WISCONSIN STATUTES

AND

ADMINISTRATIVE CODE

RELATING TO THE PRACTICE OF

REAL ESTATE

FEBRUARY 2003

State of Wisconsin
Department of Regulation and Licensing
Real Estate Board
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INTRODUCTION

The Real Estate Board and the Department of Regulation and Licensing share authority and responsibility relating to the regulation of real estate brokers and salespersons who engage in the practice of real estate in Wisconsin. Such practice includes the negotiation of the sale of real estate, business opportunities, time-share intervals and campground units. It also includes the rental of real property.

The Real Estate Board is composed of four members of the profession and three public members who are appointed by the Governor and confirmed by the Senate. The Board has primary authority to close investigative files and take disciplinary action against licensees who are unethical or incompetent. It is advisory to the department in other regulatory matters.

The Department of Regulation and Licensing is an umbrella agency which provides administrative services to various professional boards. Within the department, the Bureau of Direct Licensing and Real Estate provides administrative services to the board.

Questions about board business may be directed to the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 E. Washington Avenue, P.O. Box 8935, Madison, WI 53708-8935. Telephone: (608) 266-5511, Extension 43.

This book contains statutes and rules relevant to the regulation and practice of real estate in Wisconsin. These statutes and rules are part of the law of Wisconsin. **A** subject index is included at the end of the book. With a few exceptions, only those portions of real estate-related statutes which are covered in the licensing examinations are included in this book.

The development of statutes and rules is ongoing. Therefore, these statutes and rules may be revised subsequent to the printing of this book. Most local libraries maintain current sets of the Wisconsin Statutes. Both statutes and rules are available at Web pages of the Wisconsin Legislature.

All Wisconsin Statutes and Administrative Codes are available on the Internet at the following addresses:

Statutes: http://www.legis.state.wi.us/rsb/statutes.htinl

Rules: http://www.legis.state.wi.us/rsb/code/codtoc.htnil

CHAPTER 15
STRUCTURE OF THE EXECUTIVE BRANCH

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SUBCHAPTER I
GENERAL PROVISIONS

15.001 Declaration of policy. **(1)** THREE BRANCHES OF GOVERNMENT. The "republican form of government" guaranteed by the U.S. constitution contemplates the separation of powers within state government among the legislative, the executive and the judicial branches of the government. The legislative branch has the broad objective of determining policies and programs and review of program performance for programs previously authorized, the executive branch carries out the programs and policies and the judicial branch has the responsibility for adjudicating any conflicts which might arise from the interpretation or application of the laws. It is a traditional concept of American government that the 3 branches are to function separately, without intermingling of authority, except as specifically provided by law.

(2) GOALS OF EXECUTIVE BRANCH ORGANIZATION. (a) As the chief administrative officer of the state, the governor should be provided with the administrative facilities and the authority to carry out the functions of the governor's office efficiently and effectively within the policy limits established by the legislature.

(b) The administrative agencies which comprise the executive branch should be consolidated into a reasonable number of departments and independent agencies consistent with executive capacity to administer effectively at all levels.

(c) The integration of the agencies in the executive branch should be on a functional basis, so that programs can be coordinated.

(d) Each agency in the executive branch should be assigned a name commensurate with the scope of its program responsibilities, and should be integrated into one of the departments or independent agencies of the executive branch as closely as the conflicting goals of administrative integration and responsiveness to the legislature will permit.

(3) GOALS OF CONTINUING REORGANIZATION. Structural reorganization should be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to changing emphasis or public needs, and should be consistent with the following goals:

(a) The organization of state government should assure its responsiveness to popular control. It is the goal of reorganization to improve legislative policy–making capability and to improve the administrative capability of the executive to carry out these policies.

(b) The organization of state government should facilitate communication between citizens and government. It is the goal of reorganization through coordination of related programs in function–oriented departments to improve public understanding of government programs and policies and to improve the relationships between citizens and administrative agencies.

(c) The organization of state government shall assure efficient and effective administration of the policies established by the legislature. It is the goal of reorganization to promote efficiency by improving the management and coordination of state services and by eliminating overlapping activities.

History: **1991 a. 316.**

15.01 Definitions. In this chapter: **(1g)** "Affiliated credentialing board" means a part–time body that meets all of the following conditions:

(a) Is attached to an examining board to regulate a profession that does not practice independently of the profession regulated by the examining board or that practices in collaboration with the profession regulated by the examining board.

(b) With the advice of the examining board to which it is attached, sets standards of professional competence and conduct for the profession under the affiliated credentialing board's supervision, reviews the qualifications of prospective new practitioners, grants credentials, takes disciplinary action against credential holders and performs other functions assigned to it by law.

(1r) "Board" means a part–time body functioning as the policy–making unit for a department or independent agency or a part–time body with policy–making or quasi–judicial powers.

(2) "Commission" means a 3–member governing body in charge of a department or independent agency or of a division or other subunit within a department, except for the Wisconsin waterways commission which shall consist of 5 members, the parole commission which shall consist of 8 members, and the Fox River management commission which shall consist of 7 members. A Wisconsin group created for participation in a continuing interstate body, or the interstate body itself, shall be known as a "commission", but is not a commission for purposes of s. 15.06. The parole commission created under s. 15.145 (1) shall be known as a "commission", but is not a commission for purposes of s. 15.06. The sentencing commission created under s. **15.105** (27) shall be known as a "commission" but is not a commission for purposes of s. 15.06 (1) to (4m), (7), and (9).

(3) "Committee" means a part–time body appointed to study a specific problem and to recommend a solution or policy alternative with respect to that problem, and intended to terminate on the completion of its assignment. Because of their temporary nature, committees shall be created by session law rather than by statute.

(4) "Council" means a part–time body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government, except the Wisconsin land council has the powers specified in s. 16.965 (3) and **(5)** and the powers granted to agencies under ch. 227, the Milwaukee River revitalization council has the powers and duties specified in s. 23.18, the council on physical disabilities has the powers and duties specified in s. 46.29 (1) and (2), and the state council on alcohol and other drug abuse has the powers and duties specified in s. 14.24.

(5) "Department" means the principal administrative agency within the executive branch of Wisconsin state government, but does not include the independent agencies under subch. III.

(6) "Division," "bureau," "section" and "unit" means the subunits of a department or an independent agency, whether specifically created by law or created by the head of the department or the independent agency for the more economic and efficient administration and operation of the programs assigned to the department or independent agency. The office of justice assistance in the department of administration and the office of credit unions in the

department of financial institutions have the meaning of "division" under this subsection. The office of the long– term care ombudsman under the board on aging and long–term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subsection.

(7) "Examining board" means a part–time body which sets standards of professional competence and conduct for the profession under its supervision, prepares, conducts and grades the examinations of prospective new practitioners, grants licenses, investigates complaints of alleged unprofessional conduct and performs other functions assigned to it by law. "Examining board" includes the board of nursing.

(8) "Head", in relation to a department, means the constitutional officer, commission, secretary or board in charge of the department. "Head", in relation to an independent agency, means the commission, commissioner or board in charge of the independent agency.

(9) "Independent agency" means an administrative agency within the executive branch created under subch. III.

History: 1977 *c.* 29,274; 1979 c. 34; 1983 a. 27, 189,371,410,538; 1985 a. 29, 120, 180; 1987 s. 27,342, 399; 1989 a. 31, 107,202; 1991 a. 39,269,315; 1993 a. 16, 107, 210,215; 1995 a. 27 ss. 74 and 9145 (1); 1995 a. 442,462; 1997 a. 27,237; 2001 **a.** 16, 105, 109.

15.02 Offices, departments and independent agencies. The constitutional offices, administrative departments and independent agencies which comprise the executive branch of Wisconsin state government are structured as follows:

(1) SEPARATE CONSTITUTIONAL OFFICES. The governor, lieutenant governor, secretary of state and state treasurer each head a staff to be termed the "office" of the respective constitutional officer.

(2) . PRINCIPAL ADMINISTRATIVE UNITS. The principal administrative unit of the executive branch is a "department" or an "independent agency". Each such unit shall bear a title beginning with the words "State of Wisconsin" and continuing with "department of..." or with the name of the independent agency. A department may be headed by a constitutional officer, a secretary, a commission or a board. An independent agency may be headed by a commission, a commissioner or a board.

(3) INTERNAL STRUCTURE (a) The secretary of each department may, subject to sub.(4), establish the internal structure within the office of secretary so as to best suit the purposes of his or her department. No secretary may authorize the designation of "assistant secretary'' as the official position title of any employee of his or her department.

(b) For field operations, departments may establish district or area offices which may cut across divisional lines of responsibility.

(c) For their internal structure, all departments shall adhere to the following standard terms, and independent agencies are encouraged to review their internal structure and to adhere as much as possible to the following standard terms:

1. The principal subunit of the department is the "division". Each division shall be headed by an "administrator". The office of justice assistance in the department of administration and the office of credit unions in the department of financial institutions have the meaning of "division" and the executive staff director of the office of justice assistance in the department of administration and the director of credit unions have the meaning of "administrator" under this subdivision.

2. The principal subunit of the division is the "bureau". Each bureau shall be headed by a "director". The office of the long– term care ombudsman under the board on aging and long–term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subdivision.

