



LEGAL UPDATE

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A MONTHLY GUIDE TO WISCONSIN REAL ESTATE LAW & POLICY

Firm Management Under the 2016 Modernization Act

With the advent of the modernization of the Wisconsin Statutes Chapter 452, it is a good time to take a fresh look at brokerage firm management functions. One of the first fundamental decisions for the firm is to make sure that all agents are properly established from a functional and a tax standpoint as independent contractors or employees and that the proper structure is in place for other staff. The firm should choose the appropriate contracts to be used as firm members are engaged. Contracts will typically cover compensation, real estate licensing requirements, board memberships, compliance with applicable laws and rules, and termination provisions.

Because a firm’s supervisory responsibilities are critical, the Chapter 452 modernization act brought many of the supervision, independent practice and related licensing and broker relationship guidelines that had been in Wis. Admin. Code chapter REEB 17 and codified them in Wis. Stat. Chap. 452. In the process there were clarifications and subtle changes that are discussed in this *Legal Update*.

This *Legal Update* reviews the differences between independent contractors versus employees and the requirements for establishing independent contractor status under prior standards and the new Wis. Stat. § 452.38. The firm’s supervision responsibilities are examined. In addition, general office practice considerations such as agent terminations and independent practice are discussed and the updated WRA form for an Independent Contractor Agreement and the new form for establishing independent practice are overviewed. The use of licensed and unlicensed personal assistants is reviewed in a later *Legal Update*.

Real Estate Personnel

Real estate agents, personal assistants and office support staff generally will be classified as employees or independent contractors based upon their authority to act independently and compliance with classification standards found in statutes, the common law and applicable tax codes.

The relationship between the firm and the licensees associated with the firm can be either an independent contractor relationship or an employer/employee relationship. Independent contractors, in turn, can be either common-law independent contractors, statutory independent

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contractors or independent contractors under the new Wis. Stat. § 452.38.

① MORE INFORMATION

See the discussion on pages 3-6 of the April 2016 *Legal Update*, “License Law Modernization 2016,” at www.wra.org/LU1604 and “Question: How Do You Feel About This?” in the June 2016 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/June16/Chapter452.

The determination of whether an individual is an employee or independent contractor is important for several reasons. Federal and state income tax is generally withheld from wages paid to employees, but not from compensation paid to independent contractors. The employee/independent contractor status also determines Social Security and Medicare payments, federal and Wisconsin unemployment compensation, Wisconsin worker’s compensation, tax on self-employment income, and the deductibility of business expenses.

Employees

Employees are individuals who perform services subject to the will and control of an employer who has the legal right to control both the method used and results of the services performed. In Wisconsin, only a very few licensed agents are employees. Secretarial staff, receptionists and unlicensed personal assistants, on the other hand, generally are employees. Employment contracts are not necessary for employees such as office staff, but some firms may have such contracts. This is an issue to discuss with the firm's legal counsel.

The employer is responsible for withholding federal income taxes from employee wages. In addition, the Federal Insurance Contributions Act (FICA) provides for a federal system of old-age, survivors, disability and hospital insurance. The old-age, survivors and disability insurance part is financed by the social security tax. The hospital insurance part is financed by the Medicare tax. Each of these taxes is reported separately. Generally, an employer is required to withhold Social Security and Medicare taxes from employees' wages and pay the employer's share of these taxes. Employers periodically deposit federal income tax withheld and both the employer and employee Social Security and Medicare taxes with the government in designated accounts. On the other hand, the employer alone is responsible for paying the Federal Unemployment Tax Act (FUTA) federal unemployment tax; it isn't withheld from the employee's wages.

Employees complete Internal Revenue Service Form W-4 so the employer can calculate how much money to withhold. Income tax is determined using the withholding tables in the IRS Circular E – Employer's Tax Guide. For FICA, the employer withholds 6.2 percent of the employee's wages and matches that amount – a total of 12.4 percent. The employer also matches Medicare at 1.45 percent – a total of 2.9 percent. And the employer must pay federal unemployment tax, which is 6 percent of first \$7,000 of the employee's wages.



REALTOR® Practice Tip

This information is a general overview and all employers should consult with their tax advisors for specific information and procedures. Information is also available on the Internal Revenue website at www.irs.gov/help-resources.

Independent Contractors

Independent contractors are persons who engage in an independent trade, business, or profession in which they offer their services to the general public. The general rule, at least for federal tax purposes, is that an individual is an independent contractor if the company has the right to control or direct only the result of the work and not the means and methods of accomplishing the result.

Independent contractor status may be determined three different ways in Wisconsin: the common law 20 factor test, the federal tax law independent contractor safe harbor and the new Wis. Stat. § 452.38 safe harbor.

Common law 20 factors

An individual's status as an employee or independent contractor may be determined under common-law rules. Under the common-law test, an individual is an employee if the person for whom the individual performs services has the right to control and direct that individual, not only as to the result to be accomplished, but also as to the means by which that result is accomplished. The most important factor is the degree of control. To help determine whether an individual is an employee or an independent contractor under the common-law rules, the IRS identified 20 factors that are used as guidelines on a case-by-case basis to determine whether sufficient control is present to establish an employer/employee relationship.

MORE INFORMATION

See the 20 factors on page 15 of *Legal Update* 00.12, "Real Estate Office Management," at www.wra.org/LU0012.

The 20-factor common law test limits the requirements that a firm may place upon its sales associates. For example, under the 20-factor test, a common-law independent contractor generally should not be subjected to mandatory floor time, required meetings or property tours, dress codes, performance standards, or other mandatory guidelines controlling the manner in which the agent performs his or her job. A statutory independent contractor generally may be made subject to some of these requirements. All independent contractors, however, can be required to attend training sessions pertaining to real estate laws, regulations and ethical rules because the agent's failure to conform his or her practice to these principles can result in liability to the firm.

Maintaining common-law independent contractor status

To maintain the common-law independent contractor status, a firm should consider the following considerations:

(1) Independent contractors should buy their own business cards, and the use of any firm desks, telephones and other office equipment should be optional. Independent contractors should provide and pay for

computers, tablets, cell phones, and vehicles (including maintenance and insurance).

(2) Common-law independent contractors should pay their own license fees and local board, WRA and NAR dues.

(3) Common-law independent contractors are entitled only to the compensation stated in their agreement with the firm and should be paid only commissions. Salaries, draw accounts, and advances have been recognized as inconsistent with independent contractor status.

(4) A common-law independent contractor can be required to follow the policies and procedures in an office policy manual only to the extent the manual sets forth procedures and requirements the firm is legally obliged to follow. Detailed rules of conduct, for example a mandatory dress code, are only optional suggestions and recommendations.

(5) The firm can require the use of approved forms by all licensees.

(6) Floor time, sales meetings and weekly open house caravan tours should be optional to independent contractors.

(7) The firm should not require mandatory office routine and sales technique training programs.

(8) The firm should not set minimum earnings requirements or quotas.

