DSPS Quarterly Report
July 25, 2016

The information is meant to serve as a summary of the events and changes affecting you at the DSPS. For further information about any topic, feel free to contact Cori Lamont at coriL@wra.org.

WB Forms

The Contractual Forms Advisory Committee provides the REEB assistance in reviewing, modifying and creating the WB real estate forms Wisconsin licensees are required to use. The following forms are currently being revised or will be revised in the near future.

Recently approved:
- WB-1 Residential Listing Contract — Exclusive Right to Sell (Mandatory use date 7.1.16)
- WB-42 Amendment to Listing Contract (Mandatory use date 7.1.16)

Currently being revised:
- WB-36 Buyer Agency Representation Agreement

Slated to be revised in the near future:
- WB-47 Amendment to Buyer Agency/Tenant Representation Agreement
- WB-2 Farm Listing Contract — Exclusive Right to Sell
- WB-3 Vacant Land Listing Contract — Exclusive Right to Sell
- WB-4 Residential Condominium Listing Contract — Exclusive Right to Sell
- WB-5 Commercial Listing Contract — Exclusive Right to Sell
- WB-6 Business Listing Contract — Exclusive Right to Sell
- WB-8 Timeshare Listing Contract — Exclusive Right to Sell

If you have any comments, suggestions relating to the WB forms, or would like to participate in the WRA's forms committee, please contact Debbi Conrad at dconrad@wra.org.

Rule Revisions

As a reminder, real estate licensees are obligated to follow federal and state statutes, administrative codes, office policy and as a REALTOR® the Code of Ethics. Therefore, the state statutes set forth the law and then by administrative rule the REEB may promulgate rules further clarifying portions of the statutes. The administrative rules cannot eliminate or contradict the law set forth in the statutes.

Due to the numerous changes made in the legislature to Wis. Stat. Ch. 452, the REEB statutorily had the authority to circumvent the traditional rulemaking process for those administrative rules directly impacted by the Wis. Stat. Ch. 452 changes. Thus the REEB was given the authority to modify the administrative rules via the emergency rule process. The emergency rule process allows for an expedited rulemaking process. The nonemergency or traditional rulemaking process takes anywhere from 18 to 24 months.

Allowing the REEB the authority to change administrative rules in this scenario quickly offers certainty for real estate licensees as to the laws. The following rules were recently modified and have a July 1, 2016, effective date. A summary of the focus of the changes are provided for your reference.

Effective July 1, 2016

- REEB 11: Authority and Definitions — matches the definitions of Wis. Stat. Ch. 452.
- REEB 12: Applications — permits the REEB to charge $68 for a predetermination and allows said fee to be applied toward the real estate license application fee if application is made within one year of determination.
- REEB 15: Record Retention — clearly permits the ability to retain documents electronically or digitally, establishes a two-year record retention period unless required by federal law (such as lead-based paint) or there is an active or ongoing REEB investigation, confirms the REEB cannot require copies of documents and records to be submitted beyond the retention period, and requires as per the statute for licensees associated with the firm to timely submit documents and records related to the transaction to the firm in a timely manner.
- REEB 16: Approved Forms and Legal Advice — clarifies in addition to all of the forms permitted for use by licensees including government forms, licensees now have the ability to also use quasi-government (such as HomePath) and tribal agencies (such as Oneida Nation) forms.
- REEB 17: Licensees Associated with a Firm — the majority of this rule has been repealed because Wis. Stat. Ch. 452 now includes supervision language. The administrative rule title was changed from Licensure and Supervision of Employees, includes clarification that a broker shall be associated with only one firm unless the broker is engaging in independent practice or acting as a business representative, and confirms a salesperson may engage in real estate practice only when associated with a firm.
- REEB 18: Trust Accounts — the majority of the changes modified the use of broker to firm.
- REEB 23: Change of Name or Address on License, Trade Name or Form of Organization — reflects the consistent and appropriate use of licensed business entity in Wis. Stat. Ch. 452.
- REEB 24: Conduct and Ethical Practices for Real Estate Licensees — substitutes the use of firm for broker and clarifies the language regarding a licensee's ability to write an offer on a property their firm has currently listed. This change clarifies that an individual licensed broker acting as a sole proprietor or licensee associated with a listing firm cannot submit their own personal offer to purchase a property when their firm has the property listed.