2m. Notwithstanding subds. 1. and 2., the principal subunit of the department of tourism is the "bureau", which shall be headed by a "director".

3. If further subdivision is necessary, bureaus may be divided into subunits which shall be known as "sections" and which shall be headed by "chiefs" and sections may be divided into subunits which shall be known as "units" and which shall be headed by "supervisors".

(4) INTERNAL ORGANIZATION AND ALLOCATION OF FUNCTIONS. The head of each department or independent agency shall, subject to the approval of the governor, establish the internal organization of the department or independent agency and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the department or independent agency to promote economic and efficient administration and operation of the department or independent agency. The head may delegate and redelegate to any officer or employee of the department or independent agency any function vested by law in the head. The governor may delegate the authority to approve selected organizational changes to the head of any department or independent agency.

History: 1971 **c.** 261; 1973 **c.** 12; 1975 c. 39; 1977 *c.* 29; 1979 **c.** 221; 1987 a. 27,399; 1993 a. 16, 184,215,491; 1995 a. 27 ss. 75, 76, 76t and 9145 (1); 1997 a. 27.

Limits of internal departmental reorganization discussed. 61 Atty. Gen. 306.

15.03 Attachment for limited purposes. Any division, office, commission, council or board attached under this section to a department or independent agency or a specified division thereof shall be a distinct unit of that department, independent agency or specified division. Any division, office, commission, council or board so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division, office, commission, council or board, independently of the head of the department or independent agency, but budgeting, program coordination and related management functions shall be performed under the direction and supervision of the head of the department or independent agency, except that with respect to the office of the commissioner of railroads, all personnel and biennial budget requests by the office of the commissioner of railroads shall be provided to the department of transportation as required under s. 189.02 (7) and shall be processed and properly forwarded by the public service commission without change except as requested and concurred in by the office of the commissioner of railroads.

History: 1981 *c.* 347; 1983 **a.** 27; 1993 **a. 123;** 1999 a. 9.

15.04 Heads of departments and independent agencies; powers and duties. (1) DUTIES. Each head of a department or independent agency shall:

(a) ***Supervision.*** Except as provided in s. 15.03, plan, direct, coordinate and execute the functions vested in the department or independent agency.

(b) ***Budget.*** Biennially compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department or independent agency and each program, subprogram and activity therein.

(c) ***Advisory bodies.*** In addition to any councils specifically created by law, create and appoint such councils or committees as the operation of the department or independent agency requires. Members of councils and committees created under this general authority shall serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their duties and, if such reimbursement is made, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of such a council or committee shall be paid by the agency which pays the officer's or employee's salary.

(d) ***Biennial report.*** On or before October 15 of each odd–numbered year, submit to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report on the performance and operations of the department or independent agency during the preceding biennium, and projecting the goals and objectives of the department or independent agency as developed for the program budget report. The secretary of administration may prescribe the format of the report and may require such other information deemed appropriate. Each department or independent agency shall provide a copy of its biennial report to legislators upon request. Any department or independent agency may issue such additional reports on its findings and recommendations as its operations require. **A** department or independent agency may, on or before October 15, submit an annual report prepared by it, in place of the biennial report required under this paragraph, if the submission of the annual reports is approved by the secretary of administration.

(e) Seal. Have authority to adopt a seal for the department or independent agency.

(f) ***Bonds.*** Have authority to require that any officer or employee of the department or independent agency give an official bond under ch.

19, if the secretary of administration agrees that the position held by such officer or employee requires bonding.

(g) ***Discrimination review.*** In order to determine whether there is any arbitrary discrimination on the basis of race, religion, national origin, sex, marital status or sexual orientation as defined in s. 111.32 (13m), examine and assess the statutes under which the head has powers or regulatory responsibilities, the procedures by which those statutes are administered and the rules promulgated under those statutes. If the department or agency head finds any such discrimination, he or she shall take remedial action, including making recommendations to the appropriate executive, legislative or administrative authority.

(i) ***Records and forms management program.*** Establish and maintain a records and forms management program.

(j) ***Records and forms officer.*** Appoint a records and forms officer, who shall be responsible for compliance by the department or independent agency with all records and forms management laws and rules and who may prevent any form from being put into use.

(k) ***Form numbering and filing system.*** Establish a numbering and filing system for forms.

(m) ***Notice on forms.*** See that each form used by the department or independent agency to seek information from municipalities, counties or the public contains on the first page of the form, or in the instructions for completing the form, a conspicuous notice of the authorization for the form, whether or not completing the form **is** voluntary, if it is not voluntary, the penalty for failure to respond and whether or not any personally identifiable information, as defined under **s.** 19.62 (5), requested in the form is likely to be used for purposes other than for which it is originally being collected. This paragraph does not apply to state tax forms.

(2) DEPUTY. Each secretary of a department or head of an independent agency under **s.** 230.08 (2) (L) may appoint a deputy who shall serve at the pleasure of the secretary or agency head outside the classified service. The deputy shall exercise the powers, duties and functions of the secretary or head in the absence of the secretary or head, and shall perform such other duties as the secretary or head prescribes. The adjutant general may appoint 2 deputies **as** provided in **s.** 21.18 (1). In this subsection "secretary" includes the attorney general and the state superintendent of public instruction.

(3) DEPUTY APPROVALS. Positions for which appointment is made under sub.(2) may be authorized only under s. 16.505.

History: 1971 **c.** 125; **1975 c. 94; 1977 c. 196, 273, 418, 447; 1979 c. 221; 1981 c.** 112, 350; **1981 c. 391 s. 210; 1983 a. 27,524;** 1985 **a. 29; 1985 a. 180** ss. **2 to** 4, 30m; **1985 a. 332; 1987 a. 147 s. 25; 1987 a. 186; 1989 a. 248; 1991 a. 39,** 189; **1995 a. 27; 1997 a. 73.**

15.05 Secretaries. (1) SELECTION. (a) If a department is under the direction and supervision of a secretary, the secretary shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(b) Except as provided in pars.(c) and (d), if a department is under the direction and supervision of a board, the board shall appoint a secretary to serve at the pleasure of the board outside the classified service. In such departments, the powers and duties of the board shall be regulatory, advisory and policy–making, and not administrative. All of the administrative powers and duties of the department are vested in the secretary, to be administered by him or her under the direction of the board. The secretary, with the approval of the board, shall promulgate rules for administering the department and performing the duties assigned to the department.

(c) The secretary of natural resources shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(d) The secretary of agriculture, trade and consumer protection shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(3) EXECUTIVE ASSISTANT. Each secretary may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform duties as the secretary prescribes. In this subsection, "secretary" includes the attorney general, the adjutant general, the director of the technical college system and the state superintendent of public instruction.

(3m) FIELD DISTRICT OR FIELD AREA DIRECTORS. Each secretary may appoint a director under the classified service for each district or area office established in his or her department under s. 15.02 (3) (b).

(4) OFFICIAL OATH. Each secretary shall take and file the official oath prior to assuming office.

(5) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub.(3) may be authorized only under s. 16.505.

History: 1973 c. 90; 1977 c. 4, 196; 1985 a. 18; **1985 a. 332 s. 251 (3); 1989 a. 31, 169; 1993 a. 399; 1995 a. 27.**

A secretary, appointed by the governor, could be removed only **by the governor, even though the general appointment statute had been amended** to **provide that the secretary is appointed by a board to serve at the board's pleasure. Moses** v. **Board** of **Veterans Affairs, 80 Wis. 2d 41**1, 259 N.W.2d **102 (1977).**

15.06 Commissions and commissioners. (1) SELECTION OF MEMBERS. (a) Except as otherwise provided in this subsection, the members of commissions shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 6–year terms expiring on March 1 of the odd–numbered years.

(ag) Members of the Wisconsin waterways commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 5–year terms.

(ar) The commissioner of railroads shall be nominated by the governor, and with the advice and consent of the senate appointed, for a 6–year term expiring on March 1 of an odd–numbered year,

(b) The commissioner of insurance shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor. The governor may remove from office the commissioner of insurance who was appointed for a fixed term before August 1, 1987.

(d) The members of the personnel commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for 5–year terms, subject to the following conditions:

1. At least one member shall be licensed to practice law in this state.

2. They shall possess some professional experience in the field of personnel or labor relations.

3. No member may hold any other position in state employment.

4. No member, when appointed or for 3 years immediately prior to the date of appointment, may have been an officer of a committee in any political party, partisan political club or partisan political organization or have held or been a candidate for any partisan elective public office. No member may become a candidate for or hold any such office.

5. At no time may more than 2 members be adherents of the same political party.

6. Each member of the commission shall be a U.S. citizen and shall have been a resident of this state for at least 3 years.

(2) SELECTION OF OFFICERS. Each commission may annually elect officers other than a chairperson from among its members as its work requires. Any officer may be reappointed or reelected. At the time of making new nominations to commissions, the governor shall designate a member or nominee of each commission to serve as the commission's chairperson for a 2–year term expiring on March 1 of the odd–numbered year except that:

(a) Commencing March 1, 1979, and thereafter, the labor and industry review commission shall elect one of its members to serve as the commission's chairperson for a 2–year term expiring on March 1 of the odd–numbered year.