(9) The role of a manager or supervising broker is generally inconsistent with the firm's need to maintain a lack of control over independent contractors. Managers generally are employees with respect to managerial activities that are subject to the control of the firm, but may also be independent contractors to the extent they engage in sales activities. Note that these "dual service" persons are now accommodated under Wis. Stat. § 452.038. See pages 5-6 of the April 2016 *Legal Update*, "License Law Modernization 2016," at www.wra.org/LU1604.

Failure to observe all of these guidelines does not mean that the sales force will automatically become employees, but each failure to observe these principles may contribute to an overall picture of a broker who is controlling the means and manner of job performance and may lead to the conclusion that the salespeople are employees. There are no bright lines and this is all on a case-by-case basis, making it less than optimal.

The common law test has also presented obstacles for real estate licensees in Wisconsin and other states because of the supervisory responsibilities placed on firms. Supervision typically involves a certain amount of control over methods used as well as results, making it undesirable to use the common law for this classification.

Federal tax law: statutory independent contractors

Rather than evaluate the status of real estate agents under the common law principles, a firm can take advantage of the simplicity and certainty of the statutory independent contractor classification under federal tax law. Real estate agents may qualify as statutory independent contractors under § 3508(B) of the Internal Revenue Code for federal tax purposes if they meet the following three criteria:

The tax code actually refers to statutory nonemployees instead of statutory independent contractors.

Statutory nonemployees include licensed real estate agents and

individuals engaged in appraisal activities for real estate sales if they earn income based on sales or other output. Licensed real estate agents are treated as self-employed for all federal tax purposes, including income and employment taxes, if:

- Substantially all payments for their services as real estate agents are directly related to sales or other output, rather than to the number of hours worked.
- And their services are performed under a written contract providing that they will not be treated as employees for federal tax purposes.

① MORE INFORMATION

See the text of the federal tax code and the associated discussion on pages 4-5 of the April 2016 *Legal Update*, "License Law Modernization 2016," at www.wra.org/LU1604 and "Question: How Do You Feel About This?" in the June 2016 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/June16/Chapter452.

Wis. Stat. § 452.38: independent contractor safe harbor

A safe harbor for real estate independent contractors is now stated in Wis. Stat. § 452.38 that is somewhat similar to the safe harbor in the federal Internal Revenue Service regulations (see 26 U.S. Code § 3508). The safe harbor in § 452.38 depends upon fulfillment of the following basic criteria:

1. A written agreement between the firm and the licensee that provides the licensee shall not be treated as an employee for federal and state tax purposes.
2. 75 percent or more of commission related to sales or output and paid by the firm to the licensee during a calendar year is directly related to the brokerage services performed by the licensee on behalf of the firm.

REALTOR® Practice Tips

Every firm should have independent contractor agreements with all licensees associated with the firm who are intended to be independent contractors for income tax and other purposes. Each agreement should specify that the licensee will not be treated as an employee for state or federal tax purposes. In addition, most of the typical agent's compensation and/or commissions must be directly related to the provision of real estate services and to sales or other output, including the performance of services, rather than to the number of hours worked. Fulfillment of these criteria should satisfy both the federal tax law and the Wis. Stat. § 452.38 independent contractor safe harbors.

**REALTOR® Practice Tips continued**

Compliance with the new §452.38 safe harbor establishes a licensee's status as an independent contractor with regard to various state laws and in the eyes of many state agencies. Compliance with the Internal Revenue tax code test establishes the licensee's status for purpose of federal income taxes. Thus compliance with both is generally desirable.

① MORE INFORMATION

See pages 3-5 of the April 2016 *Legal Update*, "License Law Modernization 2016," at www.wra.org/LU1604 and "Question: How Do You Feel About This?" in the June 2016 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/June16/Chapter452.

Independent Contractor Agreements

Firms can use independent contractor written agreements, such as the WRA Real Estate Independent Contractor Agreement, to qualify associated licensees as statutory independent contractors for federal and Wisconsin tax purposes as well as other state law purposes as provided in the Wis. Stat. § 452.38 safe harbor. In most cases, such an agreement should indicate that the licensee will not be treated as an employee for federal or state tax purposes, and most of the licensee's compensation should be commissions earned for providing real estate services. If there is no written agreement between the firm and the licensee, firms must observe the more restrictive common-law test to qualify licensees as independent contractors.

Prudent practice also would dictate a written independent contractor agreement as evidence of the agreement regarding commissions in the event that a dispute later arises, for example, when an agent leaves an office with pending transactions. A written agreement that is signed when the business relationship is commenced will alleviate disputes upon the ending of the relationship.

**REALTOR® Practice Tip**

For individual tax purposes, independent contractors are treated as self-employed and generally must file and pay quarterly estimated income tax payments. Income from real estate practice can vary a great deal depending on the market, making it difficult to predict annual tax liability. If estimated tax payments are not made, the tax liability and underpayment interest due when filing an income tax return may be sizable. See the IRS Self-Employed Individuals Tax Center at www.irs.gov/individuals/self-employed for more information.

WRA real estate independent contractor agreement

The WRA Real Estate Independent Contractor Agreement (ICA) was updated to embrace the new provisions and terminology of the 2016 Chapter 452 modernization legislation. A sample copy appears at pages 14-15 of this *Update*. This form is available in zipForm.

Lines 1-5: Terminology and parties

The ICA adopts the new terminology of the Chapter 452 modernization act and refers to what had been typically referred to as the brokerage company or employing broker as the firm. Wis. Stat. § 452.01(4w) defines a firm as "a licensed individual broker acting as a sole proprietorship or a licensed broker business entity." Therefore the term "firm" refers to the licensed business entity or the sole proprietor broker who has engaged licensees to perform real estate services. Instead of referring to a sales agent or an agent, the beginning of the revised ICA refers to the "licensee" who has been engaged by the firm. The revised ICA acknowledges that the licensee engaged by the firm may be an individual who holds a broker's license or a salesperson's license or a licensed business entity.

A licensed business entity may engage another licensed business entity to provide real estate services. In other words, one licensed business entity may "hold" the license of another licensed business entity. This scenario may exist for a number of reasons. For example, a broker may have been encouraged by his attorney or CPA to have a licensed business entity for liability and tax purposes and so may have created a licensed LLC. The law under the Chapter 452 modernization act will clearly allow a licensed business entity to have one or more licensed business entities associated with that licensed business entity firm.

Once the licensee retained by the firm has been identified, the balance of the form refers to the licensee as "agent" for ease of use.

Lines 6-12: Independent contractor for real estate services

These sections establish that the relationship being created between the firm and the agent is an independent contractor relationship, not an employment relationship. Examples of the types of real estate services to be provided are given.

Lines 13-19: Legal and ethical compliance

The firm and agent agree to comply with all applicable law and the Code of Ethics, to practice competently, and to maintain real estate licenses and REALTOR® memberships.

