

CERTIFICATE

CR00-105

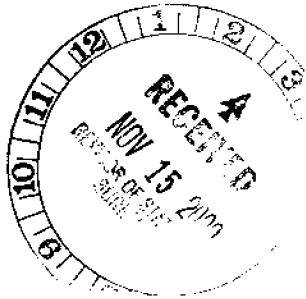
STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Marlene A. Cummings, Secretary, Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department of Regulation and Licensing, hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 15th day of November, 2000.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

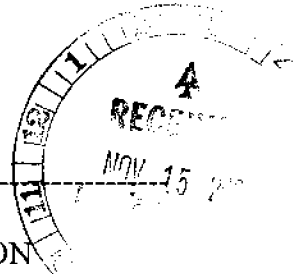
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin this 15th day of November, 2000.



Marlene A. Cummings
Marlene A. Cummings, Secretary,
Department of Regulation and
Licensing

00-105

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING



IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 00-105)

ORDER

An order of the Department of Regulation and Licensing to repeal RL 17.02 (3) and 17.09; to renumber and amend RL 24.05 (5) and 24.12; to amend RL 17.02 (3) and (5), 17.03 (title), (2), (3) and (4), 17.04, 17.05 (1) and (2), 17.06, 17.08 (1), 17.12 (1), the Note following RL 24.03 (1), 24.04 (2) (a) and (b), 24.07 (8) (a) 2. (intro.), a. and c., and 24.13 (3) (b), (5) (title) and (5); and to create RL 17.02 (3g) and (3k), 25.05 (5) (a) 1., 2., 3., (b), 24.12 (2), and the Note following RL 24.13 (5), relating to real estate education requirements.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2), 452.04, 452.05 and 452.07, Stats.

Statutes interpreted: ss. 452.025, 452.10, 452.12, 452.133, 452.135 and 452.14, Stats.

This rule-making order was prepared with the assistance, review and recommendations of the Real Estate Board.

This rule proposal amends, creates and repeals certain definitions in Chapter RL 17.

The proposal ascertains that provisions in Chapter RL 17 that are applicable to time-share salespersons clearly indicate time-share salespersons, not just brokers and salespersons who are employed by a broker.

The proposal amends s. RL 24.04, relating to advertising requirements. The proposal clarifies an issue that has been unclear, that is, the fact that a licensee renting his or her own property is not required to disclose his, her or its name. When a licensee rents a property owned by the licensee, the licensee is not acting under a real estate license held by the licensee.

The proposal retains the general principle of confidentiality of offers to purchase; however, it amends s. RL 24.12 to require licensees to disclose to all persons seeking to acquire an interest subject to the right of first refusal the fact that there is a right of first refusal.

The proposal amends s. RL 24.13 (5), a current rule that requires licensees to negotiate, submit offers and submit leases to a seller through the seller's listing broker, and extends this same type

of requirement to a buyer's broker. All negotiations, offers and leases must be channeled through the buyer's broker. A few exceptions remain in the current rule.

TEXT OF RULE

SECTION 1. RL 17.02 (3) is amended to read:

RL 17.02 (3) "Broker-employer" means a sole proprietor or business entity that employs another ~~broker or salesperson~~ licensee to provide services to the broker.

SECTION 2. RL 17.02 (3g) and (3k) are created to read:

RL 17.02 (3g) "Immediate family" means any of the following:

(a) Parents, stepparents, grandparents, foster parents, children, stepchildren, grandchildren, foster children, brothers and their spouses, sisters and their spouses, of a licensee or a licensee's spouse.

(b) The spouse of a licensee.

(c) Aunts and uncles, sons-in law or daughters-in-law of a licensee or a licensee's spouse.

(3k) "Licensee" has the meaning under s. 452.01 (5), Stats.

SECTION 3. RL 17.02 (5) is amended to read:

RL 17.02 (5) "Unlicensed personal assistant" means a person not licensed under ch. 452, Stats., or a person who is licensed but not employed for the purpose of providing services for which a ~~licensee~~ license is required under ch. 452, Stats., who on behalf of and under the direction of a licensee, provides the licensee with administrative, clerical or personal services for which a license under ch. 452, Stats., is not required.