(3) FULL-TIME OFFICES. (a) **A** commissioner may not hold any other office or position of profit or pursue any other business or vocation, but shall devote his or her entire time to the duties of his or her office. This paragraph does not apply to:

1. The commissioner of insurance.

3. The members of the Wisconsin waterways commission.

(b) The commissioner of insurance shall not engage in any other occupation, business or activity that is in any way inconsistent with the performance of the duties of the commissioner of insurance, nor shall the commissioner hold any other public office.

(4) CHAIRPERSON; ADMINISTRATIVE DUTIES. The administrative duties of each commission shall be vested in its chairperson, to he administered by the chairperson under the statutes and rules of the commission and subject to the policies established by the commission.

(4m) EXECUTIVE ASSISTANT. Each commission chairperson under s. 230.08 (2) (m) and each commissioner of the public service commission may appoint an executive assistant to serve at his or her

pleasure outside the classified service. The executive assistant shall perform duties as the chairperson or commissioner prescribes.

(5) FREQUENCY OF MEETINGS; PLACE. Every commission shall meet on the call of the chairperson or a majority of its members. Every commission shall maintain its offices in Madison, but may meet or hold hearings at such other locations as will best serve the citizens of this state.

(6) QUORUM. A majority of the membership of a commission constitutes a quorum to do business, except that vacancies shall not prevent a commission from doing business. This subsection does not apply to the parole commission.

(7) REPORTS. Every commission attached to a department shall submit to the head of the department, upon request of that person not more often than annually, a report on the operation of the commission.

(8) OFFICIAL OATH. Every commissioner shall take and file the official oath prior to assuming office.

(9) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub.(4m) may be authorized only under s. 16.505.

History: 1971 c. 193, 307; 1977 c. 29, 196, 274; 1981 c. 347; 1983 a. 27,371,410, 538; 1985 a. 29; 1987 a. 27,403; 1989 a. 31; 1991 a. 39,269,316; 1993 a. 16, 123; 1995 a. 27; 1997 a. 27; 2001 a. 16.

A single member of the personnel commission is empowered to act as the commission when 2 of the 3 commission positions are vacant. 68 Atty. Gen. 323.

A commissioner designated as chairperson of the commission under sub.(2) is not appointed to a new position, and Art. IV, s. 26, precludes a salary increase based on that designation. 76 Atty. Gen. 52.

Sub.(3) (a) prohibits a commissioner from pursuing business interests that would prevent properly fulfilling the duties of the office. 77 Atty. Gen. 36.

15.07 Boards. (1) SELECTION OF MEMBERS. (a) If a department or independent agency is under the direction and supervision of a board, the members of the board, other than the members serving on the board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve for terms prescribed by law, except:

1. Members of the higher educational aids board shall be appointed by the governor without senate confirmation.

2. Members of the elections board shall be appointed as provided in s. 15.61.

3. Members of the employee trust funds board appointed or elected under s. 15.16 (1) (a), (b), (d) and (f) shall be appointed or elected as provided in that section.

4. Members of the investment board appointed under s. 15.76 (3) shall be appointed as provided in that section.

5. The members of the educational communications board appointed under s. 15.57 (5) and (7) shall be appointed as provided in that section.

6. Members of the University of Wisconsin Hospitals and Clinics Board appointed under s. 15.96 (8) shall be appointed by the governor without senate confirmation.

(b) For each board not covered under par.(a), the governor shall appoint the members of the board, other than the members serving on the board because of holding another office or position and except as otherwise provided, for terms prescribed by law except that all members of the following boards, or all members of the following boards specified in this paragraph, other than the members serving on a board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, for terms provided by law:

1. Banking review board.
2. College savings program board.
3. Credit union review board.
5. Savings and loan review board.
8. Real estate board.
9. Board on aging and long-term care.
10. Land and water conservation board.
11. Waste facility siting board.
12. Prison industries board.
14. Deferred compensation board.
15. The 3 members of the lower Wisconsin state riverway board appointed under s. 15.445 (3) (b) 7.
15m. The members of the state fair park board appointed under s. 15.445 (4) (a) 3. to 5.
16. Land information board.

Note: Subd. **16.** is repealed **eff. 9-1-03** by **1997 Wis.** Act **27.**

17. Real estate appraisers board.
18. Savings bank review board.
19m. Auctioneer board.
20. The 3 members of the Kickapoo reserve management board appointed under s. 15.445 (2) (b) 3.
22. Private employer health care coverage board.

Note: Subd. **22.** is repealed **eff. 1-1-10** by **1999 Wis.** Act **9.**

(c) Except as provided under par.(cm), fixed terms of members of boards shall expire on May 1 and, if the term is for an even number of years, shall expire in an odd-numbered year.

(cm) The term of one member of the ethics board shall expire on each May 1. The terms of 3 members of the development finance board appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of every even-numbered year and the terms of the other 3 members appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of every odd-numbered year. The terms of the 3 members of the land and water conservation board appointed under s. 15.135 (4) (b) 2. shall expire on January 1. The term of the member of the land and water conservation board appointed under s. 15.135 (4) (b) 2m. shall expire on May 1 of an even-numbered year. The terms of members of the real estate board shall expire on July 1. The terms of the appraiser members of the real estate appraisers board and the terms of the auctioneer and auction company representative members of the auctioneer board shall expire on May 1 in an even-numbered year.

(cs) No member of the auctioneer board, real estate appraisers board or real estate board may be an officer, director or employee of a private organization that promotes or furthers any profession or occupation regulated by that board.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every board shall elect a chairperson, vice chairperson and secretary each of whom may be reelected for successive terms, except that:

(a) The chairperson and vice chairperson of the investment board shall be designated biennially by the governor.

(b) The chairperson of the board on health care information shall be designated biennially by the governor.

(d) The officers elected by the board of regents of the University of Wisconsin System and the technical college system board shall be known as a president, vice president and secretary.

(e) The representative of the department of justice shall serve as chairperson of the claims board and the representative of the department of administration shall serve as its secretary.

(f) The state superintendent of public instruction or his or her designated representative shall serve as chairperson of the school district boundary appeal board.

(g) A representative of the department of justice designated by the attorney general shall serve as nonvoting secretary to the law enforcement standards board.

(h) The chairperson of the state fair park board shall be designated annually by the governor from among the members appointed under s. 15.445 (4) (a) 3., 4. and 5.

(j) At its first meeting in each even-numbered year, the state capitol and executive residence board shall elect officers for 2-year terms.

(k) The governor shall serve as chairperson of the governor's work-based learning board.

(L) The governor shall serve as chairperson of the information technology management board and the chief information officer shall serve as secretary of that board.

(3) FREQUENCY OF MEETINGS. (a) If a department or independent agency is under the direction and supervision of a board, the board shall meet quarterly and may meet at other times on the call of the chairperson or a majority of its members. If a department or independent agency is under the direction and supervision of a board, the board shall, in addition, meet no later than August 31 of each even-numbered year to consider and approve a proposed budget of the department or independent agency for the succeeding fiscal biennium.

(b) Except as provided in par.(bm), each board not covered under par.(a) shall meet annually, and may meet at other times on the call of the chairperson or a majority of its members. The auctioneer board, the real estate board and the real estate appraisers board shall also meet on the call of the secretary of regulation and licensing or his or her designee within the department.

(bm) 1. The board on health care information shall meet **4** times each year and may meet at other times on the call of the chairperson or a majority of the board's members.

2. The environmental education board shall meet **4** times each year and may meet at other times on the call of the chairperson.

3. The auctioneer board shall meet at least **4** times each year.

4. The information technology management board shall meet at least **4** times each year and may meet at other times on the call of the chairperson.

(4) QUORUM. A majority of the membership of a board constitutes a quorum to do business and, unless a more restrictive provision is adopted by the board, a majority of a quorum may act in any matter within the jurisdiction of the board. This subsection does not apply to actions of the ethics board or the school district boundary appeal board as provided in ss. **19.47 (4)** and **117.05 (2)** (a).

(5) REIMBURSEMENT FOR EXPENSES; COMPENSATION. Except as provided in sub.(5m), the members of each board shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of a board to be paid by the agency which pays the member's salary. The members shall receive no compensation for their services, except that the following members of boards, except full–time state officers or employees, also shall be paid the per diem stated below for each day on which they were actually and necessarily engaged in the performance of their duties:

(a) Members of the investment board, **$50** per day.

(b) Members of the banking review board, **$25** per day but not to exceed $1,500 per year.

(c) Members of the auctioneer board, $25 per day.

(d) Members of the board of agriculture, trade and consumer protection, not exceeding ***$35*** per day as fixed by the board with the approval of the governor, but not to exceed $1,000 per year.

(e) In lieu of a per diem, the members of the technical college system board shall receive $100 annually.

(f) Members of the teachers retirement board, appointive members of the Wisconsin retirement board, appointive members of the group insurance board, members of the deferred compensation board and members of the employee trust funds board, **$25** per day.

(g) Members of the savings and loan review board, $10 per day.

(gm) Members of the savings bank review board, $10 per day.