Lines 20-24: Tax status as independent contractor

This section fulfills one of the important criteria under the safe harbor tests: the written agreement between the agent and the firm provides that the licensee shall not be treated as an employee for federal and state tax purposes. It also confirms the agent's status as self-employed.

Lines 25-28: Performance of brokerage services

This section speaks of the agent's relative independence in the performance of the real estate services on behalf of the firm, to the extent possible in light of the firm's statutory supervision duties. It also notes that the agent is responsible to provide his or her own equipment such as computers, tablets, phones and vehicles and pay his or her own business expenses.

Lines 29-39: Compensation

This section provides that the firm shall pay the agent on the basis of production and output, that is commission and not the number of hours worked, in accordance with the attached compensation exhibit. The details of the firm's commissions are left to the firm to delineate in an addendum to the ICA. The addendum may be modified from time to time and is effective three calendar days after the agent receives the changes. In addition, this section indicates that commission shall be due to the agent within 48 hours after the firm's receipt thereof, although payment may be delayed in the case of a bona fide dispute over entitlement to the commission. The agent is responsible for a pro rata share, along with the firm, of any costs to collect a commission.

The parties may modify this section with line-outs or by stating superseding provisions in the additional provisions section on lines 107-110 or in an addendum attached per lines 105-106.

Lines 40-46: Supervision and forms

This section notes some of the basics the firm may provide to the agent such as company signs, forms and the office policy manual. Supervision is governed by statute as is the use of forms – the agent is to use state-approved forms, together with any firm-provided forms such as addenda, all in accordance with the statutes and rules for forms use. See the discussion of supervision on pages 6-8 of this *Update*.

Lines 47-51: Record keeping

This section emphasizes that the agent should not only make sure that signed transaction documents that were used, prepared or received by the agent are distributed to the parties and other agents in a transaction in accordance with the amended Wis. Admin. Code chapter REEB 15, but also that copies of all transaction and brokerage service documents are submitted to the firm so that the firm can fulfill its statutory duties to retain records as required by § REEB 15.04.

Lines 52-53: Insurance

Agents are responsible for their vehicle insurance in a minimum amount as may be specified in the blank line.

Lines 54-56: Confidentiality/trade secrets

Confidential information of clients and customers and the firm is to be maintained, even after the agreement ends. This is especially important for any trade secrets the agent may have come to know. If there are trade secrets, the firm may also wish to include a noncompetition agreement and attach it as an addendum, if it believes it to be necessary.

Lines 57-60: Authority for signatures

Agents should closely follow any firm policies for appropriate signatures on behalf of the firm, the types of documents that may be signed without additional approval and the proper format for the signatures. Pages 5-9 of the May 2005 *Legal Update*, "Avoiding Liability When Signing and Making Referrals," at www.wra.org/LU0405.

Lines 61-64: Claims against agent or the firm

It is important that the firm be made aware of all actual or threatened disputes or claims against the firm so action can be taken to resolve the issue before it becomes a major problem. This includes any disputes including commission disputes. With prompt notice, the firm can ensure proper records are being maintained, notify the insurance carrier or company attorney, if warranted, and otherwise prepare to defend the firm.

Lines 65-71: Termination

Termination of the agreement calls for advance written notice by either party. During the interim between the notice and the official end date, the firm may wish to limit the scope of the agent's activities to minimize the opportunity for wrongful interference with the firm's relationships with clients and customers and any temptation to abscond with the firm's listings, buyer agencies and clients. If the agent has lost the agent's real estate license, the termination is immediate.

Lines 72-85: Compensation following termination

One of the most contentious areas may be regarding the compensation due when the agent leaves and there are transactions midstream – transactions where the agent has done work but there has been no closing or payment of commission. This section identifies when the agent's right to commission is triggered or accrues, and what amount of the commission is payable, depending on how far the transaction has progressed when the agent departs and the firm assigns someone else to continue and finish the transaction. This may also be addressed in the compensation exhibit or another addendum if preferred.

Lines 86-100: Dispute resolution (mediation and binding arbitration)

These sections are new to the independent contractor agreement and provide the opportunity, if desired, for the firm and the agent to agree that any disputes under the agreement will be resolved through mediation and/or binding arbitration. Firms may choose to include an addendum to provide more detailed procedures if

these dispute resolution methodologies are to be used. Some alternate dispute resolution resources are available at wilawlibrary.gov/topics/adr.php.

Lines 101-110: Entire agreement, addenda and additional provisions

The whole of the independent contractor agreement must be in writing within the two-page form or as an addendum or exhibit thereto. All attachments should be referenced in the addenda section, which automatically refers to the compensation exhibit and has a blank line where other addenda or attachments can be written in for inclusion in the agreement. There also are additional provisions lines where other content may be placed.

Lines 111-120: Reading and signatures

The firm executes the agreement with an authorized signature, while the agent signs as an individual or as an entity with an authorized signature, as the case may be.

“One of the most contentious areas may be regarding the compensation due when the agent leaves and there are transactions midstream.”

Supervision

The supervision responsibilities of a real estate firm have been overhauled and modernized with many of the provisions that once had been in the administrative code having been moved to the statutes and modified in a manner that hopefully brings more clarity as well. Most of this occurred within the new Wis. Stat. § 452.132, shown in the box on page 7 of this *Update*.

Extent of firm liability for agents

452.12(3)

Firm's responsibility for acts of licensees. Subject to s. 452.139(3), a firm is responsible for the brokerage services provided on behalf of the firm by a licensee associated with the firm only to the extent that the firm fails to comply with s. 452.132 and any rules promulgated under s. 452.07(1m) with respect to that licensee.

Essentially, the revised § 452.12(3) states that a firm is responsible for the brokerage services that the agent associated with the firm provides only if the firm fails to supervise the agent as directed under the language of § 452.132 and any REEB rules.



REALTOR® Practice Tip

A firm has no liability for the brokerage services provided by agents associated with the firm if the firm complies with the specific responsibilities stated in § 452.132 and any REEB rules regarding supervision. This would include, for instance, providing written office procedures, providing access to a supervising broker and conducting a reasonable review of transaction documents and records. That makes the firm's compliance with the statutes and rules crucial. If the firm complies, the firm should be protected against liability for the brokerage services provided by the agents associated with the firm.

While Wis. Admin. Code chapter REEB 17, primarily § REEB 17.08, was the "go-to" source for all things relative to supervision for decades, that content has been moved to the statutes and to a large extent is unchanged. For example, a firm must still supervise the agent's brokerage services by ensuring a supervising broker for the firm is assigned, and the supervising broker must be a licensed Wisconsin broker. Additionally, the firm is responsible for the custody and safety of all documents and records relating to the transactions submitted to the firm by the agent.

Firm's supervision obligations

Under Wis. Stat. § 452.132, the firm must supervise the brokerage service activities of the agents associated with the firm in the following ways:

- Provide reasonable access to a supervising broker for consultation as to practice issues.
- Provide agents with a written statement of procedures under



which they are to operate with respect to handling transactional paperwork and records. This is often found in an office policy manual that addresses additional office policies as well.

