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TO: Assembly Committee on Housing and Real Estate

FROM: Rep. Scott Krug

RE: 2023 Assembly Bill 918, Changes to Chapter 452 re Real Estate Practice

DATE: January 9, 2024

Chairman Brooks and members of the Assembly Committee on Housing and Real Estate: Thank you for holding this hearing on 2023 Assembly Bill 918, which would modernize some of the laws governing the real estate industry.

Real estate as a trade or profession is within the scope of the Wisconsin Department of Safety and Professional Services (DSPS), which relies on the Wisconsin Real Estate Examining Board to oversee the licensing and discipline of real estate brokers and salespersons.

## **AB 918 would make the following changes:**

- **Disclosures:** Parties to a real estate transaction must currently be given certain information that could adversely affect the purchase decision. There have been cases in the past where the board has added items to the list of required disclosures (through administrative rule requirements) that are not outlined in state statute. AB 918 would resolve these conflicts by making statute the final determinator in what is required and any additional changes must be made through the legislative process.
- **Discipline and Criminal Penalties:** Under AB 918, the board must notify a real estate brokerage firm if one of its associates is under investigation or being disciplined. In addition, DSPS must notify the firm if an associate of the firm has not renewed their license or have had their renewal denied. Since realtors are often times independent contractors, the board will be tasked with holding them entirely accountable for any infractions they may have committed.

Bearing in mind that peoples' homes are often the largest investment in most individuals' lives, the bill changes the maximum penalty for violations of real state practice law. The

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assessment the board is allowed to assess will now vary depending on severity of violation and in certain cases will increase the fine from \$1,000 to \$5,000 for the most extreme violations, including for individuals practicing real estate without a license.

- **Property Wholesalers:** Generally, real estate wholesaling involves selling a real estate contract to another person, typically for a profit. A common example includes, a wholesaler finds a seller who would like to sell their home. The wholesaler enters into a listing contract on the seller's home and then finds an interested buyer, often an investor, to purchase it. Once a buyer is found, the wholesaler assigns their rights in the contract to the buyer at a higher price than the price contracted with the seller and keeps the difference. AB 918 would require real estate wholesalers to disclose to the party they have entered a contract with, that they are a wholesaler. In the above example this disclosure would be made to both the seller and the buyer the contract interest is being sold to.

I want to thank Sen. Jagler's office for their help on this bill, which has a companion bill in the State Senate. That bill is SB 870 and it is before the Senate Committee on Committee on Housing, Rural Issues and Forestry.

I also want to thank the Wisconsin Realtors Association for their help. I know their representatives will be coming up to answer questions about the bill and I encourage you to contact them on AB 819.

I thank you for your consideration of AB 819 and ask for your eventual support of this bill.



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January 9, 2024

**TO:** Assembly Committee on Housing and Real Estate

**FROM:** Mike Tierney, Legislative Liaison for the Wisconsin Department of Safety and Professional Services

**RE:** Assembly Bill 918 regarding various changes regarding the laws governing real estate practice, disclosures regarding real property wholesalers, and providing a penalty.

Chairperson Brooks and Committee members,

Thank you for holding this public hearing on Assembly Bill 918 related to various changes regarding the laws governing real estate practice, disclosures regarding real property wholesalers, and providing a penalty.

AB 918 mandates that the Department shall notify a firm in writing of all investigations and disciplinary proceedings and actions that are related to a licensee associated with the firm. The current practice of the Department is to seek responses to a complaint regarding a real estate matter from the individual agent and his supervising broker and firm when appropriate. When matters are finalized the firm and supervisor will be notified the matter has closed and can review the Department's website for individual orders. Often times, the credential holder that is disciplined must notify his or her employer about the disciplinary order, as a limitation in the Order.