For a copy of the emergency rule impacting REEB 11-25, see dsps.wi.gov/Documents/Board%20Services/Rulemaking/Rules/REEB_11_25_%20Emergency%20Rule_AO.pdf. Any language that is not referenced in the emergency rule continues to remain in the administrative rule.

Curriculum and Examination Council

While license renewal for the current 2015-16 biennium is five months away, the Curriculum and Examinations Council is already hard at work in creating the continuing education (CE) requirements for the next biennium. The WRA is currently working with the council in finalizing the council's recommendations to the REEB for the course curriculum for the 2017-18 CE biennium.

It is anticipated in August 2016 the council will be approving curricula for the following courses:

Core (every licensee must take all four core courses)

1: Wisconsin Listing Contracts
2: Wisconsin Offers to Purchase
3: Wisconsin New Developments
4: Ethics and Best Practices

Electives (every licensee must also take two of these electives)
A: Wisconsin New Construction
B: Wisconsin Landlords, Tenants and Property Management
C: Financing
D: Other Approved Forms

REEB Discipline from Recent Months

This information includes disciplinary actions from March 1, 2016 – July 17, 2016.

Salesperson

Facts: Filed an application for a salesperson license. The application process reflected the following convictions: on or about 4/29/15 — Disorderly Conduct, a misdemeanor, in violation of Wis. Stat. § 947.01(1).
Board Determination: Granted a salesperson license subject to the following limitations, terms and conditions: at all times, practice as a salesperson under the supervision of a Wisconsin licensed broker approved by the REEB; notify firm of the history of arrests and convictions and a copy of the Order prior to becoming associated with the firm, arrange for written reports from supervisor(s) to be provided to the DSPS on a quarterly basis.

Facts: Filed an application for a salesperson license. The application process reflected the following convictions: on or about 6/23/10 — Operating While Intoxicated, 1 a, an ordinance violation and on or about 8/9/13 — Operating While Intoxicated, 2 a, a misdemeanor.
Board Determination: Granted a salesperson license subject to the following limitations, terms and conditions: at all times, practice as a salesperson under the supervision of a Wisconsin licensed broker approved by the REEB; notify firm of the history of arrests and convictions and a copy of the Order prior to becoming associated with the firm, arrange for written reports from supervisor(s) to be provided to the DSPS on a quarterly basis and is not permitted to drive current or prospective clients in a motor vehicle.

Facts: Filed an application for a salesperson license. The application process reflected the following convictions: on or about 2/25/15 — Operating While Intoxicated, 1st, an ordinance violation, in violation of Wis. Stat. § 346.63(1)(a) and on or about 1/13/16 — Operating While Revoked (Rev due to alc/contr subst/refusal), a misdemeanor conviction, in violation of Wis. Stat. § 343.44(1)(b).
Board Determination: Granted a salesperson license subject to the following limitations, terms and conditions: at all times, practice as a salesperson under the supervision of a Wisconsin licensed broker approved by the REEB; notify firm of the history of arrests and convictions and a copy of the Order prior to becoming associated with the firm, arrange for written reports from supervisor(s) to be provided to the DSPS on a quarterly basis and is not permitted to drive current or prospective clients in a motor vehicle.

Facts: Filed an application for a salesperson license. The application process reflected the following convictions: on or about 11/20/09 — Operating with PAC .08, 1' t, an ordinance – violate; and on or about 9/17/15 — Operating While Intoxicated, 2, a misdemeanor.
Board Determination: Granted a salesperson license subject to the following limitations, terms and conditions: at all times, practice as a salesperson under the supervision of a Wisconsin licensed broker approved by the REEB; notify firm of the history of arrests and convictions and a copy of the Order prior

to becoming associated with the firm, arrange for written reports from supervisor(s) to be provided to the DSPS on a quarterly basis and is not permitted to drive current or prospective clients in a motor vehicle.