- Alert all agents as to where a copy of the REEB administrative code rules as to conduct, ethical practice and licensee responsibilities can be found. This may be included by reference in the office policy manual or may be online.
- Confirm the agent holds a valid license before an agent becomes associated with the firm and at the beginning of each biennium.
- Safeguard all transaction documents and records which the agents must submit to the firm.
- Before closing, have a supervising broker review transaction documents used by agents in transactions as well as trust account records, and point out errors to agents so that they may discuss this with the party and decide whether documentation modifications are needed.

📄 MORE INFORMATION

A copy of the REEB rules can be found in the WRA CodeBook at www.wra.org/codebook.

Firm's supervising brokers

A firm that is a licensed business entity must delegate the performance of the firm's duties to a living human being, that is, a supervising broker. For a sole proprietor, if a delegation to a supervising broker is not made, then it is presumed that the sole proprietor, him or herself, will fulfill all supervisory obligations. A firm may have one or more supervising brokers with their responsibilities divided by function, type of transaction, office location or any other stated division of responsibility. The key is flexibility. As firm structures become more fluid and flexible, this delegation flexibility allows firms to address various "office" models used in real estate now and into the future.

Under Wis. Stat. 452.132(5), a firm's delegation to a supervising broker must be:

- In writing.
- Signed by or on behalf of the delegating firm.
- Identify the duty delegated.
- Signed by the broker to whom the delegation is made.

There is no standard form for written delegation of supervisory duties.

Supervising broker's job

The role of the supervising broker under § 452.132(4) is to review transaction documents before closing. Specifically, the supervising broker must review agency agreements, offers, leases and other documents executed by the parties to the transaction, as well as records relating to the transaction used by the agent and submitted to the firm, including trust account records. The standards for this review are stated in the statute. The document review is limited to:

- Confirming that the required written agency disclosure to customers or clients was given.
- Confirming that any applicable form approved by the REEB has been used.
- Confirming that the forms have been completed by filling in the blanks in a manner consistent with the structure of the form.
- Communicating to the agent any errors in how the forms were completed that are apparent on the face of the document and known to the supervising broker reviewing the document.

Agent's role

The statute requires that the agent associated with the firm take certain actions in coordination with the firm's supervision. Per § 452.132(6), the agent must:

- Discuss with the party with whom he or she is working or representing any error communicated by the supervising broker.
- Allow the party to determine if he or she wishes to request any changes to address the error made in the transaction document.
- Submit to the firm in a timely manner all agency agreements, offers to purchase, leases and other documents that are executed by the parties and records related to the brokerage services provided on behalf of the firm and transactions that are used or received by the agent.



REALTOR® Practice Tips

There is not a definition of "timely manner" in the statute; therefore, the firm may choose to create an office policy as to the expectation of timely manner relative to agent submission of documents to the firm.

Note that this document submission requirement does not include any documents that the agent never prepared, used or received, which should solve the occasional obstacle presented when a document was used that the agent never received and the agent feels compelled to make the other agent hand over a copy. Such obstacles are removed.

452.132 Responsibilities of firms and licensees.

(1) A firm shall supervise the brokerage service activities of each licensee associated with the firm, including by doing all of the following:

(a) Ensuring that a supervising broker for the firm complies with sub. (4).

(b) Providing a licensee with reasonable access to a supervising broker for the purpose of consultation regarding real estate practice issues.

(2) A firm shall do all of the following:

(a) Provide each licensee associated with the firm with a written statement of the procedures under which the firm and licensees associated with the firm must operate with respect to handling leases, agency agreements, offers to purchase, and other documents and records relating to transactions.

(b) Notify each licensee associated with the firm where a copy of the rules promulgated by the board related to the conduct, ethical practices, and responsibilities of licensees may be obtained.

(c) Before a licensee becomes associated with the firm and at the beginning of each biennial licensure period, ensure that the licensee holds a valid license.

(3) A firm shall be responsible for the custody and safety of all documents and records relating to transactions submitted to the firm as required under sub. (6)(b).

(4)

(a) A supervising broker for a firm, as determined under sub. (5), shall review all of the following prior to the closing of a transaction in accordance with par. (b):

1. All agency agreements, offers to purchase, leases, and other documents that are executed by the parties and records relating to the transaction that are used by a licensee associated with the firm and submitted to the firm as required under sub. (6)(b).

2. All trust account records relating to the transaction.

(b) The review under par. (a) shall be limited to confirming
(continued to next page)

452.132 continued

that a written disclosure statement to a customer or client has been provided by a licensee associated with the firm in accordance with s. 452.135, confirming that any applicable form approved by the board has been used and the forms have been completed by filling in the blanks in a manner consistent with the structure of the form, and communicating to the licensee any errors in how the forms were completed that are apparent on the face of the document and known to the person reviewing the document.

(5)

(a) A firm that is a licensed broker business entity shall delegate the performance of the duty to supervise licensees associated with the firm to a supervising broker who is a licensed individual broker.

(b) A firm that is not a licensed broker business entity may delegate the duty to supervise licensees associated with the firm to a supervising broker who is a licensed individual broker, but in the absence of a specific supervising broker delegation, the firm itself is deemed to be the supervising broker for that firm.

(c) A delegation under par. (a) or (b) shall be written and signed by or on behalf of the delegating firm, identify the duty delegated, and be signed by the broker to whom the delegation is made.

(d) A firm may delegate the duty to supervise licensees to more than one supervising broker.

(6)

(a) A licensee associated with a firm shall be responsible for discussing with the party with whom the licensee is working with or representing any error communicated to the licensee as provided in sub. (4) (b), and the party shall determine whether to request any changes to address the error.

(b) A licensee associated with a firm shall submit to the firm in a timely manner all agency agreements, offers to purchase, leases, and other documents that are executed by the parties and records related to the brokerage services provided on behalf of the firm and transactions that are used

① MORE INFORMATION

See “Supervise This: A discussion of a firm’s supervision and responsibilities,” in the May 2016 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/May16/Chapter452.

Firm Administration Responsibilities

Record retention

The firm’s ability to fulfill its duty to safeguard and maintain transaction documents and trust account records relies, at least in part, upon having the agents associated the firm comply with the applicable record retention rules. The rules in Wis. Admin. Code chapter REEB 15 were significantly modified by the REEB emergency rules in effect July 1, 2016 through November 27, 2016.

Under § REEB 15.02, the rules for distribution of copies of documents have been clarified. An agent’s obligation to provide an exact and complete copy of a document to a person who has signed it pertains to all documents used, prepared or received by the agent. This rule extends to the landlord-tenant scenario: when a lease or rental agreement is signed by all parties the licensee must provide an exact and complete copy to the tenant upon execution, while a copy is provided to the landlord upon request. § REEB 15.02 specifically provides that an exact and complete copy of a listing contract or agency agreement accepted and signed by all parties must be promptly distributed to the client.