AB 918 goes further to require disclosure of a confidential and private administrative warning to a real estate firm. This provision would pierce the protection of confidentiality an Administrative Warning provides and mandates this action be further distributed to a licensee's employer. This goes against the very purpose of an Administrative Warning. Additionally, if the contents of an Administrative Warning were disclosed, then naturally, more requests to review these warnings would be requested by the licensees as the effect of receiving and Administrative Warning changes. This changes the very nature of the Board Action and will cause more time and resources for both the Board and Department.

As is the case with many provisions in this bill, these additional administrative tasks that could easily be managed by an employer are being pushed on to the Department without additional resources.

This bill establishes that a firm is not responsible for ensuring compliance with, or for the monitoring of, any license limitations set forth by the Real Estate Examining Board of a licensee associated with the firm. The Board will often require a real estate licensee to be monitored by their firm or supervising broker to provide assurances to the public that the licensee is competent to practice. This bill would prohibit such a limitation. If it is not the job of an employer to ensure their employee can adequately do his/her job, then, whose job should it be? And further, what is the purpose of a real estate firm?

Members of occupations know the statutorily set credential expiration dates and are also advised by the Department via the email address they have on file of upcoming renewal dates. Under this bill, credentialing staff would need to take time away from processing renewals for real estate professionals and other professions and produce notification reports for firms as to whether an individual associated with their firm timely applied for renewal or if their renewal was denied. This would take resources that the Department does not have. License statuses can be easily looked up online by an employer firm. If there are any questions in regard to the status of a renewal application the Department's new License system can help answer these inquires. A report

prepared by the Department is unnecessary in this regard and would take away resources used to process real estate applications and those of other professions that renew at the same time.

While requiring more paperwork and a diversion of resources from credentialing processing for people in the profession, this bill at the same time releases a firm of any responsibility for ensuring compliance or monitoring of a broker or salesperson associated with the brokerage firm. This legislation requires the Department and Board to fulfill multiple roles that should be performed by the brokerage firm – without providing the resources necessary.

Disclosure of Material Adverse Facts is an affirmative duty of any real estate professional. This bill alters this duty to allow for more permitted non-disclosures at the risk of buyers and the public. The bill strips the Real Estate Examining Board of its authority to promulgate rules regarding disclosure of material adverse facts. Additionally, the bill repeals the requirement that a licensee disclose to the parties to a real estate transaction any facts known by the licensee that contradict any information included in a written report and sets forth exceptions to the disclosure requirements and does not include the repealed requirement. This change restricts the Board of the ability to protect consumers and weakens the disclosure requirements on Licensees in a time when many consumers are forgoing formal home inspections to submit competitive bids. As a result, this change may negatively impact the unknowing property buyers.

If adverse information is buried in a written report or written in such a way that a party cannot identify there is an issue, this legislation creates a potential pathway to allow the licensee to completely ignore disclosure requirements. It also may allow a licensee to largely ignore a readily apparent issue if they believe it is something a party should have reasonably noticed. For example, you are buying a home, and the real estate professional sees water damage and mold spots on a finished wall in the basement while walking in the basement with you. There is no indication of water or mold issues on a disclosure report. Under this bill, the real estate professional has no obligation to say anything because the issues were apparent to you as a party via reasonably vigilant observation.

This bill allows the Board to assess forfeitures from \$1,000 to \$5,000 for certain violations. Currently, Wis. Stat. s. 452.14(3) lists the authority of the Board to discipline real estate licensees. This bill creates authority to assess a forfeiture up to \$5,000 for an enumerated violations which do not include the most frequent violations, such as, violating any provision under ch. 452 or rule promulgated under that chapter. This would be the most frequent violation sought for an issue in a real estate transaction. Further, this change was requested by the Board to reflect the increased value of property and the commissions earned on transactions.