Facts: Filed an application for a salesperson license. The application process reflected the following convictions: on or about 9/20/95 — Armed Robbery/Party to a Crime, a Class B Felony; on or about 1/28/04 — Carrying Concealed Weapon, a misdemeanor; on or about 1/28/04 — Prohibited Possession of a Firearm by a Felon, a Class G Felony; and on or about 8/18/08 — Possession with Intent —— Cocaine (>5 - 15g), a Class E Felony.
Board Determination: Granted a salesperson license subject to the following limitations, terms and conditions: at all times, practice as a salesperson under the supervision of a Wisconsin licensed broker approved by the REEB; notify firm of the history of arrests and convictions and a copy of the Order prior to becoming associated with the firm; arrange for written reports from supervisor(s) to be provided to the DSPS on a quarterly basis and is not permitted to drive current or prospective clients in a motor vehicle.

Facts: Salesperson license was first issued on 7/27/10 and current through 12/14/16. On 1/12/12, the salesperson was convicted by no contest plea of two counts of Manufacture/Deliver Amphetamine (Felony F) in Dane County Circuit Court. The sentence was withheld and ordered to complete four years of probation to include 100 hours of community service, payment of costs, a requirement of absolute sobriety, and random drug testing. On 8/23/14, he was released early from his probation. During the DSPS complaint investigation, his probation agent was contacted and stated he was on a low level of supervision, reported to his probation agent every three months, passed random urinalysis tests and successfully completed all ordered community service. The salesperson did not report his conviction to the DSPS. He also moved from the last address provided to the DSPS and did not notify the DSPS within 30 days of his change of address. He therefore did not receive or respond to the DSPS' initial attempt to contact him. He is not currently practicing real estate in the state of Wisconsin.
Violation: Wis. Admin. Code § REEB 24.17(1) by failing to report conviction within 30 days after entry of the judgment of conviction; violated Wis. Stat. § 440.11(1) by, after moving from the last address provided to the DSPS, failing to notify the DSPS of new address within 30 days of the date of the change.
Discipline: Voluntary surrender of the salesperson license and shall not re-apply for licensure for a period of five years following the date of the Order.

Facts: Salesperson license was first issued on 9/8/09 and current through 12/14/16. On 4/2/15, the salesperson entered into a commercial listing contract with a seller for the exclusive right to sell a commercial property located in Menomonie, WI. The salesperson did not subsequently list the property on MLS, place a sign on the property or otherwise advertise the property. The seller complained the salesperson failed to fulfill her responsibilities under the listing contract, and the salesperson offered the seller the opportunity to cancel the listing contract. On 6/8/15, the salesperson and the seller signed a Cancellation Agreement and Mutual Release cancelling the listing contract. The salesperson stated she delayed marketing the property because she was attempting to persuade the seller to include equipment and personal property in the list price. However, the seller wished to exclude equipment and personal property from the sale. The listing contract did not include equipment in the list price and in fact specifically stated the seller's personal property, hoists and racking were not included in the list price.
Violations: Wis. Admin. Code § REEB 24.03(2)(b) by failing to act to protect the public against unethical practices.
Discipline: The REEB and salesperson agreed in stipulation to the following: within 90 days of the date of the Order successful completion of six hours of education in the topic of business ethics and within 90 days from the date of the Order, pay costs of $680.

Timeshare Salesperson

Facts: Filed an application for a certificate of registration as a timeshare salesperson. The application process reflected the following convictions: on or about 12/15/03 — Reckless Driving-Endanger Safety, an ordinance violation; on or about 5/22/07 — Operating With PAC .08 or More, 2nd, a misdemeanor; on or about 12/8/08 — Disorderly Conduct, an ordinance violation; on or about 11/12/14 — Disorderly

Conduct, an ordinance violation; on or about 4/6/15 — Non-Registration of Auto, an ordinance violation; and on or about 7/6/15 — Operating While Suspended, an ordinance violation.
Board determination: Granted a timeshare salesperson registration subject to the following limitations, terms and conditions: at all times, practice as a salesperson under the supervision of a Wisconsin licensed broker approved by the REEB; notify firm of the history of arrests and convictions and a copy of the Order prior to becoming associated with the firm, arrange for written reports from supervisor(s) to be provided to the DSPS on a quarterly basis and is not permitted to drive current or prospective clients in a motor vehicle.