As far as record retention, § REEB 15.04 provides the firm must retain documents and records for two years unless a longer time frame is required by federal law – for instance, a LBP disclosure – or unless there is an ongoing REEB investigation. This shortened retention period was intended to match the new two-year statutes of limitations in Wis. Stat. § 452.142.

① MORE INFORMATION

For discussion of the two-year statute of limitations, see “Where the Grass Is Green and the Statute of Limitations Is Two Years,” in the April 2016 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/Apr16/Chapter452 and pages 2-3 of the April 2016 *Legal Update*, “License Law Modernization 2016,” at www.wra.org/LU1604.

This retention obligation pertains to exact and complete copies of all listing contracts, agency agreements, offers to purchase, leases, closing statements, deposit receipts, cancelled checks, trust account records and other documents or correspondence received or prepared in connection with any transaction. The two years runs from the closing of the transaction. If there was no closing, then the time is measured from the date the listing contract or buyer agency agreement is terminated. This is a change from the prior rule that seemed to suggest the beginning of the agency agreement was the measuring point. Another significant modification states that the REEB may not require for copies to be submitted after the end of the two years. This rule also confirms that electronic or digital means may be used to retain records, as is also stated in the new Wis. Stat. § 452.42.

Wis. Admin. Code § REEB 15.02 Copies of documents.

(per EmR162 at https://docs.legis.wisconsin.gov/code/emergency_rules/all/emr16200).

(1) A broker or salesperson shall promptly provide an exact and complete copy of any document utilized, prepared or received by the licensee in real estate practice to any person who has signed the document.

(2) A broker or salesperson shall promptly distribute to the following persons exact and complete copies of offers to purchase, amendments to contracts of sale, counter-offers, exchange agreements, or grants of option which have been accepted and signed by all parties:

- (a) The seller.
- (b) The buyer.
- (c) The listing broker.
- (d) The selling broker.

(3) A broker or salesperson shall promptly distribute an exact and complete copy of a lease or rental agreement which has been accepted and signed by all parties to the tenant upon execution of the lease or rental agreement when the tenant leases the property and to the landlord upon the landlord's request.

(4) A broker or salesperson shall promptly distribute an exact and complete copy of a listing contract or agency agreement that has been accepted and signed by all parties to the client when the client signs an agency agreement.

Wis. Admin. Code § REEB 15.04 Retention of records.

(1) A firm shall retain for at least 2 years, unless required by federal law or there is an active or ongoing investigation by the Board, exact and complete copies of all listing contracts, agency agreements, offers to purchase, leases, closing statements, deposit receipts, cancelled checks, trust account records and other documents or correspondence received or prepared in connection with any transaction. The retention period shall run from the date of closing of the transaction or, if the transaction has not been consummated, from the date of the listing contract or the agency agreement is terminated. These records shall be available for inspection and copying by the board. The firm shall, upon request of the board, promptly send exact and complete copies to the department without charge to the department or board. The Board may not require copies to be submitted beyond the retention period. Electronic or digital means may be used to retain records.

(2) A broker or salesperson shall submit in a timely manner documents and records to the firm related to transactions that are used or received by the broker or salesperson to assist in complying with sub. (1).

Unemployment insurance

While in the past the firm's administrative responsibilities may have included the unemployment insurance (UI) payroll tax, the recent change to the statutes as part of the chapter 452 modernization legislation has left a broader, clearer exception to the term "employment" within the unemployment statutes. Previously firms were generally not legally required to pay Wisconsin UI contributions for their real estate agents because of the UI law exemption for services provided by a real estate agent or salesperson paid solely by commission. Effective October 1, 2016, this exemption in Wis. Stat. § 108.02(15)(k)7 will be modified to provide the same exemption when at least 75 percent of the agent's compensation is related to real estate sales or output.

① MORE INFORMATION

See pages 5-6 of the April 2016 *Legal Update*, "License Law Modernization 2016," at www.wra.org/LU1604.

Worker's compensation

Similarly firms need no longer provide worker's compensation insurance for agents, unless they elect to do so on an optional basis. For years the Wisconsin Department of Workforce Development (DWD) consistently ruled that real estate salespersons licensed to work for licensed brokers are employees of the broker under the Wisconsin Worker's Compensation Act. However, 2015 Wis. Act 258 states that a real estate firm is not required to carry worker's compensation for an agent who meets the § 452.38 independent contractor safe harbor test. Effective July 1, 2016, the legislation eliminates the requirement for firms to pay worker's compensation insurance for agents, but also provides firms with the option to offer worker's compensation insurance if they wish without forfeiting agents' independent contractor status for other purposes.

① MORE INFORMATION

See pages 5-6 of the April 2016 *Legal Update*, "License Law Modernization 2016," at www.wra.org/LU1604 and "Question: How Do You Feel About This?" in the June 2016 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/June16/Chapter452.

An employer becomes subject to the Wisconsin Worker's Compensation Act under Wis. Stat. § 102.04(1) and must carry a worker's compensation insurance policy when they either:

- Usually employ three or more persons full or part-time for services performed in Wisconsin. (This employer needs insurance immediately).
- Employ one or more full-time or part-time employees and has paid gross combined wages of \$500 or more in any calendar quarter for work done in Wisconsin. This employer must have insurance by the tenth day of the first month of the next calendar quarter.

Generally, unlicensed personal assistants, some licensed personal assistants and office staff may be found to be employees unless they can meet the safe harbor test.

Supervision of teams

Agents cannot personally retain licensed persons to engage in real estate practice. Wis. Admin. Code § REEB 17.03(2) provides that, “A licensee associated with a firm may personally employ or engage as an independent contractor licensed persons only as unlicensed personal assistants within the meaning of s. 452.34(1), Stats., subject to the provisions in s. 452.34, Stats.” Firms must retain any licensees who will be licensed personal assistants and must supervise them, even if they are assigned to a “team.” All “team members” and personal assistants providing licensed services must be supervised by a broker designated by the firm. The supervision rules allow a firm to delegate these supervisory duties to the team leader, if he or she has a broker’s license, but the firm remains liable for damages arising from the brokerage services provided by these licensed team members under Wis. Stat. 452.12(3) if there is not proper supervision.

Checking licensee status

The new Wis. Stat. § 452.132(2)(c) requires the firm to confirm that current licenses are held by the all licensees associated with the firm at the beginning of each biennial licensure period and prior to initial association of a licensee. The firm may file with the DSPS to terminate licensees without current licenses for the protection of the firm. Thus, licensees failing to complete their continuing education requirements and renew their licenses on a timely basis may find they are without a firm until the license renewal process is completed. Failure to ensure that every agent has renewed his or her license before allowing the agent to continue to practice real estate on behalf of the firm is a common source of discipline by the REEB.

Engaged by more than one firm

Wis. Admin. Code § REEB 17.03(3) provides that, “A broker shall be associated with only one firm unless the broker is engaging in independent practice under s. 452.30 (6) (a) or acting as business representative for a licensed business entity under s. 452.12 (2) (a).”