The excluded violations are in bold and underlined below:

**452.14 Investigation and discipline of licensees.**

- (1)** The board shall, upon motion of the secretary or his or her designee or upon its own determination, conduct investigations and, as appropriate, may hold hearings and make findings, if the board or the department receives credible information that a broker or salesperson has violated this chapter or any rule promulgated under this chapter.
- (2)** The board may commence disciplinary proceedings on any matter under investigation concerning a licensee.
- (2m)** The board shall conduct disciplinary proceedings in accordance with the rules adopted under s. 440.03 (1).
- (3)** The board may revoke, suspend, or limit the license of any licensee, or reprimand the licensee, if it finds that the licensee has done any of the following:
  - (a)** Made a material misstatement in the application for a license, or in any information furnished to the board or department.

- (b) Made any substantial misrepresentation with reference to a transaction injurious to a party in which the licensee acts as agent.
- (c) Made any false promises of a character such as to influence, persuade, or induce a party to his or her injury or damage.
- (d) Pursued a continued and flagrant course of misrepresentation or made false promises through other licensees or through advertising.
- (f) Accepted from any person except the firm with which the licensee is associated, if the licensee is associated with a firm, a commission or valuable consideration for the performance of any act specified in this chapter or as compensation for referring a person to another licensee or to any other person in connection with a transaction.
- (g) Represented or attempted to represent a firm without the express knowledge and consent of the firm.**
- (h) Failed, within a reasonable time, to account for or remit any moneys coming into the licensee's possession which belong to another person.
- (i) Demonstrated incompetency to act as a broker or salesperson, whichever is applicable, in a manner which safeguards the interests of the public.
- (j) Paid or offered to pay a commission or valuable consideration to any person for acts or services in violation of this chapter.
- (jm) Intentionally encouraged or discouraged any person from purchasing or renting real estate in a particular area on the basis of race. If the board finds that any licensee has violated this paragraph, the board shall, in addition to any temporary penalty imposed under this subsection, apply the penalty provided in s. [452.17 \(4\)](#).
- (k) Been guilty of any other conduct, whether of the same or a different character from that specified herein, that constitutes improper, fraudulent, or dishonest dealing.
- (L) Violated any provision of this chapter or any rule promulgated under this chapter.**
- (m) Failed to use forms approved under s. [452.05 \(1\) \(b\)](#).**
- (n) Treated any person unequally solely because of sex, race, color, handicap, national origin, ancestry, marital status, lawful source of income, or status as a victim of domestic abuse, sexual assault, or stalking, as defined in s. [106.50 \(1m\) \(u\)](#).
- (o) Violated s. [452.25 \(2\) \(a\)](#) or failed to pay any forfeiture assessed by the board under sub. (4r) for such a violation.**
- (p) Subject to ss. [111.321](#), [111.322](#), and [111.335](#), been convicted of an offense the circumstances of which substantially relate to real estate practice.**

In theme with the other modifications of the bill, this legislation creates a provision to limit the liability of any real estate licensee for providing information to any government or quasi-government entity, including the Board, when that information is subsequently determined to be inaccurate. Further, limiting the liability of real estate professionals and firms in a time of national scrutiny of such professionals does not sit right. The department agrees that Wisconsin needs to have strong laws in place that provide property owners and buyers with the ability to have confidence in the integrity of real estate brokers, salespersons, and firms. This bill undermines that confidence. [Thank you for the opportunity to raise these concerns and considerations.](#)



**To:** Assembly Committee on Housing and Real Estate  
**From:** Cori Lamont, Vice President of Legal and Public Affairs  
**Date:** January 9, 2024  
**RE:** AB 918/SB 870 – Real Estate Practice Changes

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The Wisconsin REALTORS® Association (WRA) supports AB 918/SB 870 making a series of changes to the practice of real estate including establishing a safe harbor for licensees who use government information, disclosures to consumers in contracts when contractual rights are being assigned to another and creating consistency in the statute and administrative rule relating to disclosure obligations by real estate agents.

### **Background**

Wisconsin Statute Chapter 452 governs real estate brokerage practice, investigation and discipline of licensees, and the duties and powers of the Real Estate Examining Board (REEB). Real estate brokers and salespersons are regulated by the Wisconsin Department of Safety and Professional Services as well as the REEB which protects Wisconsin property buyers and sellers by ensuring safe and competent practice.

