offer is subject to a clause requiring removal of certain contingencies upon the occurrence of an event such as receipt, acceptance, or conditional acceptance of another offer.

REEB 24.12 (2) ~~As used in this subsection, "right of first refusal" means the right of a person to have the first opportunity to purchase or lease real property. "Right of first refusal" does not mean a so-called "bump clause" which is a contingency provision in a purchase agreement that requires the prospective buyer to remove certain contingencies in the buyer's purchase agreement or to relinquish the buyer's primary status to a secondary offer.~~ If a licensee is providing brokerage services in a transaction and the licensee has knowledge that the property is subject to a right of first refusal, the licensee shall disclose the right of first refusal, in writing and in a timely manner, to all persons seeking to acquire an interest subject to the right of first refusal. After disclosure of the right of first refusal to a party seeking to acquire an interest in the property, the licensee may deliver a copy of that party's ~~subsequent~~ offer to purchase, exchange agreement, option ~~contract~~ or lease ~~proposal~~ to the party holding the right of first refusal.

SECTION 22. REEB 24.13 (1), and (2) (title), are amended to read:

REEB 24.13 (1) Licensees shall not refuse to draft or submit any written proposal unless the terms of the written proposal would be contrary to specific written instructions of the other party.

REEB 24.13 (2) (title) ~~WITHHOLDING WRITTEN PROPOSALS PROHIBITED~~ ACCESS TO PROPERTY FOR SHOWINGS.

SECTION 23. REEB 24.13 (2) (a) is renumbered to REEB 24.13 (2) and amended to read:

REEB 24.13 (2) Listing firms shall permit access to listed property for showing purposes, to all buyers and persons assisting or advising buyers, without unreasonable delay, unless the buyer's or other person's access is contrary to specific written instructions of the seller. Persons assisting or advising buyers for this subsection does not include any inspectors, testers, appraisers, or contractors unless the seller has provided specific written permission.

SECTION 24. REEB 24.13 (2) (b) is repealed.

SECTION 25. REEB 24.13 (3) (b) is amended to read:

REEB 24.13 (3) (b) ~~A listing licensed individual broker acting as a sole proprietor or~~ If a firm has a property listed, no licensee associated with ~~a the listing firm, including a licensed individual broker acting as a sole proprietor and licensed broker business entity, or listing firm,~~ may not submit his or her own a personal written proposal or offer to purchase a property, which

~~the firm has listed~~ if the licensee has knowledge of the terms of any pending offer, except that a firm may arrange for a guaranteed sale at the time of listing.

SECTION 26. REEB 24.13 (3) (c) is created to read:

REEB 24.13 (3) (c) Licensees shall promptly present all written proposals received to the licensee's client or customer unless the presentation would be contrary to specific written instructions from the licensee's client or customer. Licensees shall not withhold any written proposal from presentation pending the party's action on a written proposal previously presented unless the presentation would be contrary to specific written instructions from the licensee's client or customer.

SECTION 27. REEB 24.13 (5) is amended to read:

REEB 24.13 (5) NEGOTIATION THROUGH FIRM. A licensee may not negotiate a sale or lease of real estate directly with a party if the licensee knows that the party has an unexpired written contract in connection with the real estate ~~which that~~ grants to another licensee an exclusive right to sell, lease, or negotiate. All negotiations shall be conducted with the firm holding the exclusive right to sell, lease, or negotiate, and not with the party, except with the consent of the firm or where the absence of the firm, or other similar circumstances, reasonably compels direct negotiation with the party. A listing firm has no duty to investigate whether a buyer has granted a buyer's agent an exclusive right to negotiate.

SECTION 28. REEB 24.15 is amended to read:

REEB 24.15 **Adequate funds required.** Licensees ~~shall~~ may not issue checks upon business or trust accounts ~~which that~~ contain insufficient funds.

SECTION 29. REEB 24.16 is repealed.

SECTION 30. REEB 24.17 (1), (2m) and (3) are amended to read:

REEB 24.17 (1) Licensees may not violate, or aid or abet the violation of, any law the circumstances of which substantially relate to the practices of a real estate licensee. A licensee, who has been convicted of a crime, shall send to the board, within 48 hours after the judgment of conviction, a copy of the complaint or other information ~~which that~~ describes the nature of the crime and the judgment of conviction in order that the board ~~may~~ determine whether the circumstances of the crime of which the licensee was convicted are substantially related to the practice of a real estate licensee, pursuant to s. 111.335 (3) (a), Stats.

REEB 24.17 (2m) The board may revoke a license ~~or registration on the basis of~~ based on a conviction of a felony that is a bar to licensure ~~or registration~~ under s. 452.25 (1) (a), Stats.

REEB 24.17 (3) VIOLATION OF STATUTES, ADMINISTRATIVE CODE AND ~~DISCIPLINARY BOARD~~ ORDERS. Licensees ~~shall~~ may not violate any provisions or terms or conditions of, or aid or abet the violation of ch. 452, Stats., chs. REEB 11 to 25 or any ~~disciplinary~~ order of, the board.

SECTION 31. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