Broker and Business Entity

Facts: Broker offered voluntary surrender of license to practice as a broker. There were no DSPS records of complaints filed or disciplinary proceeding commenced against the licensee.
Board Determination: REEB accepted pursuant to Wis. Stat. § 440.19.

Facts: Three separate disciplinary proceedings — one for the supervising broker, one for the licensed business entity and one for the broker-associate of the firm have been consolidated into this one. The supervising broker is the responsible broker for the licensed business entity. All were currently licensed. On 7/21/14, the DSPS received a complaint alleging a broker-associate of the licensed business entity suggested the sellers to give money to the buyers outside of the final closing agreement. The case was opened for investigation. The broker-associate of the firm represented the buyers in a single-family home transaction. On 5/20/14, a final offer was accepted contingent on an inspection. The inspection revealed electrical and plumbing issues. The parties entered into three subsequent WB-40 amendments, each addressing the inspection repairs. On 5/28/14, the first amendment was accepted. The parties agreed the sellers would contribute $750.00 towards repairs, which the sellers would provide to the buyer at closing. On 6/23/14, the second amendment was accepted. The parties agreed the sellers would allow the buyer to fix the plumbing and electrical prior to closing at the buyers' expenses, minus the previously agreed-upon $750.00 that the sellers would provide at closing. On 7/1/14, the third amendment was accepted. The parties agreed the sellers would pay at closing the electrical and plumbing invoices totaling $684.25 instead of the earlier agreed to $750.00. The final amendment was not properly incorporated into the HUD statement prepared by the buyer's lender, which created a discrepancy between the closing documents and the actual agreement between the parties. The DSPS investigation uncovered correspondence between the broker-associate and the seller's agent showing the broker-associate suggested reconciling the $750 for the repair credit by either having the sellers write a check to the buyers for the difference between $750 and $684.25 or having the sellers put cash in an envelope and quietly hand it to the buyers after closing. These suggestions were meant to be kept off the record. The supervising broker of the broker-associate provided a statement to the DSPS indicating after reviewing the transaction documents and the correspondence, the broker discovered numerous drafting errors. The supervising broker placed the agent on probation with no further work.
Violation: Supervising broker and business entity violated Wis. Admin. Code § REEB 17.08(1) by failing to supervise the activities of any licensee associated by the firm. The individual broker/agent violated Wis. Stat. § 452.133(1)(b) by failing to provide brokerage services with reasonable skill and care.
Discipline: The REEB, supervising broker and business entity agreed in stipulation to the following: within 90 days pay costs of $788.00. The REEB and the individual broker agreed in stipulation to the following: individual broker must complete a course on contracts and Wisconsin real estate law within 90 days of the Order and pay costs of $788.

Facts: Broker's license was first issued 1/2/05 and current through 12/14/16. The broker is also the responsible broker for a licensed business entity first licensed 1/2/05 and current through 12/14/16 and manages the trust account. A trust account was maintained at Westconsin Credit Union in Menomonie, WI with an account number ending in -92. On 7/29/15, the DSPS audited the trust account. The audit revealed: incorrect name on the trust account; the correct name was not registered with the DSPS; the broker did not set up an interest-bearing trust account to properly handle the interest; the real estate trust funds were deposited in an interest-bearing account without obtaining written authorization from the