(h) Voting members of the land and water conservation board, **$25** per day.

(i) Members of the educational approval board, **$25** per day.

(j) Members of the state fair park board, $10 per day but not to exceed $600 per year.

(k) Members of the ethics board, **$25** per day.

(L) Members of the school district boundary appeal board, **$25** per day.

(n) Members of the elections board, $25 per day.

(o) Members of the burial sites preservation board, $25 per day.

(r) Members of the real estate hoard, **$25** per day.

(s) Members of the credit union review board, **$25** per day but not to exceed **$1,500** per year.

(t) Members of the waste facility siting board who are town or county officials, **$35** per day.

(w) Members of the lower Wisconsin state riverway board, $25 per day.

(x) Members of the real estate appraisers board, $25 per day.

(y) Members of the Kickapoo reserve management board, **$25** per day.

(5m) LIMITATIONS ON SALARY AND EXPENSES. (b) ***Lower Wisconsin state riverway board.*** The members, except for the chairperson, of the lower Wisconsin state riverway board shall be reimbursed under sub.(5) for only their necessary and actual travel expenses incurred in the performance of their duties, or shall be paid **$25** plus mileage incurred in the performance of their duties, whichever is greater. The chairperson of the lower Wisconsin state riverway board shall be reimbursed for all his or her actual and necessary expenses incurred in the performance of his or her duties. The lower Wisconsin state riverway board shall determine which expenses of the chairperson are actual and necessary before reimbursement.

(6) REPORTS. Every board created in or attached to a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the board.

(7) OFFICIAL OATH. Each member of a board shall take and file the official oath prior to assuming office.

History: 1971 c. 100 s. 23; 1971 c. **125, 261, 270, 323; 1973 c. 90, 156, 299,** 334; 1975 c. 39, 41, 422; **1977 c. 29** ss. 24, 26, 1650m **(3); 1977 c. 203,277,418,427; 1979 c. 34,** 110, 221, 346; 1981 c. 20, 62, 94, 96, 156, 314, 346, 374, 391; **1983 a. 27,282,403; 1985 a.** 20, 29, 316; **1987 a. 27, 119, 142,354,399,403; 1989 a. 31, 102, 114,219,299. 340;** 1991 **a. 25.39, 116,221,269,316; 1993 a.** 16, 75, **102, 184,349,399,490; 1995 a.** 27, 216, 247; **1997a.27;**1999 a. 9, 44, 181, 197; 2001 a. 16.

"Membership" as used in sub.(4) **means the authorized number of positions and not the number of positions that are currently occupied. 66** Atty. **Gen. 192.**

15.08 Examining boards and councils. (I) SELECTION OF MEMBERS. All members of examining hoards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than **2** consecutive terms. **No** member of an examining board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) *PUBLIC* MEMBERS. (a) Public members appointed under s. **15.405** or **15.407** shall have all the powers and duties of other members except they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. **15.405** or **15.407** shall not he, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the board, examining board or examining council to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the chiropractic examining board, the dentistry examining board, the hearing and speech examining board, the medical examining board, perfusionists examining council, respiratory care practitioners examining council and council on physician assistants, the board of nursing, the nursing home administrator examining board, the veterinary examining board, the optometry examining board, the pharmacy examining board, the marriage and family therapy, professional counseling, and social work examining board, and the psychology examining board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(c) The membership of each examining board and examining council created in the department of regulation and licensing after June 1, **1975,** shall be increased by one member who shall be a public member appointed to serve for the same term served by the other members of such examining board or examining council, unless the act relating to the creation of such examining board or examining council provides that 2 or more public members shall be appointed to such examining board or examining council.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every examining board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS. (a) Every examining board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The medical examining board shall meet at least **12** times annually.

(c) The hearing and speech examining board shall meet at least once every ***3*** months.

(4) QUORUM. (a) **A** majority of the membership of an examining board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the examining board.

(b) Notwithstanding par.(a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two–thirds of the voting membership of the examining board.

(5) GENERAL POWERS. Each examining board: (a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the examining board.

(6) IMPROVEMENT OF THE PROFESSION. In addition to any other duties vested in it by law, each examining board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each examining board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an examining board shall, unless the member is a full–time salaried employee of this state, be paid a per diem of $25 for each day on which the member was actually and necessarily engaged in the performance of examining board duties. Each member of an examining board shall be reimbursed for the actual and necessary expenses incurred in the performance of examining board duties.

(8) OFFICIAL OATH. Every member of an examining board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every examining board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the examining board.

(10) SEAL. Every examining board may adopt a seal.

History: 1971 c. 40; 1975 c. 86, 199; 1977 c. 418; 1979 c. 32; 1979 c. 34 ss. 32e to 32s, 2102 (45) (a); 1979 c. 221; 1981 c. 94; 1983 a. 403,524; 1985 a. 332,340; 1987 a. 399; 1989 a. 229, 316, 359; 1991 a. 39, 160, 316; 1993 a. 105, 107, 184, 490; 1995 a. 245: 1997 a. 175: 1999 a. 180; 2001 a. 80, 89, 105.

Selection and terms of officers of regulatory and licensing boards are discussed. 75 Atty. Gen. 247 (1986).

15.085 Affiliated credentialing boards. (1) SELECTION OF MEMBERS. All members of affiliated credentialing boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an affiliated credentialing board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) PUBLIC MEMBERS. (a) Public members appointed under s. 15.406 shall have all of the powers and duties of other members except that they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.406 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the affiliated credentialing board to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the physical therapists affiliated credentialing board, podiatrists affiliated credentialing board or occupational therapists affiliated credentialing board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every affiliated credentialing board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS. (a) Every affiliated credentialing board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The chairperson of an affiliated credentialing board shall meet at least once every 6 months with the examining board to which the affiliated credentialing board is attached to consider all matters of joint interest.

(4) QUORUM. (a) A majority of the membership of an affiliated credentialing board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the affiliated credentialing board.

(b) Notwithstanding par.(a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two–thirds of the membership of the affiliated credentialing board.

(5) GENERAL POWERS. Each affiliated credentialing board:

(a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession. In addition to any other procedure under ch. 227 relating to the promulgation of rules, when promulgating a rule, other than an emergency rule under s. 227.24, an affiliated credentialing board shall do all of the following:

1. Submit the proposed rule to the examining board to which the affiliated credentialing board is attached. The proposed rule shall be submitted under this subdivision at least 60 days before the proposed rule is submitted to the legislative council staff under s. 227.15 (1).

2. Consider any comments on a proposed rule made by the examining board to which the affiliated credentialing board is attached, if the examining board submits the comments to the affiliated credentialing board within 30 days after a public hearing on the proposed rule under s. 227.18 or, if no hearing is held, within 30 days after the proposed rule is published under s. 227.16 (2) (e).

3. Include, in the report submitted to the legislature under s. 227.19 (2), any comments on the proposed rule submitted by the examining board under subd. 2. and the affiliated credentialing board's responses to those comments.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the affiliated credentialing board.

(6) IMPROVEMENT OF THE PROFESSION. In addition to any other duties vested in it by law, each affiliated credentialing board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each affiliated credentialing board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an affiliated credentialing board shall, unless the member is a full–time salaried employee of this state, be paid a per diem of $25 for each day on which the member was actually and necessarily engaged in the performance of affiliated credentialing board duties. Each member of an affiliated credentialing board shall be reimbursed for the actual and necessary expenses incurred in the performance of affiliated credentialing board duties.

(8) OFFICIAL OATH. Every member of an affiliated credentialing board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every affiliated credentialing board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the affiliated credentialing board.

(10) SEAL. Every affiliated credentialing board may adopt a seal.

History: 1993 a. 107; 1997 a. 175; 1999 a. 180.

15.09 Councils. (1) SELECTION OF MEMBERS. (a) Unless otherwise provided by law, the governor shall appoint the members of councils for terms prescribed by law. Except as provided in par.(b), fixed terms shall expire on July 1 and shall, if the term is for an even number of years, expire in an odd–numbered year.

(b) The terms of the members of the council on recycling shall expire as specified under s. 15.347 (17) (c).

(2) SELECTION OF OFFICERS. Unless otherwise provided by law, at its first meeting in each year every council shall elect a chairperson,

vice chairperson and secretary from among its members. Any officer may be reelected for successive terms. For any council created under the general authority of s. 15.04 (1) (c), the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which such council is created shall designate an employee of the department or independent agency to serve as secretary of the council and to be a voting member thereof.

(3) LOCATION AND FREQUENCY OF MEETINGS. Unless otherwise provided by law, every council shall meet at least annually and shall also meet on the call of the head of the department or independent agency in which it is created, and may meet at other times on the call of the chairperson or a majority of its members. A council shall meet at such locations as may be determined by it unless the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which it is created determines a specific meeting place.

(4) QUORUM. Except as otherwise expressly provided, a majority of the membership of a council constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the council.

(5) **POWERS AND DUTIES.** Unless otherwise provided by law, a council shall advise the head of the department or independent agency in which it is created and shall function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government.

(6) REIMBURSEMENT FOR EXPENSES. Members of a council shall not be compensated for their services, but members of councils created by statute shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an elective or appointive officer or employee of this state who represents an agency as a member of a council to be paid by the agency which pays his or her salary.