Therefore one way that a broker might be engaged by more than one firm is if the licensed broker serves as the business representative for more than one licensed business entity. As before, each licensed broker business entity must have at least one licensed broker to act as a business representative. While a licensed business entity may have more than one business representative, at least one must be a licensed broker.

Under the revised Wis. Stat. § 452.12(2)(a), a licensed broker may be a business representative for more than one licensed business entity and may provide brokerage services for each entity. However, there is a new requirement. If a licensed broker is going to act as a business representative for more than one licensed business entity, the broker must have express written consent of each licensed business entity to act as a business representative for each.

① MORE INFORMATION

See page 9 of the April 2016 *Legal Update*, “License Law Modernization 2016,” at www.wra.org/LU1604 and “Beyond the Looking Glass,” in the March 2016 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/Mar16/Chapter452.



This flexibility, however, is not available for one with a salesperson’s license. The new Wis. Stat. § 452.30(7) confirms that a salesperson may be associated with only one firm at a given time, may not engage in independent real estate practice, and may engage in real estate practice only when associated with a firm.

A person with a broker’s license, however, has a second opportunity in addition to being the business representative for multiple firms, to be engaged by more than one firm. A broker might conduct an independent practice provided the criteria are fulfilled.

Independent Practice

The chapter 452 modernization legislation largely codifies Wis. Admin. Code Chapter REEB 17, which addresses a variety of issues including independent practice. The law in Wis. Stat. § 452.30 now more clearly states that a licensed broker who is associated with a firm may engage in independent real estate practice in his or her own name or under a licensed broker business entity. However, in moving this concept from the administrative rules to the statutes, additional details and requirements were added. If a broker associated with a firm would like to participate independently from the firm, the broker must:

1. Obtain written approval from each firm the broker is associated with.

2. Obtain approval to have other licensees work under the broker in the independent practice.
3. Obtain confirmation that the broker in independent practice, and not the firm, is responsible to supervise any licensees working under the broker.
4. Avoid any conflict of interest with each firm with which the broker is associated.
5. Notify the DSPS of the name under which the broker will be engaging in independent practice.

The statute also clarifies that the independent practice opportunity is available only to brokers and not licensed salespersons.

WRA independent practice agreement

The WRA has developed an Independent Practice Agreement (IPA) form to assist firms and brokers in implementing the new prerequisites for establishing an independent practice under Wis. Stat. § 452.30(6). A sample copy appears at page 13 of this *Update*. This form is available in zipForm.

Lines 1-5: Terminology and parties

The new IPA adopts the new terminology of the Chapter 452 modernization act and refers to what had been typically referred to as a brokerage company or employing broker as the firm. Wis. Stat. § 452.01(4w) defines a firm as “a licensed individual broker acting as a sole proprietorship or a licensed broker business entity.” Therefore the term “firm” refers to the licensed business entity or the sole proprietor broker who is giving a licensed broker permission to engage in an independent practice. The new IPA acknowledges that the licensee seeking independent practice may be an individual who holds a broker’s license or a licensed business entity. That licensee is referred to in the IPA as the “broker.”

Lines 6-8: Independent contractor

This section acknowledges that the broker is associated with the firm as in independent contractor to provide real estate services for the firm.

Lines 9-20: Independent practice real estate services

Here the broker seeks approval from the firm to engage in independent practice per § 452.30(6). The broker agrees to avoid all conflicts of interest with the firm and any other firms with which the broker is associated. Using a “strike one” feature, it is indicated whether the firm is giving permission for the broker to engage other licensees to work for the independent practice. If so, the IPA states that the broker, and not any firm, is responsible to supervise those licensees. It is also stated that the broker’s independent practice is separate and that the broker is not considered to be associated with the firm with regard to the broker’s independent practice activities.

Lines 21-25: Other firms

This section acknowledges that the broker might be associated with other firms and provides blank lines where those firms can be listed. This is intended to provide transparency and help keep track of firms that must approve of the broker’s independent practice before the broker can move forward.

Lines 26-28: Notice to the department

Wis. Stat. § 452.30(6)(b) requires that the broker notify DSPS that the broker will engage in independent practice and indicate under what

name the independent practice will operate. The DSPS may develop a form for this purpose. Until that time, a broker might wish to provide written notice using the DSPS contact information at [dsp.wi.gov/contact](https://www.dsp.wi.gov/contact).

Lines 29-38: Additional provisions and addenda

A section of blank lines and a place for specifying any attachments or addenda is provided.

Lines 39-47: Reading and signatures

The firm executes the IPA with an authorized signature, while the broker signs as an individual or as an entity with an authorized signature, as the case may be.

Sunset for Timeshare Salesperson Registrations

A timeshare salesperson is not required to complete any pre-license education, does not take an examination and has no continuing education requirements. 2015 Wis. Act 258 eliminates timeshare salesperson registrations effective December 15, 2016. Thus once outstanding timeshare registrations expire on December 14, 2016, there will be no timeshare salesperson registrations issued and none will be renewed. The act also permits developers (defined in Wis. Stat. § 707.02(11)) and their employees to engage in transactions involving timeshare interests. Developers and their employees are exempted from broker license requirements in Wis. Stat. § 452.01(3)(d) & (i).

Wis. Stat. Chap. § 707 regulates the timeshare industry and creates numerous consumer protections with specific language that must be contained in an offer, penalties for violating the law and a consumer complaint process at the Department of Agriculture, Trade and Consumer Protection. Complaints are also currently filed with the Real Estate Examining Board (REEB) because the individual is registered as a timeshare salesperson. Most often new timeshare transactions are not real estate-based and may, for example, involve purchasing an interest in a trust. Arguably, the REEB is not designed to address these types of transactions and it is a misuse of time and resources because the REEB is not knowledgeable regarding non-real estate timeshares.

Going forward, licensees with a salesperson’s or a broker’s license may continue, as before, to negotiate timeshare transactions involving interests in real estate.

Repeal of Real Estate Apprenticeships

The language in Wis. Stat. § 452.09(5) addressed apprenticeships, but it was repealed effective July 1, 2016. Since entry into real estate as a salesperson is not very oppressive, few individuals attempt to become an apprentice and almost all instead choose to obtain a salesperson’s license. In the last few years, less than a handful of people attempted to become a real estate apprentice at the DSPS. Therefore the concept of real estate apprenticeships was removed from the statutes.

Resources

- LegalTalks video series: “Wis. Stat. Ch. 452 Changes” at www.wra.org/LegalTalks/Chapter452.
- Chapter 452 FAQ: www.wra.org/Chap452FAQ.

- “Change Is on Its Way,” in the February 2016 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/Feb16/Chapter452.
- “Beyond the Looking Glass,” in the March 2016 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/Mar16/Chapter452.
- “Where the Grass Is Green and the Statute of Limitations Is Two Years,” in the April 2016 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/Apr16/Chapter452.
- “Supervise This,” in the May 2016 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/May16/Chapter452.
- “Question: How Do You Feel About This?” in the June 2016 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/June16/Chapter452.
- April 2016 *Legal Update*, “License Law Modernization 2016,” at www.wra.org/LU1604.
- March 2008 *Legal Update*, “Running a Real Estate Office,” at www.wra.org/LU0803.
- *Legal Update* 00.12, “Real Estate Office Management,” at www.wra.org/LU0012.