owner of the funds; the broker failed to prepare a bank reconciliation each month; a trial balance was never prepared; the broker could not validate his own trust account; the broker could not account how much each was holding for each client; and the profit and loss reports for the 28 clients were negative as of 5/31/15.
Violations: Wis. Stat. § 452.13(2)(b)(1) by failing to register an interest-bearing common trust account with the DSPS; Wis. Stat. § 452.13(2)(e) by failing to direct the depository institution to remit to the Department of Administration; Wis. Stat. § 452.133(1)(f) by failing to safeguard trust funds; Wis. Admin. Code § REEB 18.035(1) by failing to provide no later than 10 days after opening a real estate trust account the name and number of the account to DSPS; Wis. Admin. Code § REEB 18.03(1) by failing to name the broker's real estate trust account with the name appearing on the broker's license or trade name submitted to DSPS; the broker violated Wis. Admin. Code § REEB 18.031(3)(b) by depositing trust funds in an interest-bearing account without obtaining written authorization from the persons for whom the funds are held; Wis. Admin. Code § REEB 18.13(3) by failing to reconcile the real estate trust account in writing each month; Wis. Admin. Code § REEB 18.13(4) by failing to prepare a trial balance of all open items in the real estate trust account; Wis. Admin. Code § REEB 18.15(5) by failing to review the reconciled account statement balance, ledger and journal; and the licensed business entity violated Wis. Admin. Code § REEB 24.17(3) by aiding or abetting the violations of the broker.
Discipline: Within 90 days of the Order, complete six hours of education on trust accounts; beginning three months from the Order and every three months after, submit quarterly reports to the DSPS with specific information; within 90 days, the broker and the entity shall each pay costs of $354, and within 90 days, the entity also shall pay forfeiture of $500.

Facts: Broker license was first issued 5/28/97 and current through 12/14/16. On 4/6/15, the broker pled guilty to and was convicted of two counts of WIC-Provide Cash for Drafts (Felony I) in Milwaukee County. On 8/10/15, the broker was sentenced to 12 months in the House of Corrections; the sentence was imposed and stayed. The broker was ordered to complete two years of probation and 200 hours of community service as well as many other requirements.
Violations: Subject to discipline pursuant to Wis. Stat. § 452.14(3)(p) for being convicted of a felony that is a bar to licensure.
Discipline: The REEB and the broker agreed in stipulation to the following: the broker's license was suspended for 60 days beginning 10 days after the Order. The broker was required to comply with his probation terms; provide copy of the Order to his probation agent; and arrange for written reports from his probation agent on a quarterly basis to the REEB; and he must submit a quarterly report containing specific information, and within 90 days pay costs in the amount of $472.

Facts: These proceedings were initiated on 10/6/15 when the DSPS served a formal Notice of Hearing and Complaint against the real estate licensee. The Complaint alleged she violated Wis. Admin. Code § REEB 24.17(1) by violating a law the circumstances of which substantially relate to the practice of a real estate broker, and Wis. Stat. § 452.09(1)(c) by failing to include in her license application all information the Wisconsin REEB reasonably required to enable it to determine her competency to transact the business of a broker in a manner that safeguards the interests of the public.

On 10/26/15, counsel for the broker filed an Answer to the Complaint. A telephone pre-hearing conference was held on 11/6/15 at which the parties agreed to briefing schedule on a motion for summary judgment, which the DSPS intended to file. Consistent with an 11/6/15 Briefing Order, on 12/7/15, the DSPS filed a motion for summary judgment. Counsel for the broker failed to file a response. On 2/19/16, the administrative law judge (ALJ) issued a Summary Judgment Order granting summary judgment to the DSPS with respect to whether the broker engaged in the violations alleged. The ALJ's Summary Judgment Order required the parties to submit written arguments on the remaining issues of discipline and costs no later than 3/31/15, unless the broker indicated in writing by 3/1/16 she preferred a hearing on these issues. Counsel for the broker did not request a hearing on the issues of discipline and costs and failed to file a submission with respect to these issues. The following are undisputed material facts: The individual is a licensed broker first issued on 7/6/12 and current through 12/14/16. On 11/8/10, she was charged with Theft Over $10,000 — Theft by Deception, a Class 2 felony, in the Circuit Court in Illinois. On or about 6/27/12, she submitted an application for a broker license to the DSPS. On her application, she answered "no" to the following question:

> Have you ever been convicted of a misdemeanor or a felony, or driving while intoxicated (DWI), in this or any other state, OR are criminal charges or DWI charges currently pending against you?