SECTION 4. RL 17.03 (title), (2), (3) and (4) are amended to read:

RL 17.03 (title) **Limitations on ~~broker and salesperson~~ employees of a broker.**

(2) A ~~broker or salesperson~~ licensee who is employed by a broker-employer may personally employ licensed persons only as unlicensed personal assistants within the meaning of s. RL 17.02 (5), subject to the provisions in s. RL 17.12.

(3) A ~~broker or salesperson~~ licensee may be employed by only one broker-employer at any time.

(4) A salesperson or time-share salesperson may engage in real estate practice only when employed by a broker.

SECTION 5. RL 17.04 is amended to read:

RL 17.04 Notice of employment. A ~~broker or salesperson~~ licensee who wishes to engage in real estate practice as an employe of a broker-employer shall notify the department of the name of the broker-employer on forms prescribed by the department. If this notice is provided at the time of application for original licensure, the department may not charge a fee in addition to the fee specified in s. 440.05 (1), Stats. If the notice is provided other than at the time of application for original licensure, the licensee shall pay the fee specified in s. 440.05 (7), Stats.

SECTION 6. RL 17.05 (1) and (2) are amended to read:

RL 17.05 (1) A ~~broker or salesperson~~ licensee who wishes to transfer employment from one broker-employer to another shall submit to the department a transfer application accompanied by the fee specified in s. 440.05 (7), Stats.

(2) A ~~broker or salesperson~~ licensee who transfers employment to another broker-employer may not engage in real estate practice for the new employer until the ~~broker or salesperson~~ licensee has delivered or mailed a completed transfer application and the required fee to the department.

SECTION 7. RL 17.06 is amended to read:

RL 17.06 Termination of employment. A ~~broker or salesperson~~ licensee who terminates employment with a broker-employer shall send written notice to the department within 10 days after the termination.

SECTION 8. RL 17.08 (1) is amended to read:

RL 17.08 (1) A broker-employer shall supervise the activities of any ~~broker or salesperson~~ licensee employed by the broker-employer. Supervision includes, but is not limited to, reviewing all listing contracts, offers to purchase, trust account records and other documents related to transactions. A broker-employer may delegate this responsibility to other brokers. Broker-employers shall provide all licensed employes with a written statement of procedures under which the office and employes shall operate with respect to handling leases, listing contracts, offers to purchase and other documents relating to transactions.

SECTION 9. RL 17.12 (1) is amended to read:

RL 17.12 (1) A ~~real estate salesperson or broker-employe~~ licensed employe, prior to employing an unlicensed personal assistant, shall enter into a written agreement with his or her broker-employer, setting forth the duties of the unlicensed personal assistant, the manner in which the personal assistant will be compensated for his or her services and the responsibilities between the ~~salesperson or broker-employe~~ licensed employe and broker-employer for supervision of the personal assistant's activities.

SECTION 10. The Note following s. RL 24.03 (1) is amended to read:

Note: The primary references for federal and state fair housing laws are the 1988 amendments to the Federal Housing Act (Title VII of the Civil Rights Act of 1968) and ~~1991 Wis. Act 295~~ Chapter 106, Subchapter II, Stats.

SECTION 11. RL 24.04 (2) (a) and (b) are amended to read:

RL 24.04 (2) (a) ~~▲ Except for advertisements for the rental of real estate owned by the broker, a broker shall in all advertising disclose the broker's name exactly as printed on the broker's license or disclose a trade name previously filed with the department, as required by s. RL 23.03, and in either case clearly indicate that the broker is a business concern and not a private party.~~

(b) ~~▲ broker or salesperson~~ Except for advertisements for the rental of real estate owned by the licensee, a licensee employed by a broker shall advertise under the supervision of and in the name of the employing broker.