Watch the Legal Update Video Online:



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WISCONSIN REALTORS® ASSOCIATION
4801 Forest Run Road, Madison, WI 53704

INDEPENDENT PRACTICE AGREEMENT

1 This Independent Practice Agreement (hereinafter "Agreement") is entered into by and between the following parties:

2 (1) **Name of Firm** (include business entity name and/or trade name, as applicable): _____
3 _____ (hereinafter "Firm") and

4 (2) **Name of Licensee:** _____
5 who/which holds a current Wisconsin real estate license as a broker business entity **CHECK ONE** (hereinafter "Broker").

6 ■ **INDEPENDENT CONTRACTOR:** Broker is currently associated with the Firm. The Firm retains and engages Broker as an
7 independent contractor to assist the Firm in the performance of real estate-related activities and the conduct of the Firm's real
8 estate business. It is not an employment relationship.

9 ■ **INDEPENDENT PRACTICE REAL ESTATE SERVICES:** Broker wishes to engage in independent real estate practice in
10 compliance with the Wis. Stat. § 452.30(6) requirements. The independent practice will be conducted under Broker's name, or
11 under the name of a licensed broker business entity created for the operation of the independent practice.

12 Accordingly, Broker hereby requests written approval to engage in independent real estate practice and the Firm hereby gives
13 such written approval subject to the following conditions:

14 (1) Broker agrees to avoid all conflicts of interest with the Firm and with any other firms with which Broker may be associated.

15 (2) When engaging in independent practice Broker (may) (may not) **STRIKE ONE** ("may" if neither is stricken) engage other
16 licensees to work under Broker.

17 (3) When engaging in independent practice, if Broker is permitted to have licensees associated with Broker, then Broker is
18 responsible for the supervision of those licensees in accordance with Wis. Stat. § 452.132.

19 (4) While Broker is engaging in independent practice Broker shall not be considered to be associated with the Firm with respect
20 to Broker's independent practice activities and any licensees associated with Broker in that endeavor.

21 ■ **OTHER FIRMS:** Broker understands that Broker's ability to engage in independent real estate practice in his or her own name or
22 under the name of a licensed broker business entity requires Broker to obtain written approval from and avoid conflicts of interest
23 with each firm with which Broker is associated. Broker is associated with the following other firms: _____
24 _____

25
26 ■ **NOTICE TO THE DEPARTMENT:** Before engaging in independent practice Broker shall notify the Department of Safety and
27 Professional Services of that fact and of the name under which Broker will engage in independent practice. Broker shall notify the
28 Department using any form or other method prescribed by the Department for that purpose.

29 ■ **ADDITIONAL PROVISIONS:** _____
30 _____
31 _____
32 _____
33 _____
34 _____
35 _____
36 _____
37 _____

38 ■ **ADDENDA:** The attached _____ is/are made part of this Agreement.

39 ■ **READING:** By signing and dating below, each party acknowledges they have received and read a copy of this Agreement.

40 Firm Name: _____

41 (x) _____
42 Authorized Signature ▲ Print Name & Title Here ► Date ▲

43 (x) _____
44 Broker's Signature ▲ Print Name Here ► Date ▲

45 Broker Entity Name (if a business entity): _____

46 (x) _____
47 Authorized Signature ▲ Print Name & Title Here ► Date ▲

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No representation is made as to the legal validity of any provision or the adequacy of any provision in any specific relationship.

WISCONSIN REALTORS® ASSOCIATION
4801 Forest Run Road, Madison, WI 53704

REAL ESTATE INDEPENDENT CONTRACTOR AGREEMENT

This Real Estate Independent Contractor Agreement (hereinafter "Agreement") is entered into by and between the following parties:

(1) **Name of Firm** (include business entity name and/or trade name, as applicable): _____

_____ (hereinafter "Firm") and

(2) **Name of Licensee:** _____ who holds

a current Wisconsin real estate license as a broker salesperson business entity (hereinafter "Agent").

■ **INDEPENDENT CONTRACTOR:** The Firm hereby retains and engages Agent as an independent contractor Agent to assist the Firm in the performance of real estate-related activities and the conduct of the Firm's real estate business. This is not an employment relationship.

■ **REAL ESTATE SERVICES:** Services provided by Agent for the Firm under this agreement shall include: the solicitation, drafting and acceptance of agency agreements on behalf of the Firm regarding the sale, purchase, or rental of interests in real estate and businesses; the negotiation, drafting, presentation, monitoring and closing of contracts for the sale, purchase or rental of interest in real estate or businesses; and other related brokerage services including, without limitation, advertising and marketing.

■ **COMPLIANCE WITH APPLICABLE LAW AND REALTOR® CODE OF ETHICS:** In connection with the performance of brokerage services for the Firm's clients and customers, Agent and the Firm agree to abide by all applicable laws, rules and regulations and the National Association of REALTORS® Code of Ethics; to perform brokerage services in a competent manner consistent with the Firm's business policies; to maintain current real estate licenses; and to become and remain a member of the

Association of REALTORS®, the Wisconsin REALTORS® Association and the National Association of REALTORS® as an indication of the Agent's commitment to the real estate profession and high ethical standards of practice.

■ **TAX STATUS AS INDEPENDENT CONTRACTOR:** Agent shall not be treated as an employee for federal tax purposes or state tax purposes with respect to the services performed by Agent as a real estate licensee under this Agreement. Agent is responsible for paying Agent's estimated income tax payments, self-employment taxes, occupational taxes and other taxes, if any, to the appropriate governmental entities. The Firm will not withhold any taxes from compensation due to Agent. Both parties agree to make all tax returns and reports in a manner consistent with Agent's status as an independent contractor.

■ **PERFORMANCE OF BROKERAGE SERVICES:** Agent has the right and freedom to work the hours Agent deems necessary in order to perform real estate brokerage services on behalf of the Firm, and the manner and method of performing those services is under the exclusive control of Agent, except as otherwise stated herein. Agent shall pay Agent's business expenses and for equipment such as computers, tablets, phones and vehicles.

■ **COMPENSATION:** As compensation for the services provided under this Agreement, the Firm shall pay the Agent on the basis of production and output (commission), and not the number of hours worked, in accordance with the attached Compensation Exhibit. Compensation payments shall be due to the Agent within 48 hours after the Firm's receipt of the commission on which they are based or performance of the task for which they are made. Payments may be deferred if there is a bona fide dispute over the Firm's or the Agent's entitlement to the compensation. The Firm may revise the Compensation Exhibit from time to time, provided any revision shall not be effective until the end of the third calendar day following the Agent's actual receipt of the revisions, and revisions shall not apply to any commissions earned before Agent's actual receipt of the changes. Agent shall not be eligible to participate in any of the Firm's employee benefit programs unless expressly stated herein.