### **AB 918/SB 870**

- I. Reduces real estate licensee risk by creating a safe harbor** when using government information and citing the source. For example, if a real estate agent uses the assessor record to indicate the lot size when selling the property and later it is determined the assessor record was wrong, the agent should not be held responsible for incorrect information cited from a government source.
- II. Allows payment of referral fees and commission to former licensees under certain circumstances.** AB 918/SB 870 clarifies that the payment of referral fees or commission can be made if the individual was licensed when the commission was earned, or referral fee arrangement was made.

Currently, the REEB has a policy that an individual must still be licensed both when the agreement to receive commission or referral fees is made and when the money is paid. However, this often creates challenges in the real world. For illustration, an agent earned a commission but passed away before the transaction closed when they would have received the payment. Under the REEB's policy, the firm cannot pay the agent's estate the commission owed, because the deceased agent at the time of payment is no longer licensed.

Another common example is an agent who has decided to retire and has not renewed their license before a transaction has closed. The agent has earned the commission or referral fee, but the firm or licensee cannot pay the agent due to the REEB's policy.

**III. Underscore the value of competent real estate practice and transparency by**

- a. Increasing fines & forfeitures up to \$5,000 for the most egregious violations of Wis. Stat. Ch. 452. Under current law, for the most severe violations of Wisconsin license law, the REEB can only assess a fine or forfeiture up to \$1,000. Therefore, increasing the REEB's ability to assess a fine or forfeiture for the more egregious violations up to \$5,000, modernizes the statute and emphasizes the importance of competent practice.
- b. Requiring wholesaler buyers and sellers to provide written disclosure of purchase or sale of a property. Wholesaling in most simple terms is assigning contractual rights under a contract to another.

Real estate wholesaling is a strategy often utilized by investors. The investor, also known as the wholesaler, enters into a purchase agreement with the seller of real property. The wholesaler then finds a buyer interested in the property and assigns their contractual rights to that buyer for the seller's property. The wholesaler most often profits by selling the contract to the buyer for a price higher than the one agreed to with the seller.

To encourage transparency, this legislation requires a written disclosure from the wholesaler at the time of entering the agreement. 1) disclosure to the seller that they are a wholesaler and 2) to the buyer they are a wholesaler with an equitable interest in the property and does not own title to the property.

- IV. Eliminate administrative rule inconsistency.** Wis. Admin. Code § REEB 24.07(3) currently requires in addition to known material adverse facts to disclose information suggesting the possibility of material adverse facts. Wis. Admin. Code § REEB 24.07(3) creates a disclosure obligation beyond what is required by Wis. Stat. Ch. 452 and inconsistent to the statute. Wis. Stat. Ch. 452 requires real estate licensees to disclose known material adverse facts. AB 918/SB 870 eliminates the inconsistency between the statute and rule.

**V. Technical changes relating to independent contractor status**

- a. Firms are not responsible for compliance with license limitations. Typically, real estate agents are independent contractors. Therefore, firms cannot control the behavior of the agents associated with their firm. On occasion, real estate licensees are issued a license that includes limitations such as not being able to have consumers in the car for one year because of an operating while intoxicated conviction.

To protect the independent contractor status, AB 918/SB 870 clarifies firms are not responsible for compliance or monitoring of license limitations for licensees associated with the firm unless the firm agrees.

- b. Notification of supervising broker regarding activities. While agents are independent contractors, firms have some legal requirements involving supervision. AB 918/SB 870 requires the REEB to notify the supervising broker of all complaints, order, limitations, suspension, and revocations including non-renewal of licenses relating to any licensee associated with their firm. Establishing that supervising brokers must be copied on communications from the regulator regarding the license of the agent associated with the firm associated with the agents ensures the agent is not practicing on behalf of the firm unless authorized under law.

We respectfully request your support for 918/SB 870.