(7) REPORTS. Unless a different provision is made by law for transmittal or publication of a report, every council created in a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the council.

(8) OFFICIAL OATH. Each member of a council shall take and file the official oath prior to assuming office.

History: 1971 c. 211; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 34,346; 1983 a. 27,388, 410; 1985 a 84; 1989 a. 335; 1991 a. 39,189; 1993 a. 184.

SUBCHAPTER II
DEPARTMENTS

15.40 Department of regulation and licensing; creation.

There is created a department of regulation and licensing under the direction and supervision of the secretary of regulation and licensing.

History: 1971 c. 270 s. 104; 1975 c. 39; 1977 c. 29, 1977 c. 196 s. 131; 1977 c. 418 ss. 24 to 27.

15.405 Same; attached boards and examining boards.

(1) ACCOUNTING EXAMINING BOARD. There is created an accounting examining board in the department of regulation and licensing. The examining board shall consist of 7 members, appointed for staggered 4-year terms. Five members shall hold certificates as certified public accountants and be eligible for licensure to practice in this state. Two members shall be public members.

(2) EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS. There is created an examining board of architects, landscape architects, professional engineers, designers and land surveyors in the department of regulation and licensing. Any professional member appointed to the examining board shall be registered to practice architecture, landscape architecture, professional engineering, the design of engineering systems or land surveying under ch. 443. The examining board shall consist of the following members appointed for 4-year terms: 3 architects, 3 landscape architects, 3 professional engineers, 3 designers, 3 land surveyors and 10 public members.

(a) In operation, the examining board shall be divided into an architect section, a landscape architect section, an engineer section, a designer section and a land surveyor section. Each section shall consist of the 3 members of the named profession appointed to the examining board and 2 public members appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(b) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of registration, and all other matters of interest to either the architect, landscape architect, engineer, designer or land surveyor section shall be acted upon solely by the interested section.

(c) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(2m) EXAMINING BOARD OF PROFESSIONAL GEOLOGISTS, HYDROLOGISTS AND SOIL SCIENTISTS. (a) There is created in the department of regulation and licensing an examining board of professional geologists, hydrologists and soil scientists consisting of the following members appointed for 4-year terms:

1. Three members who are professional geologists licensed under ch. 470.
2. Three members who are professional hydrologists licensed under ch. 470.
3. Three members who are professional soil scientists licensed under ch. 470.
4. Three public members.

(b) In operation, the examining board shall be divided into a professional geologist section, a professional hydrologist section and a professional soil scientist section. Each section shall consist of the 3 members of the named profession appointed to the examining board and one public member appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(c) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of licenses, and all other matters of interest to either the professional geologist, hydrologist or soil scientist section shall be acted upon solely by the interested section.

(d) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the matter is of interest.

(3) AUCTIONEER BOARD. (a) There is created in the department of regulation and licensing an auctioneer board consisting of the following members appointed for 4-year terms:

1. Four members, each of whom is registered under ch. 480 as an auctioneer, or is an auction company representative, as defined in s. 480.01 (3), of an auction company that is registered under ch. 480 as an auction company.
2. Three public members.

(b) No member of the board may serve more than 2 terms.

(5) **CHIROPRACTIC EXAMINING BOARD.** There is created a chiropractic examining board in the department of regulation and licensing. The chiropractic examining board shall consist of 6 members, appointed for staggered 4-year terms. Four members shall be graduates from a school of chiropractic and licensed to practice chiropractic in this state. Two members shall be public members. No person may be appointed to the examining board who is in any way connected with or has a financial interest in any chiropractic school.

(5g) CONTROLLED SUBSTANCES BOARD. There is created in the department of regulation and licensing a controlled substances board consisting of the attorney general, the secretary of health and family services and the secretary of agriculture, trade and consumer protection, or their designees; the chairperson of the pharmacy examining board or a designee; and one psychiatrist and one pharmacologist appointed for 3-year terms,

(6) **DENTISTRY EXAMINING BOARD.** There is created a dentistry examining board in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

(a) Six dentists who are licensed under ch. 447.

(b) Three dental hygienists who are licensed under ch. 447. Notwithstanding s. 15.08 (1m) (a), the dental hygienist members may participate in the preparation and grading of licensing examinations for dental hygienists.

(c) Two public members.

(6m) HEARING AND SPEECH EXAMINING BOARD. There is created a hearing and speech examining board in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

(a) Three hearing instrument specialists licensed under subch. I of ch. 459.

(b) One otolaryngologist.

(c) 1. One audiologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One audiologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(d) 1. One speech–language pathologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One speech–language pathologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(e) Two public members. One of the public members shall be a hearing aid user.

(7) MEDICAL EXAMINING BOARD. (a) There is created a medical examining board in the department of regulation and licensing.

(b) The medical examining board shall consist of the following members appointed for staggered 4–year terms:

1. Nine licensed doctors of medicine.

2. One licensed doctor of osteopathy.

3. Three public members.

(c) The chairperson of the patients compensation fund peer review council under **s.** 655.275 shall serve as a nonvoting member of the medical examining board.

(7c) MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING, AND SOCIAL WORK EXAMINING BOARD. (a) There is created a marriage and family therapy, professional counseling, and social work examining board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

1. Four social worker members who are certified or licensed under ch. 457.

2. Three marriage and family therapist members who are licensed under ch. 457.

3. Three professional counselor members who are licensed under ch. 457.

4. Three public members who represent groups that promote the interests of consumers of services provided by persons who are certified or licensed under ch. 457.

(am) The 4 members appointed under par.(a) 1. shall consist of the following:

1. One member who is certified under ch. 457 as an advanced practice social worker.

2. One member who is certified under ch. 457 as an independent social worker.

3. One member who is licensed under ch. 457 as a clinical social worker.

4. At least one member who is employed as a social worker by a federal, state or local governmental agency.

(b) In operation, the examining board shall be divided into a social worker section, a marriage and family therapist section and a professional counselor section. The social worker section shall consist of the 4 social worker members of the examining board and one of the public members of the examining board. The marriage and family therapist section shall consist of the 3 marriage and family therapist members of the examining board and one of the public members of the examining board. The professional counselor section shall consist of the 3 professional counselor members of the examining board and one of the public members of the examining board.

(c) All matters pertaining to granting, denying, limiting, suspending, or revoking a certificate or license under ch. 457, and all other matters of interest to either the social worker, marriage and family therapist, or professional counselor section shall be acted upon solely by the interested section of the examining board.

(d) All matters that the examining board determines are of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(e) Notwithstanding **s.** 15.08 (4) (a), at a joint meeting of all sections of the examining board, a majority of the examining board constitutes a quorum to do business only if at least 8 members are present at the meeting. At a meeting of a section of the examining board or a joint meeting of 2 or more of the sections of the examining board, each member who is present has one vote, except as provided in par.(f).

(f) At a joint meeting of the social worker section and one or both of the other sections of the examining board, each member who is present has one vote, except that the social worker members each have three–fourths of a vote if all 4 of those members are present.

(7g) BOARD OF NURSING There is created a board of nursing in the department of regulation and licensing. The board of nursing shall consist of the following members appointed for staggered 4-year terms: 5 currently licensed registered nurses under ch. 441; 2 currently licensed practical nurses under ch. 441; and 2 public members. Each registered nurse member shall have graduated from a program in professional nursing and each practical nurse member shall have graduated from a program in practical nursing accredited by the state in which the program was conducted.

(7m) NURSING HOME ADMINISTRATOR EXAMINING BOARD. There is created a nursing home administrator examining board in the department of regulation and licensing consisting of 9 members appointed for staggered 4–year terms and the secretary of health and family services or a designee, who shall serve as a nonvoting member. Five members shall be nursing home administrators licensed in this state. One member shall be a physician. One member shall be a nurse licensed under ch. 441. Two members shall be public members. No more than 2 members may be officials or full–time employees of this state.

(8) OPTOMETRY EXAMINING BOARD. There is created an optometry examining board in the department of regulation and licensing. The optometry examining board shall consist of 7 members appointed for staggered 4–year terms. Five of the members shall be licensed optometrists in this state. Two members shall he public members.

(9) PHARMACY EXAMINING BOARD. There is created a pharmacy examining board in the department of regulation and licensing. The pharmacy examining board shall consist of 7 members appointed for staggered 4–year terms. Five of the members shall be licensed to practice pharmacy in this state. Two members shall be public members.

(10m) PSYCHOLOGY EXAMINING BOARD. There is created in the department of regulation and licensing a psychology examining board consisting of 6 members appointed for staggered 4–year terms. Four of the members shall be psychologists licensed in this state. Each of the psychologist members shall represent a different specialty area within the field of psychology. Two members shall be public members.

(10r) REAL ESTATE APPRAISERS BOARD. (a) There is created a real estate appraisers board in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

1. Three appraisers who are certified or licensed under ch. 458.

2. One assessor, as defined in **s.** 458.09 (1).

3. Three public members.

(b) Of the appraiser members of the board, one shall be certified under **s.** 458.06 as a general appraiser, one shall be certified under **s.** 458.06 as a residential appraiser and one shall be licensed under **s.** 458.08 as an appraiser. No public member of the board may be connected with or have any financial interest in an appraisal business or in any other real estate–related business. Section 15.08 (1m) (am) applies to the public members of the board. No member of the board may serve more than 2 consecutive terms.

