



Wisconsin REALTORS' Association
4901 Forest Run Road, Suite 200
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www.wra.org

DSPS Report March 2023

This report contains updates on activity at the Department of Safety and Professional Services and summarizes licensee discipline from January 2023 through March 2023.

Forms Update

The Real Estate Contractual Forms Advisory Council is working on revisions to the WB-36 Buyer Agency/Tenant Representation Agreement. The current plan is to separate the buyer agency and tenant representation provisions and make the WB-36 a standalone buyer agency agreement and create a new form, tentatively titled the WB-39 Tenant Representation Agreement, that contains the tenant representation provisions. In the past, licensees had requested removing the tenant representation provisions from the existing WB-36 Buyer Agency/Tenant Representation Agreement as the tenant representation provisions were not frequently used. The council is also working on wire transfer fraud warning language that will be added to the buyer agency agreements and possibly other forms as well. An optional and mandatory use date have not yet been chosen.

Licensee discipline issued by the Real Estate Examining Board (REEB)

Disciplinary orders are publicly available at online.drl.wi.gov/orders/searchorders.aspx.

A person can file a complaint with the DSPS and REEB at dsps.wi.gov/Pages/SelfService/FileAComplaint.aspx.

For frequently asked questions about filing of complaints, visit dsps.wi.gov/Pages/SelfService/FileAComplaint.aspx.



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Real Estate Business Entity License Discipline

Inappropriate interaction with an appraiser; earnest money disbursement

There were two complaints made against a real estate business entity as well as the licensed broker responsible for the entity. One complaint involved improper interactions with an appraiser, and the other complaint was for failing to promptly disburse earnest money.

Complaint 1: The appraiser

On October 7, 2020, the department received a complaint alleging that a broker attempted to improperly influence an appraiser to change an appraisal. The appraiser was hired by a bank to conduct an appraisal on a property. The broker had the property listed. The appraiser valued the property at less than the agreed upon purchase price. The broker contacted the lender to object to the appraisal and subsequently emailed the appraiser asking for the appraiser to correct the appraisal by a deadline established by the broker. The broker again emailed the appraiser, alleging that the broker had spoken to prior clients who stated that the appraiser has a personal interest in valuing the properties lower than they should be because the appraiser owned properties, and that somehow created an incentive for the appraiser to value properties not owned by the appraiser for less than their actual value. The broker continued to contact the appraiser to complain about the comparables used and again instructed the appraiser to make adjustments. Additionally, the broker threatened to make a complaint against the appraiser if the appraiser did not make the adjustments by the deadline set by the broker.

Complaint 2: The earnest money

On January 12 and 15, 2021, the department received complaints alleging that a broker failed to return the earnest money for a property after a Cancellation and Mutual Release (CAMR) was signed by all parties. The broker was the listing firm for a seller's property. On August 21, 2020, the potential buyer delivered \$25,000 earnest money to the listing firm. The transaction failed to close, and on December 10, 2020, the parties signed a CAMR and sent it to the listing firm. The CAMR provided that the earnest money should be returned to buyer. The buyer made several attempts to contact the listing firm regarding the return of the earnest money, but the listing firm failed to return the money. On January 4, 2021, the buyer filed a lawsuit against the listing firm for failure to return the earnest money. Finally, in March 2021, the listing firm returned the earnest money, and the lawsuit against the listing firm was dismissed. The listing firm failed to respond to multiple requests over several months from the department, seeking a response to the complaint.



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The firm/broker violated Wis. Stat. § 452.133(1)(a) by failing to provide brokerage services honestly and fairly. The firm/broker violated Wis. Admin. Code § REEB 24.17(5) by failing to respond to the department regarding any request for information within 30 days of the date of the request. The firm/broker violated Wis. Admin. Code § REEB 24.03(2)(b) by failing to act to protect the public against fraud, misrepresentation and unethical practices. The department agreed to a voluntary surrender of the broker's license and the right to renew it. The department agreed to a voluntary surrender of the firm's real estate business entity license and the right to renew it. If the broker petitions the department for reinstatement for the surrendered credential or applies for another credential in the state of Wisconsin under Wis. Stat. Chs. 440 through 480, the broker shall pay the costs of the matter in the amount of \$2,274, before any petition or application for a credential will be considered by the applicable board or department. If the broker or firm petitions for reinstatement, the department may enter an order denying such application without further notice or hearing.

Real Estate Broker License Discipline

Disorderly conduct

In October 2022, a licensed broker applied for renewal. In March 2022, the broker entered into a Deferred Judgment Agreement (DJA) for a misdemeanor charge of disorderly conduct — domestic abuse arising from a physical altercation with the broker's spouse that took place in front of their 10-year-old child. As part of the DJA, the broker pled guilty/no contest to the charge. Under the DJA, the broker must fulfill several conditions, including no further law violations, community service, domestic abuse counseling program and no contact with the victim, among other conditions. If the broker complies with these requirements, the state will move to dismiss the case.

The department agreed to renewal of the license subject to limitations. The limitations included compliance with the DJA, arrange for quarterly reports from the entity or person supervising compliance with the DJA to be submitted to the department, practice as a broker under a broker pre-approved by the board, provide a copy of the department's order to the broker under which the broker is practicing, arrange for the supervising broker to provide quarterly reports to the department, and commit no further violations of law. The order is in effect for one year. After one year, the broker can petition for an unrestricted license.

Failed to give agency disclosure, bad drafting, no written listing contract

A broker drafted an offer to purchase for a buyer to purchase a spec home under construction. The broker did not have a buyer agency agreement with the buyer and did not provide a Disclosure to Customers form to the buyer. The seller of the home was a company in which the broker had an



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ownership interest. The offer was signed by the buyer and the seller. The offer included an addendum where the broker disclosed the broker's ownership interest in the seller and that the broker was acting as an agent on behalf of the seller with the consent of all parties. The buyer initialed the addendum.

The broker did not have a written listing contract with the seller. When the department reviewed the offer, the broker failed to indicate who drafted the offer and who presented the offer to the seller. The broker indicated to the department that the broker did not provide a Disclosure to Customers form to the buyer because the buyer was not the broker's client.

The department found that the broker violated Wis. Stat. § 452.135(1)(a) by negotiating on behalf of the buyer, who was not the broker's client, without providing a Disclosure to Customers form to the buyer. The broker violated Wis. Admin. Code § REEB 24.08 by failing to put in writing the listing contract, expressing the exact agreement of the parties. Within 60 days of the date of the order, the broker must complete one remedial education course on the topic of forms, including taking and passing an exam. Within 90 days from the date of this order, the broker shall pay the costs of this matter in the amount of \$3,812.

Real Estate Salesperson License Discipline

Failure to disclose material adverse fact

An agent listed a house in March 2020, and the seller accepted an offer within days of the listing. The buyer had a home inspection that revealed defects, including an inoperable fireplace. The buyer and seller executed a cancellation agreement and mutual release. The seller did not amend the seller's real estate condition report. The seller then accepted another offer, and this buyer also had a home inspection that also identified an inoperable fireplace. The second buyer filed a complaint. The listing agent admitted to being aware of the inoperable fireplace and that she failed to disclose it to the second buyer. The agent violated Wis. Admin. Code § REEB 24.07(3) by becoming aware of information suggesting the possibility of material adverse facts to the transaction and failing to disclose this information to the parties in writing and in a timely fashion.

The agent was ordered to complete an hour of education on the topic of approved forms and pass an exam. The agent was also ordered to pay \$1,089 in costs associated with the matter.