

DSPS Report December 2023

This report contains updates on activity at the Department of Safety and Professional Services and some examples of licensee discipline through December 2023.

Forms Update

The [Real Estate Contractual Forms Advisory Council](#) recommended revisions to all of the agency agreements and the offers to purchase over the course of 2023. The Real Estate Examining Board approved all the recommended revisions.

Agency agreements

- Separated the former WB-36 Buyer Agency/Tenant Representation Agreement into the WB-36 Buyer Agency Agreement and the new WB-39 Tenant Representation Agreement.
- Modified all the agency agreements with consumer-friendly language regarding the negotiability of commissions and compensation to others.
- Modified the dispute resolution language in all the agency agreements to better highlight alternative dispute resolution as an alternative to judicial resolution in the event of a dispute.
- Added language to the agency agreements in the Dispute Resolution section to draw attention to the two-year statute of limitations to bring an action against a real estate licensee.
- Added a strongly worded Wire Fraud Warning to all the agency agreements.
- Optional use date: December 1, 2023. Mandatory use date: January 1, 2024.

Offers to purchase

- Added a strongly worded Wire Fraud Warning to all the offers to purchase.
- Optional use date: October 1, 2023. Mandatory use date: January 1, 2024.

Resources for form updates

- Current copies of the WB forms can be found on the [DSPS website](#).
- Resources highlighting the changes can be found on the WRA's Forms Update Resource webpage at www.wra.org/FormsUpdate.

LicenseE

The Department of Safety and Professional services unveiled LicenseE as its new online, self-guided occupational license application platform. LicenseE is for new applications and renewals. LicenseE

replaced the Online Licensure Application System (OLAS). Additional information on LicenseE, including frequently asked questions, can be found at dsps.wi.gov/Pages/LicenseE.aspx.

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.

The three purposes of discipline are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct.

Unauthorized practice of law

A licensee drafted an amendment to a commercial lease. The amendment was not on an approved form. There is not an approved form for amending a commercial lease. For those kinds of real estate or business opportunity transactions for which the board has not approved contractual forms, a licensee, when acting as an agent or a party, may use contractual forms drafted by a party or an attorney, if the name of the drafter is imprinted on the form before use by a licensee. This amendment did not bear the name of the drafter. If the amendment had been drafted by a party or an attorney and the name of the drafter was imprinted on the lease, the licensee could have completed it.

The REEB ordered the licensee and the licensee's firm to each pay costs of \$293.

Failure to provide brokerage services with reasonable skill and care

A broker acted as a property manager on behalf of a landlord. The broker supervised an unlicensed property manager. The unlicensed property manager allowed a tenant to move into a unit five months before actually executing the lease. When the lease finally got signed, the unlicensed property manager signed it on behalf of the owner, thereby engaging in the practice of real estate without a license.

The REEB found that by authorizing an unlicensed individual to sign both a lease and a property management agreement, the broker aided and abetted the unlicensed real estate practice, which is a failure to provide brokerage services with reasonable skill and care.

The broker was ordered to pay costs of \$1,000. Additionally, the broker was required to engage another broker for one year to review each completed property management agreement or lease to ensure they are properly completed. The broker engaged by the other broker shall provide quarterly reports to the REEB. The REEB also ordered the broker to complete one hour of education on contracts and one hour of education on property management.

Advertising in a way that is false, deceptive or misleading

A broker sent a letter to a property owner that indicated the sender was an investor and a real estate broker. Additionally, it said, "*THIS CHECK reflects a legitimate cash offer for your property at*" and identified the owner's property. Further, it said the broker could close in 30 days or less and that the broker would purchase the property as is with no required repairs. The letter included an image of a signed check made out to the property owner in the amount of \$32,421.60. The

"check" purported to be from the broker and contained watermarks and a check number. The letter contained additional text stating, *"we are ready to turn this into a LIVE CHECK for your property at" the property owner's address.*

The property owner contacted the broker and asked to move forward with the sale. The broker asked to see the property, and the property owner refused and said he wanted to move forward with the sale.