(c) Notwithstanding **s.** 15.07 (4), a majority of the board constitutes a quorum to do business only if at least 2 of the members present are appraiser members and at least one of the members present is a public member.

(11) REAL ESTATE BOARD. There is created a real estate board in the department of regulation and licensing. The real estate board shall consist of 7 members appointed to staggered 4–year terms. Four of the members shall be real estate brokers or salespersons licensed in this state. Three members shall be public members. Section 15.08 (Im) (am) applies to the public members of the real estate board. No member may serve more than 2 terms. The real estate board does not have rule–making authority.

(12) VETERINARY EXAMINING BOARD. There is created a veterinary examining board in the department of regulation and licensing. The veterinary examining board shall consist of 8 members appointed for staggered 4–year terms. Five of the members shall be licensed veterinarians in this state. One member shall be a veterinary technician certified in this state. Two members shall be public

members. No member of the examining board may in any way be financially interested in any school having a veterinary department or a course of study in veterinary or animal technology.

(16) FUNERAL DIRECTORS EXAMINING BOARD. There is created a funeral directors examining board in the department of regulation and licensing. The funeral directors examining board shall consist of 6 members appointed for staggered 4–year terms. Four members shall be licensed funeral directors under ch. 445 in this state. Two members shall be public members.

(17) BARBERING AND COSMETOLOGY EXAMINING BOARD. There is created a barbering and cosmetology examining board in the department of regulation and licensing. The barbering and cosmetology examining board shall consist of 9 members appointed for 4–year terms. Four members shall be licensed barbers or cosmetologists, 2 members shall be public members, one member shall be a representative of a private school of barbering or cosmetology, one member shall be a representative of a public school of barbering or cosmetology and one member shall be a licensed electrologist. Except for the 2 members representing schools, no member may be connected with or have any financial interest in a barbering or cosmetology school.

History: 1973 c. 90, 156; 1975 c. 39, 86, 199, 200, 383, 422; 1977 c. 26, 29, 203; 1977 c. 418; 1979 c. 34 ss. 45, 47 to 52; 1979 c. 221, 304; 1981 c. 94 ss. 5, 9; 1981 c. 356; 1983 a. 27,403,485, 538; 1985 a. 340; 1987 a. 257 s. 2; 1987 a. 264,265,316; 1989 a. 316,340; 1991 a. 39, 78, 160, 189, 269; 1993 a. 16, 102, 463, 465, 491; 1995 a. 27 s. 9126 (19); 1995 a. 225; 1995 a. 305 s. 1; 1995 a. 321,417; 1997 a. 96,252,300; 2001 a. 16, 80.

A medical school instructor serving without compensation is ineligible to *serve* on the board of medical examiners. 62 Atty. Gen. 193.

An incumbent real estate examining board member is entitled to hold over in office until a successor is duly appointed and confirmed by the senate. The board was without authority to reimburse the nominee for expenses incurred in attending a meeting during an orientation period prior to confirmation. 63 Atty. Gen. 192.

15.406 Same; attached affiliated credentialing boards.

(1) PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a physical therapists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three physical therapists who are licensed under subch. III of ch. 448.

(am) One physical therapist assistant licensed under subch. III of ch. 448.

Note: Par. (am) is created eff. 4–1-04 by 2001 **Wis. Act** 70.

(b) One public member.

(2) DIETITIANS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a dietitians affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three dietitians who are certified under subch. V of ch. 448.

(b) One public member.

(3) PODIATRISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a podiatrists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three podiatrists who are licensed under subch. IV of ch. 448.

(b) One public member.

(4) ATHLETIC TRAINERS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an athletic trainers affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Four athletic trainers who are licensed under subch. VI of ch. 448 and who have not been issued a credential in athletic training by a governmental authority in a jurisdiction outside this state. One of the athletic trainer members may also be licensed under ch. 446 or 447 or subch. II, III or IV of ch. 448.

(b) One member who is licensed to practice medicine and surgery under subch. II of ch. 448 and who has experience with athletic training and sports medicine.

(c) One public member.

(5) OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an occupational therapists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three occupational therapists who are licensed under subch. VII of ch. 448.

(b) Two occupational therapy assistants who are licensed under subch. VI of ch. 448.

(c) Two public members.

History: 1993 a. 107,443; 1997 a. 75, 175; 1999 a. 9, 180; 2001 a. 70.

15.407 Same; councils.

(1m) RESPIRATORY CARE PRACTITIONERS EXAMINING COUNCIL. There is created a respiratory care practitioners examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity in the formulating of rules to be promulgated by the medical examining board for the regulation of respiratory care practitioners. The respiratory care practitioners examining council shall consist of 3 certified respiratory care practitioners, each of whom shall have engaged in the practice of respiratory care for at least 3 years preceding appointment, one physician and one public member. The respiratory care practitioner and physician members shall be appointed by the medical examining board. The members of the examining council shall serve 3–year terms. Section 15.08 (1) to (4) (a) and (6) to (10) shall apply to the respiratory care practitioners examining council.

(2) COUNCIL ON PHYSICIAN ASSISTANTS. There is created a council on physician assistants in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council's membership shall consist of:

(a) The vice chancellor for health sciences of the University of Wisconsin–Madison or the vice chancellor's designee.

(b) One public member appointed by the governor for a 2–year term.

(c) Three physician assistants selected by the medical examining board for staggered 2–year terms.

(2m) PERFUSIONISTS EXAMINING COUNCIL. There is created a perfusionists examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Three licensed perfusionists appointed by the medical examining board.

(b) One physician who is a cardiothoracic surgeon or a cardiovascular anesthesiologist and who is appointed by the medical examining board.

(c) One public member appointed by the governor.

(3) EXAMINING COUNCILS; BOARD OF NURSING. The following examining councils are created in the department of regulation and licensing to serve the board of nursing in an advisory capacity. Section 15.08 (1) to (4) (a) and (6) to (10), applies to the examining councils.

(a) *Registered nurses.* There is created an examining council on registered nurses to consist of 4 registered nurses of not less than 3 years' experience in nursing, appointed by the board of nursing for staggered 4–year terms.

(b) *Practical nurses.* There is created an examining council on licensed practical nurses to consist of one registered nurse, 3 licensed practical nurses and one registered nurse who is a faculty member of an accredited school for practical nurses, appointed by the board of nursing for staggered 3–year terms. No member may be a member of the examining council on registered nurses.

(4) COUNCIL ON SPEECH–LANGUAGE PATHOLOGY AND AUDIOLOGY. There is created a council on speech–language pathology and audiology in the department of regulation and licensing and serving the hearing and speech examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Three speech–language pathologists licensed under subch. II of ch. 459.

(b) Two audiologists licensed under subch. III of ch. 459.

(5) COUNCIL ON REAL ESTATE CURRICULUM AND EXAMINATIONS. There is created in the department of regulation and licensing a council on real estate curriculum and examinations consisting of 7 members appointed for 4–year terms. Five members shall be real estate brokers or salespersons licensed under ch. 452 and 2 members shall be public members. Of the real estate broker or salesperson members, one member shall be a member of the real estate board appointed by the real estate board, at least 2 members shall be

licensed real estate brokers with at least 5 years of experience as real estate brokers, and at least one member shall be a licensed real estate salesperson with at least 2 years of experience as a real estate salesperson. Of the 2 public members, at least one member shall have at least 2 years of experience in planning or presenting real estate educational programs. No member of the council may serve more than 2 consecutive terms.

(6) PHARMACIST ADVISORY COUNCIL. There is created a pharmacist advisory council in the department of regulation and licensing and serving the pharmacy examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Two pharmacists licensed under ch. 450 appointed by the chairperson of the pharmacy examining board.

(b) One physician licensed under subch. II of ch. 448 appointed by the chairperson of the medical examining board.

(c) One nurse licensed under ch. 441 appointed by the chairperson of the board of nursing.

(7) MASSAGE THERAPY AND BODYWORK COUNCIL. (a) There is created a massage therapy and bodywork council in the department of regulation and licensing, serving the department in an advisory capacity. The council shall consist of 7 members, appointed for 4–year terms, who are massage therapists or bodyworkers certified under ch. 460 and who have engaged in the practice of massage therapy or bodywork for at least 2 years preceding appointment.

(b) In appointing members under par. (a), the governor shall ensure, to the maximum extent practicable, that the membership of the council is diverse, based on all of the following factors:

1. Massage or bodywork therapies practiced in this state.

2. Affiliation and nonaffiliation with a professional association for the practice of massage therapy or bodywork.

3. Professional associations with which massage therapists or bodyworkers in this state are affiliated.

4. Practice in urban and rural areas in this state.

Note: Sub. (7) is created eff. 3–1–03 by 2001 Wis. Act 74.