SECTION 12. RL 24.05 (5) is renumbered RL 24.05 (5) (a) (intro.) and amended to read:

RL 24.05 **Disclosure of licensure.** (5) (a) (intro.) A licensee acting as a principal in a real estate or business opportunity transaction shall disclose his, her, or its license status ~~prior to entering into a binding purchase agreement, option, exchange agreement, lease or other contract creating an interest in the real estate or business opportunity,~~ and intent to act in the transaction as a principal at the earliest of all of the following:

SECTION 13. RL 25.05 (5) (a) 1., 2., 3. and (b) are created to read:

RL 25.05 (5) (a) 1. The first contact with the other party or an agent representing the other party where information regarding the other party or the transaction is being exchanged.

2. A showing of the property.

3. Any other negotiation with the seller or the listing broker.

(b) The disclosure under this subsection shall be made to the other party in a transaction or to an agent representing the other party.

SECTION 14. RL 24.07 (8) (a) 2. (intro.), a. and c. are amended to read:

RL 24.07 (8) (a) 2. (intro.) Licensees acting as agents of potential buyers of real estate used or intended to be used principally for one to 4 family residential purposes, who are negotiating directly with the seller or who are aware that the owner of the real estate has granted

another licensee the exclusive right to sell, shall notify the seller or the listing broker, as applicable, of the licensee's buyer agency relationship at the earlier of all of the following:

a. The first contact with the seller or the listing broker where information regarding the seller or transaction is being exchanged.

c. Any other negotiation with the seller or the listing broker.

SECTION 15. RL 24.12 is renumbered RL 24.12 (1) and amended to read:

RL 24.12 Confidentiality of offers. (1) ~~A~~ 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.

SECTION 16. RL 24.12 (2) is created to read:

RL 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 17. RL 24.13 (3) (b), (5) (title) and (5) are amended to read:

RL 24.13 (3) (b) A listing broker or the listing broker's employe may not submit his or her own offer to purchase a property which the broker has listed if the broker or broker's employe has knowledge of the terms of any pending offer, except that a broker may arrange for a guaranteed sale at the time of listing.

(5) (title) **Negotiation through listing broker.** ~~Licensees shall~~ A licensee may not negotiate a sale or lease of real estate directly with an owner a party if the licensee knows that ~~such owner~~ the party has an unexpired written contract in connection with ~~such property~~ the

real estate which grants to another licensee an exclusive right to sell, lease or negotiate. All negotiations shall be conducted with the listing broker holding the exclusive right to sell, and not with the owner party, except with the consent of the listing broker or where the absence of the listing broker, or other similar circumstances, reasonably compels direct negotiation with the owner party. A listing broker has no duty to investigate whether a buyer has granted a buyer's agent an exclusive right to negotiate.

SECTION 18. A Note following RL 24.13 (5) is created to read:

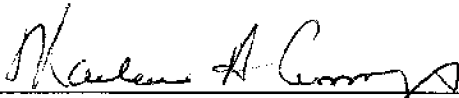
Note: The Department of Regulation and Licensing's approved form, WB-38, does not grant the buyer's agent an exclusive right to negotiate.

(END OF TEXT OF RULE

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.

Dated 11/15/00

Agency



Marlene A. Cummings, Secretary
Department of Regulation and Licensing

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11/14/00



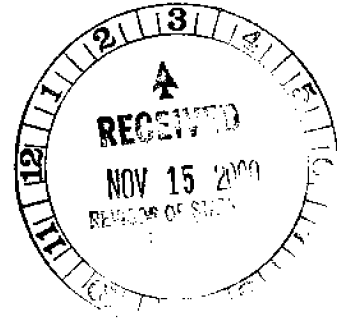
State of Wisconsin
DEPARTMENT OF REGULATION AND LICENSING
CORRESPONDENCE/MEMORANDUM

DATE: November 15, 2000

TO: Gary Poulson
Assistant Revisor of Statutes

FROM: Pamela A. Haack, Paralegal
Department of Regulation and Licensing
Office of Administrative Rules

SUBJECT: Final Order Adopting Rules



Agency: Department of Regulation and Licensing

Clearinghouse Rule 00-105

Attached is a copy and a certified copy of a final order adopting rules relating to real estate education requirements.

Please stamp or sign a copy of this letter to acknowledge receipt.

Thank you.