

STATE OF WISCONSIN
REAL ESTATE EXAMINING BOARD

IN THE MATTER OF RULEMAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : REAL ESTATE EXAMINING BOARD
REAL ESTATE EXAMINING BOARD : ADOPTING EMERGENCY RULES

The statement of scope for this rule, SS 016-15, was approved by the Governor on February 5, 2015, published in Register 710A3 on February 16, 2015, and approved by Real Estate Examining Board on February 26, 2015.

ORDER

An order of the Real Estate Examining Board to create ch. REEB 13 relating to cooperative broker agreements.

Analysis prepared by the Department of Safety and Professional Services.

FINDING OF EMERGENCY

The Real Estate Examining Board finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

2013 Wisconsin Act 259 creating s. 452.137 relating to cooperation with out-of-state brokers and salesperson, as well as the rule-making authority, became effective on January 1, 2015. Without the rules in place addressing the cooperative agreement form and terms, there will be confusion for brokers, both in-state and out-of-state, as to what needs to be contained in such an agreement.

ANALYSIS

Statutes interpreted: s. 452.137, Stats.

Statutory authority: ss. 15.08(5)(b) and 452.137, 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 trade of profession.

The board shall, by rule, establish the form and terms of the cooperative agreement.

Related statute or rule: None

Plain language analysis:

This rule requires the cooperative agreement between the licensed real estate broker and the out-of-state broker be in writing utilizing a board approved form. The terms must include the terms of cooperation and out-of-state broker's compensation as well as provide that all client funds in connection with the transaction shall be deposited in a trust account maintained by the Wisconsin licensed broker.

Summary of, and comparison with, existing or proposed federal regulation: None

Comparison with rules in adjacent states:

Illinois: Illinois does not have rules relating to out-of-state cooperative broker agreements.

Iowa: Iowa does not have rules relating to out-of-state broker cooperative agreements.

Michigan: Michigan does not have rules relating to out-of-state broker cooperative agreements.

Minnesota: Minnesota does not have rules relating to out-of-state broker cooperative agreements.

Summary of factual data and analytical methodologies:

The Board considered the format and process of other forms utilized by the real estate profession as well as inclusion of the statutory term requirements.

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

This rule does not place any requirements on small businesses. An economic impact analysis will be done as part of the permanent rule process.

Fiscal Estimate:

See attached Fiscal Estimate

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 Eric.Esser@wisconsin.gov, or by calling (608) 266-2435.

Agency contact person:

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box

8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

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

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8366, or by email to Sharon.Henes@wisconsin.gov. Comments must be received on or before April 16, 2015 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1 Chapter REEB 13 is created to read:

CHAPTER REEB 13

COOPERATIVE AGREEMENT

REEB 13.01 Cooperative agreement. (1) A cooperative agreement between a licensed broker and an out-of-state broker shall be all of the following:

- (a) In writing.
 - (b) A form approved by the board pursuant to s. 452.05(1)(b).
- (2) The terms of the cooperative agreement shall contain at least all of the following:
- (a) The terms of cooperation between the out-of-state broker, any out-of-state salesperson, and the licensed broker.
 - (b) The terms of the out-of-state broker's compensation.
 - (c) Provide that all client funds, as defined in s. 452.13(1)(a), that the out-of-state broker and licensed broker receive in connection with a transaction subject to the cooperative agreement shall be deposited in a trust account maintained by the licensed broker.

SECTION 2 This emergency rule shall take effect on March 19, 2015.

(END OF TEXT OF RULE)

FISCAL ESTIMATE

The anticipated effect on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues.

There will be no effect on these entities.

A projection of the anticipated state fiscal effect during the current biennium and a projection of the net annualized fiscal impact on state funds.

None

For rules that the agency determines may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by the private sector in complying with the rule.

This rule will not have a significant fiscal effect on the private sector.