History: 1973 c. 149; 1975 c. 39, 86, 199, 383, 422; 1977 c. 418; 1979 c. 34 ss. 46, 53; 1981 c. 390 s. 252; 1985 a. 332 s. 251 (1); 1987 a. 399; 1989 a. 229, 316, 341, 359; 1991 a. 316; 1993 a. 105, 107; 1997 a. 68, 175; 1997 a. 237 s. 727m; 1999 a. 32, 180, 186; 2001 a. 74.89.

CHAPTER 23
CONSERVATION

23.32 **Wetlands mapping.**

Cross–reference: *See* definitions **in** s. 24.01.

23.32 Wetlands mapping. (1) In this section "wetland" means an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

(2) (a) For the purpose of advancing the conservation of wetland resources the department shall prepare or cause to be prepared maps that, at a minimum, identify as accurately as is practicable the individual wetlands in the state which have an area of 5 acres or more.

(b) Mapping priorities, technical methods and standards to be used in delineating wetlands and a long–term schedule which will result in completion of the mapping effort at the earliest possible date shall be developed by the department in cooperation with those other state agencies having mapping, aerial photography and comprehensive planning responsibilities.

(c) Wetland maps shall be prepared utilizing the best methods practicable with the funds available for that purpose and shall be based upon data such as soil surveys, aerial photographs and existing wetland surveys and may be supplemented by on–site surveys and other studies.

(d) The department shall cooperate with the land information board under s. 16.967 in conducting wetland mapping activities or any related land information collection activities.

NOTE: Par. (d) *is* **repealed eff. 9–1-03 by** 1997 **Wis. Act 27.**

(3) (a) The department may sell, and may enter into contracts to sell, wetland maps. The fees for the maps shall be as follows: 1. For each paper map, $5. 2. For each aerial photograph, $10. 3. For each copy of a digital wetland database covering one township, $15.

(b) The department, by rule, may increase any fee specified in par. (a). Any increased fee must at least equal the amount necessary to cover the costs of preparing, producing and selling the wetland maps.

History: 1977 c. 374; 1979 c. 221, 1983 a. 21; 1985 a. 29; 1989 a. 31; 1995 a. 27; 1997 a. 27; 1999 a. 147, 185.

CHAPTER 66
GENERAL MUNICIPALITY LAW

SUBCHAPTER Vl
FINANCE; REVENUES
66.0617 Impact fees.

SUBCHAPTER X
PLANNING, HOUSING AND TRANSPORTATION
66.1011 Local equal opportunities.

NOTE: Chapter 66 was substantially renumbered and revised by 1999 Wis. Act 150. Extensive explanatory notes are contained in the act. A conversion table showing the location of the prior statutes in the new chapter is located at the end of this chapter.

SUBCHAPTER VI
FINANCE; REVENUES

66.0617 Impact fees. (1) DEFINITIONS. In this section:

(a) "Capital costs" means the capital costs to construct, expand or improve public facilities, including the cost of land, and including legal, engineering and design costs to construct, expand or improve public facilities, except that not more than 10% of capital costs may consist of legal, engineering and design costs unless the political subdivision can demonstrate that its legal, engineering and design costs which relate directly to the public improvement for which the impact fees were imposed exceed 10% of capital costs. "Capital costs" does not include other noncapital costs to construct, expand or improve public facilities or the costs of equipment to construct, expand or improve public facilities.

(b) "Developer" means a person that constructs or creates a land development.

(c) "Impact fees" means cash contributions, contributions of land or interests in land or any other items of value that are imposed on a developer by a political subdivision under this section.

(d) "Land development" means the construction or modification of improvements to real property that creates additional residential dwelling units within a political subdivision or that results in nonresidential uses that create a need for new, expanded or improved public facilities within a political subdivision.

(e) "Political subdivision" means a city, village, town or county.

(f) "Public facilities" means highways, as defined in s. 340.01 (22), and other transportation facilities, traffic control devices, facilities for collecting and treating sewage, facilities for collecting and treating storm and surface waters, facilities for pumping, storing and distributing water, parks, playgrounds and other recreational facilities, solid waste and recycling facilities, fire protection facilities, law enforcement facilities, emergency medical facilities and libraries except that, with regard to counties, "public facilities" does not include highways, as defined in s. 340.01 (22), other transportation facilities or traffic control devices. "Public facilities" does not include facilities owned by a school district.

(g) "Service area" means a geographic area delineated by a political subdivision within which there are public facilities.

(h) "Service standard" means a certain quantity or quality of public facilities relative to a certain number of persons, parcels of land or other appropriate measure, as specified by the political subdivision.

(2) GENERAL. (a) Subject to par. (am), a political subdivision may enact an ordinance under this section that imposes impact fees on developers to pay for the capital costs that are necessary to accommodate land development.

(am) No county may impose an impact fee under this section to recover costs related to transportation projects.

(b) Subject to par. (c), this section does not prohibit or limit the authority of a political subdivision to finance public facilities by any other means authorized by law, except that the amount of an impact fee imposed by a political subdivision shall be reduced, under sub. (6) (d), to compensate for any other costs of public facilities imposed by the political subdivision on developers to provide or pay for capital costs.

(c) Beginning on May 1, 1995, a political subdivision may impose and collect impact fees only under this section.

(3) PUBLIC HEARING; NOTICE. Before enacting an ordinance that imposes impact fees, or amending an existing ordinance that imposes impact fees, a political subdivision shall hold a public hearing on the proposed ordinance or amendment. Notice of the public hearing shall be published as a class 1 notice under ch. 985, and shall specify where a copy of the proposed ordinance or amendment and the public facilities needs assessment may be obtained.

(4) PUBLIC FACILITIES NEEDS ASSESSMENT. (a) Before enacting an ordinance that imposes impact fees or amending an ordinance that imposes impact fees by revising the amount of the fee or altering the public facilities for which impact fees may be imposed, a political subdivision shall prepare a needs assessment for the public facilities for which it is anticipated that impact fees may be imposed. The public facilities needs assessment shall include, but not be limited to, the following:

1. An inventory of existing public facilities, including an identification of any existing deficiencies in the quantity or quality of those public facilities, for which it is anticipated that an impact fee may be imposed.

2. An identification of the new public facilities, or improvements or expansions of existing public facilities, that will be required because of land development for which it is anticipated that impact fees may be imposed. This identification shall be based on explicitly identified service areas and service standards.

3. A detailed estimate of the capital costs of providing the new public facilities or the improvements or expansions in existing public facilities identified in subd. 2., including an estimate of the effect of recovering these capital costs through impact fees on the availability of affordable housing within the political subdivision.

(b) A public facilities needs assessment or revised public facilities needs assessment that is prepared under this subsection shall be available for public inspection and copying in the office of the clerk of the political subdivision at least 20 days before the hearing under sub. (3).

(5) DIFFERENTIAL FEES, IMPACT FEE ZONES. (a) An ordinance enacted under this section may impose different impact fees on different types of land development.

(b) An ordinance enacted under this section may delineate geographically defined zones within the political subdivision and may impose impact fees on land development in a zone that differ from impact fees imposed on land development in other zones within the political subdivision. The public facilities needs assessment that is required under sub. (4) shall explicitly identify the differences, such as land development or the need for those public facilities, which justify the differences between zones in the amount of impact fees imposed.

(6) STANDARDS FOR IMPACT FEES. Impact fees imposed by an ordinance enacted under this section:

(a) Shall bear a rational relationship to the need for new, expanded or improved public facilities that are required to serve land development.

(b) May not exceed the proportionate share of the capital costs that are required to serve land development, as compared to existing uses of land within the political subdivision.

(c) Shall be based upon actual capital costs or reasonable estimates of capital costs for new, expanded or improved public facilities.

(d) Shall be reduced to compensate for other capital costs imposed by the political subdivision with respect to land development to provide or pay for public facilities, including special assessments, special charges, land dedications or fees in lieu of land dedications under ch. 236 or any other items of value.

(e) Shall be reduced to compensate for moneys received from the federal or state government specifically to provide or pay for the public facilities for which the impact fees are imposed.

(f) May not include amounts necessary to address existing deficiencies in public facilities.

(g) Shall be payable by the developer to the political subdivision, either in full or in installment payments that are approved by the political subdivision, before a building permit

may be issued or other required approval may be given by the political subdivision.

(7) LOW-COST HOUSING. An ordinance enacted under this section may provide for an exemption from, or a reduction in the amount of, impact fees on land development that provides low–cost housing, except that no amount of an impact fee for which an exemption or reduction is provided under this subsection may be shifted to any other development in the land development in which the low–cost housing is located or to any other land development in the political subdivision.

(8) REQUIREMENTS FOR IMPACT FEE REVENUES. Revenues from impact fees shall be placed in a segregated, interest–bearing account and shall be accounted for separately from the other funds of the political subdivision. Impact fee revenues and interest earned on impact fee revenues may be expended only for capital costs for which the impact fees were imposed.

(9) REFUND OF IMPACT FEES. An ordinance enacted under this section shall specify that impact fees that are imposed and collected by a political subdivision but are not used within a reasonable period of time after they are collected to pay the capital costs for which they were imposed shall be refunded to the current owner of the property with respect to which the impact fees were imposed. The ordinance shall specify, by type of public facility, reasonable time periods within which impact fees must be spent or refunded under this subsection. In determining the length of the time periods under the ordinance, a political subdivision shall consider what are appropriate planning and financing periods for the particular types of public facilities for which the impact fees are imposed.