■ **COMMISSION COLLECTION COSTS:** Agent shall pay Agent's pro rata share of any costs incurred by the Firm for the collection of commissions in which Agent shares. The Firm shall not be liable for any expenses incurred by Agent without the Firm's prior approval. This provision shall survive termination of this Agreement.

■ **FIRM SUPERVISION:** In connection with the performance of services hereunder, the Firm will provide Agent with the following signs transaction forms office policy manual containing a written statement of procedures as required by Wis. Stat. § 452.132(2)(a) other: _____ (CHECK AND COMPLETE AS APPLICABLE). The

Firm shall provide supervision and support as required by Wis. Stat. § 452.132.

■ **USE OF FORMS:** Agent shall use the forms approved by the Real Estate Examining Board and other forms and language provided by the Firm to ensure legal compliance and uniformity reflecting the Firm's business practice, unless the Firm has authorized a variation. Forms shall be used in accordance with Wis. Stat. § 452.40 and Wis. Admin. Code Chapter REEB 16.

■ **RECORD KEEPING:** Agent shall prepare, distribute and retain appropriate records on all transactions in which Agent is involved in conformance with Wis. Admin. Code Chapter REEB 15. Agent shall submit to the Firm in a timely manner all agency agreements, offers to purchase, leases, and other documents that are executed by the parties and records related to the brokerage services provided on behalf of the Firm and transactions that are used or received by Agent as required under Wis. Stat. § 452.132(6)(b). Agent may make and retain copies of these records as long as the Firm's file is maintained.

■ **INSURANCE:** Agent shall maintain at Agent's expense and provide evidence of automobile liability insurance in the amount of at least \$ _____ and shall name the Firm as an additional insured.

■ **CONFIDENTIALITY/TRADE SECRETS:** During the term of this Agreement and following termination, Agent shall maintain the confidentiality of the information of all clients, customers and the Firm. Agent shall not use or disclose any information which has been provided by the Firm to the Agent as a trade secret and which has been treated and protected by the Firm as such.

■ **AUTHORITY FOR SIGNATURES:** Agent, in Agent's capacity as an agent of the Firm, is authorized to execute for and in the name of the Firm, listing contracts, buyer agency/tenant representation agreements, closing statements and earnest money receipts, including related amendments and notices, except as otherwise stated therein. All other signatures by the Agent on behalf of the Firm shall be invalid unless approved in advance or ratified after the fact by the Firm.

■ **CLAIMS AGAINST AGENT OR THE FIRM:** Agent shall report any actual or threatened claim against the Firm or the Agent relating to Agent's brokerage practice on behalf of the Firm including commission disputes, claims for damages or arbitration, and

63 asserted violations of ethics or law, including license law. In the event of any such claim, Agent will consult with the Firm and
64 comply with the Firm's directions in the matter. These duties survive termination of this Agreement.

65 ■ **TERMINATION:** Either party may terminate this Agreement at any time without cause by delivery of a written notice to the other
66 party setting a termination date not less than _____ business days ("5" if no number is entered) after the date of delivery. The
67 Firm may, in its discretion, limit Agent's scope of activities and authority hereunder during the period between delivery of the
68 termination notice and the termination date. If the termination is based upon or concurrent with the Agent's loss of Agent's real
69 estate license, the termination shall be effective for all purposes on the earlier of the stated termination date or the date the license
70 terminates. Prior to and subsequent to termination of this Agreement, all agency agreements solicited by the Agent on behalf of the
71 Firm shall remain the exclusive property of the Firm unless otherwise stated herein or on any addendum referenced at lines ____-____.

72 ■ **COMPENSATION FOLLOWING TERMINATION:** The Firm shall owe the Agent the compensation accrued through the
73 termination date. For this purpose:

74 (1) The commission on all listings shall be deemed to have accrued upon the Firm's receipt of an offer/lease/option or other
75 conveyance that eventually closes;

76 (2) The commission for the sale or rental of property shall be deemed to have accrued upon delivery to the seller or owner of an
77 offer or other proposal on the property that eventually closes; and

78 (3) The commission on all buyer agency/tenant representation agreements shall be deemed to have accrued upon the Firm's
79 receipt of an offer/lease/option or other conveyance that eventually closes;

80 Amounts payable as compensation for work fully completed but not yet due before the termination date shall be paid as they
81 become due. Amounts payable as compensation for work not completed before the termination date shall be reduced or
82 discounted as follows based upon the status of the work as of the termination date:

83 (a) Offer accepted and all contingencies removed: _____%

84 (b) Offer accepted with contingencies yet to be removed: _____%

85 (c) Offer received but not yet accepted: _____%

86 ■ **DISPUTE RESOLUTION:** This Agreement will be construed under Wisconsin law.

87 **Mediation.** The Firm and Agent agree to mediate all controversies, disputes, claims, and other matters in question arising
88 between them under this Agreement, including the obligation to pay compensation, before resorting to arbitration or court action.
89 Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph
90 applies, any party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before
91 commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover
92 attorney fees, even if they would otherwise be available to that party in any such action.

93 **Binding Arbitration.** The Firm and Agent agree that any controversy, dispute or claim in law or equity arising between them
94 under this Agreement, including with regard to the obligation to pay compensation, which is not settled through mediation, shall be
95 decided by neutral, binding arbitration. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of real
96 estate law experience, unless the parties mutually agree to another arbitrator. In all respects, the arbitration shall be conducted in
97 accordance with Wis. Stat. Chapter 788. Each party to any arbitration (or litigation to enforce the arbitration provision of this
98 Agreement or an arbitration award) will pay its own fees, costs, and expenses, including attorney's fees, and will equally split the
99 arbitrator's fees and administrative fees of arbitration. The Firm and Agent acknowledge that by agreeing to this provision they are
100 foregoing their rights to resolution through litigation before a judge or jury.

101 ■ **ENTIRE AGREEMENT:** This Agreement and any attached exhibits and addenda constitute the entire agreement of the parties
102 relating to the brokerage activities performed by Agent on behalf of the Firm. Except as provided herein, it may only be amended or
103 modified by a writing executed by both parties. Both parties waive any right they may have to seek or rely on an oral amendment
104 hereof.

105 ■ **ADDENDA:** The attached Compensation Exhibit and _____ is/are
106 made part of this Agreement.

107 ■ **ADDITIONAL PROVISIONS:** _____

108 _____

109 _____

110 _____

111 ■ **READING:** By signing and dating below, each party acknowledges they have received and read a copy of this Agreement.

112 (Firm Name): _____

113 (x) _____
114 Authorized Signature ▲ Print Name & Title Here ► Date ▲

115 (x) _____
116 Agent's Signature ▲ Print Name Here ► Date ▲

117 Agent Entity Name (if a business entity): _____

119 (x) _____
120 Authorized Signature ▲ Print Name & Title Here ► Date ▲



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