She also certified on the application, in a notarized statement, that all answers on the application were strictly true. On or about 6/5/13, the Illinois State's Attorney amended the criminal Information in the case. The charge of Theft Over $10,000 — Theft by Deception was replaced with a charge of Home Repair Fraud in violation of 815 ILCS 515/3(a){l), a Class 3 felony. The Amended Information, upon which her conviction was based, alleged that she "knowingly entered into a written agreement in the amount of $35,000.00 with an individual for the repair of the home of his home and in so doing, knowingly promised performance of the contract which she *[sic]* did not intend to perform or knew would not be performed, in violation of 815 ILCS 515/3(a){l). On 7/18/13, she was convicted by guilty plea of Home Repair Fraud in violation of815 ILCS 515/3(a)(1), a Class 3 felony. An Order of Probation was filed on 9/11/13. The Order of Probation ordered her to complete 30 months of probation, the terms of which included payment of restitution in the amount of $35,000 and counseling for "deceptive behavior." Based on Findings of Fact 2-6, it is clear that the Theft Over $10,000 — Theft by Deception felony charge was pending against Respondent in Illinois on or about 6/27/12 when her application was submitted to the REEB.
Violations: Wis. Stat. §§ 452.09(1)(e) and 452.14(3)(a) and (L) by failing to submit the information on her application that the DSPS reasonably required and by instead submitting false information.
Discipline: License revoked and licensee must pay all recoverable costs.

Facts: Broker's license was first issued 4/24/12 and current through 12/14/16. The broker maintained a trust account at Tri-City National Bank in Brookfield with an account number ending in -04. On 5/20/14, the DSPS audit revealed: broker did not maintain a cash journal; did not maintain a ledger for each buyer and seller transaction; had not reconciled the bank statement against his own records; never prepared a trial balance; could not validate his trust account; at the time of the audit, no assurance could be provided that the account had enough money to cover all pending obligations including three to six outstanding checks; in at least two incidences, the broker failed to deposit a check for earnest money within two business days; the broker generated a receipt for $2,500 of earnest money from 4/14/14 but a deposit matching this amount was not made until 4/21/14 and generated a receipt for $500 of earnest money from 4/27/14, however, no corresponding deposit could be found for this amount; and does not retain exact and complete copies of all deposit slips or deposit receipts, nor all transactional documents such as listing contracts, offers to purchase, counter-offers, closing statements or agency agreements. On 5/21/14, the broker notified the DSPS his Tri-City National Bank trust account was closed. As of 2/12/16, his Tri-City National Bank trust account was still open.
Violations: Wis. Stat. § 452.133(l)(f) by failing to adequately safeguard trust funds and other property held by the broker; Wis. Admin. Code§ REEB 18.13(1)-(5) by failing to maintain and be responsible for a bookkeeping system in the broker's office for all accounts that consist of a cash journal, ledger, account reconciliation, trial balance and validation; Wis. Admin. Code§ REEB 18.031(1) by failing to deposit all real estate funds received by the broker in a real estate trust account within 48 hours of receipt of the trust funds; is considered to have demonstrated incompetency to act as a real estate broker in a manner as to safeguard the interests of the public pursuant to Wis. Admin. Code § REEB 18.14; and Wis. Admin. Code § REEB 15.04 by failing to retain for at least three years exact and complete copies of all listing contracts, offers to purchase, leases, closing statements, deposit receipts, cancelled checks, trust account records and other documents or correspondence received or prepared by the broker in connection with any transaction.
Discipline: The REEB and the broker agreed in stipulation to the following: within 90 days from the Order, successful completion of five hours of education on the topics of financial and office management and the broker's license is limited in the following ways: broker shall not maintain a real estate trust account under his own name or the name of any entity in which he is an owner, partner, officer or director; cannot handle any real estate trust or client funds; within 30 days of the order, submit proof the account ending in -04 is closed; and within 90 days, pay a forfeiture of $1,000 and costs of $1,550.

For more information about disciplinary actions and orders from the REEB, visit the REEB's Lookup Orders and Disciplinary Actions page online. A search may be conducted by board or by license.

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