The REEB found that letter and "check" constituted advertising in a false, deceptive or misleading manner. The REEB ordered the broker and the broker's business entity to each pay \$1,258.

Practicing outside of the licensee's firm

A licensed broker was associated with a firm but was providing brokerage services outside of the firm. In doing so, the broker received commissions directly instead of having them paid to the broker's firm. The broker was also operating and advertising under a trade name that was not registered with the DSPS, which also constituted advertising in a way that was false, deceptive or misleading. The broker also failed to provide the documents for those side transactions to his firm.

The broker's license was suspended for five calendar days. The REEB ordered the broker to practice under a licensed real estate broker, and the broker must submit reports to the DSPS on a quarterly basis. The broker is required to provide a copy of the current order to any new firm or existing firm. The broker can petition the REEB for modification or termination of the limitations after one year of compliance with all the terms. The REEB ordered the broker to pay costs and a forfeiture in the amount of \$3,449.

Failure to use forms correctly

A buyer submitted an offer to purchase a property for \$150,000 and included an earnest money check for \$10,000. The listing agent drafted a counter-offer on behalf of the seller. The counter-offer provided that the property would be surveyed to determine the total acreage, and the purchase price would be \$5,000 per acre. In addition, the counter-offer stated, *"Seller is entertaining other offers, final decision will be made on or before August 24, 2020."* The buyer accepted the counter-offer on August 18, 2020, and delivered it back to the seller, which created binding acceptance. On August 23, 2020, a second buyer submitted an offer to purchase the property, offering \$155,000. The agent presented the second offer to the seller on August 24, 2020, and the seller accepted.

The first buyer's earnest money was returned to the buyer. The first buyer complained. The REEB found the listing agent failed to use approved forms and prepare addenda in such a way as to adequately accomplish the instruction of his client. This constituted failing to provide brokerage services with reasonable skill and care. The REEB ordered the licensee to complete one hour of education on contracts and pay costs of \$732.

Failure to promptly present offers and failure to retain documents

A buyer submitted an offer to purchase with a deadline for binding acceptance of December 11. The listing agent did not present the offer until December 12. The buyer requested an update on the buyer's offer, and the listing agent indicated the seller accepted another offer. That transaction failed to close, and the property went back on the market. The buyer submitted another offer to purchase on December 24 with a deadline for binding acceptance of 7:00 p.m. on that day. The offer was allegedly emailed to the seller at 7:21 p.m. The offer to purchase was rejected by the seller on December 26. In four offers reviewed by the REEB, the agent did not complete the section of the offer to purchase indicating when the offer to purchase was presented.

The REEB requested documents from the agent, but the agent did not have them anymore, which was a failure to retain documents for the required two years. In addition, the REEB found that the agent did not use approved forms correctly and failed to promptly present offers. Additionally, this

was considered failure to exercise reasonable skill and care. The REEB ordered the agent to do two hours of education and pay costs of \$809.

Failing to act to protect the public agent fraud, misrepresentation and unethical practices

A licensee represented a client who was looking to purchase a property. The client asked the licensee to show him several homes. The licensee said she was unavailable to show the property but suggested a plan to the client to have other agents show the property without receiving a commission. The licensee recommended the client use an online service to find an agent to do the showing and have his partner contact the agent for the showing and bring a friend to pose as her spouse so the agent would not discover that the buyer was represented by a licensee. Then when it came time to write the offer, the licensee could write the offer and receive the commission. The buyer obtained showings of the properties using the licensee's plan. The licensee then drafted an offer for the client and received a commission for the purchase.

The REEB found the licensee failed to act to protect the public against fraud, misrepresentation and unethical practices. The licensee was ordered to take ethics education and pay costs and a forfeiture totaling \$1,747.

Future DSPS reports

Future DSPS reports will be available in March, June, September and December of 2024. Reports can be found at www.wra.org/DSPSReports.