(10) **APPEAL.** A political subdivision that enacts an impact fee ordinance under this section shall, by ordinance, specify a procedure under which a developer upon whom an impact fee is imposed has the right to contest the amount, collection or use of the impact fee to the governing body of the political subdivision.

History: 1993 **a.** 305; *1997* a. **27;** *1999* a. *150* s. 524; *Stats.* 1999s. *66.0617.*

Rough Proportionality and Wisconsin's New Impact Fee. Ishikawa. Wis. Law. March 1995.

SUBCHAPTER X
PLANNING, HOUSING AND TRANSPORTATION

66.1011 Local equal opportunities. (1) DECLARATION OF POLICY. The right of all persons to have equal opportunities for housing regardless of their sex, race, color, physical condition, disability as defined in s. 106.50 (1m) (g), sexual orientation as defined in s. 11 1.32 (13m), religion, national origin, marital status, family status as defined in s. 106.50 (1m) (k), lawful source of income, age or ancestry is a matter both of statewide concern under ss. 101.132 and 106.50 and also of local interest under this section and s. 66.0125. The enactment of ss. 101.132 and 106.50 by the legislature does not preempt the subject matter of equal opportunities in housing from consideration by political subdivisions, and does not exempt political subdivisions from their duty, nor deprive them of their right, to enact ordinances which prohibit discrimination in any type of housing solely on the basis of an individual being a member of a protected class.

(1m) DEFINITIONS. In this section:

(a) "Aggrieved person" has the meaning given in s. 106.50 (lm) (b).

(b) "Complainant" has the meaning given in s. 106.50 (1m) (c).

(c) "Discriminate" has the meaning given in s. 106.50 (1m) (h).

(d) "Member of a protected class" has the meaning given in s. 106.50 (lm) (nm).

(e) "Political subdivision" means a city, village, town or county.

(2) ANTIDISCRIMINATION HOUSING ORDINANCES. Political subdivisions may enact ordinances prohibiting discrimination in housing within their respective boundaries solely on the basis of an individual being a member of a protected class. An ordinance may be similar to ss. 101.132 and 106.50 or may be more inclusive in its terms or in respect to the different types of housing subject to its provisions. An ordinance establishing a forfeiture as a penalty for violation may not be for an amount that is less than the statutory forfeitures under s. 106.50 (6) (h). An ordinance may permit a complainant, aggrieved person or respondent to elect to remove the action to circuit court after a finding has been made that there is reasonable cause to believe that a violation of the ordinance has occurred. An ordinance may authorize the political subdivision, at any time after a complaint has been filed alleging an ordinance violation, to file a complaint in circuit court seeking a temporary injunction or restraining order pending final disposition of the complaint.

(3) CONTINGENCY RESTRICTION. No political subdivision may enact an ordinance under sub. (2) that contains a provision making its effective date or the operation of any of its provisions contingent on the enactment of an ordinance on the same or similar subject matter by one or more other political subdivisions.

History: 1971 **c.** 185 s. 7, 1975 **c.** 94, 275, 422; 1977 c. 418 **s.** 929 (55); 1981 **c.** 112; 1981 **c.** 391 s. 210; 1985 **a.** 29; 1989 **a.** 47; 1991 **a.** 295; 1995 **a.** 27: 1997 **a.** 237; 1999 a. 82; 1999 a. 150 s. 447; Stats. 1999 s. 66.1011; 1999 a. 186 ss. 61, 62.

NOTE: 1991 **Wis. Act 295, which affected this section, contains extensive legislative council notes.**

***An* ordinance provision banning discrimination against "cohabitants" was outside the authority** of **sub.** (2) **and was invalid. County** of **Dane v. Norman,** 174 Wis. **2d** 683,497 N.W.2d 714 (1993)

CHAPTER 70
GENERAL PROPERTY TAXES

70.043 Mobile homes.
70.095 Assessment roll; time–share property

70.043 Mobile homes. (1) A mobile home, as defined in s. 66.0435 (1) (d), is an improvement to real property if it is connected to utilities and is set upon a foundation upon land which is owned by the mobile home owner. In this section, a mobile home is "set upon a foundation" if it is off its wheels and is set upon some other support.

(2) A mobile home, as defined in s. 66.0435 (1) (d), is personal property if the land upon which it is located is not owned by the mobile home owner or if the mobile home is not set upon a foundation or connected to utilities.

History: 1983 a. 342; 1985 a. 332 s. 253; 1999 a. 150 s. 672.

Under sub. (1), a mobile home is an improvement to real property when the home is resting for more than a temporary time, in whole or in part, on some other means of support than its wheels. Ahrens v. Town of Fulton, 2002 WI 29, 251 Wis. 2d 135, 641 N.W.2d 423.

70.095 Assessment roll; time–share property. For the purpose of time–share property, as defined in s. 707.02 (32), a time–share instrument, as defined in s. 707.02 (28), shall provide a method for allocating real property taxes among the time–share owners, as defined in s. 707.02 (31), and a method for giving notice of an assessment and the amount of property tax to the owners. Only one entry shall be made on the assessment roll for each building unit within the time–share property, which entry shall consist of the cumulative real property value of all time–share interests in the unit.

History: 1983 a. 432; 1985 a. 188 s. 16; 1987 a. 399

CHAPTER 74
PROPERTY TAX COLLECTION

SUBCHAPTER III
PAYMENT OF TAXES
74.15 Payment of real property taxes by grantor and grantee

SUBCHAPTER VI
RETURN AND COLLECTION OF DELINQUENT TAXES
74.47 Interest and penalty on delinquent amounts.

NOTE: 1987 Wisconsin Act 378, which repealed and recreated Chapter 74, contains notes explaining the revision.

SUBCHAPTER III
PAYMENT OF TAXES

74.15 Payment of real property taxes by grantor and grantee. If real property is conveyed and there is no valid written agreement between the grantor and the grantee concerning the payment of real property taxes for the year in which the conveyance is made, the grantor shall pay to the grantee an amount equal to one–twelfth of the taxes assessed against the property for the calendar year preceding the year in which the conveyance is made multiplied by the number of months in the calendar year of the conveyance which have elapsed before the date of the conveyance, including the month in which the conveyance is made if the conveyance occurs after the 15th day of the month.

History: 1987 a. 378; 1989 a. 104.

SUBCHAPTER VI
RETURN AND COLLECTION OF DELINQUENT TAXES

74.47 Interest and penalty on delinquent amounts. (1) INTEREST. The interest rate on delinquent general property taxes, special charges, special assessments and special taxes included in the tax roll for collection is one percent per month or fraction of a month.

(2) PENALTY ALLOWED. (a) Any county board and the common council of any city authorized to act under s. 74.87 may by ordinance impose a penalty of up to 0.5% per month or fraction of a month, in addition to the interest under sub. (1), on any delinquent general property taxes, special assessments, special charges and special taxes included in the tax roll.

(b) Any ordinance enacted under par. (a) may specify that the penalty under this subsection shall apply to any general property taxes, special assessments, special charges and special taxes that are delinquent on the effective date of the ordinance.

(3) DISTRIBUTION. (a) All interest and penalties collected by the county treasurer on payments of real property taxes and special taxes shall be retained by the county treasurer for the county.

(b) All interest and penalties on payments of delinquent special assessments and special charges collected by the county treasurer of a county which settles for unpaid special assessments and special charges under s. 74.29 shall be retained by the county treasurer for the county.

(c) All interest on payments of delinquent special assessments and special charges collected by the county treasurer of a county which does not settle for unpaid special assessments and special charges under s. 74.29 shall, along with the delinquent amounts that have been paid, be paid to the taxing jurisdiction which assessed the special assessment or special charge as follows:

1. If collected on or before July 31, as part of the settlement under s. 74.29.

2. If collected after July 31 and before issuance of the tax certificate under s. 74.57, on or before September 15.

(d) All interest and penalties on delinquent general property taxes, special assessments, special charges and special taxes collected on or before July 31 by the treasurer of a taxation district which has enacted an ordinance under s. 74.12 shall be retained by the taxation district treasurer for the taxation district.

(e) All interest and penalties on payments of delinquent personal property taxes collected by the taxation district treasurer shall be retained by the taxation district treasurer for the taxation district.

(f) All penalties on payments of delinquent special assessments and special charges collected by the county treasurer of a county which does not settle for unpaid special assessments and special charges shall be retained by the county treasurer for the county.

History: 1987 a. 378; 1989 a. 104; 1991 a. 39.

CHAPTER 77
TAXATION OF FOREST CROPLANDS; REAL ESTATE TRANSFER FEES; SALES AND USE TAXES; COUNTY AND SPECIAL DISTRICT SALES AND USE TAXES; MANAGED FOREST LAND; RECYCLING SURCHARGE; LOCAL FOOD AND BEVERAGE TAX; LOCAL RENTAL CAR TAX; PREMIER RESORT AREA TAXES; STATE RENTAL VEHICLE FEE; DRY CLEANING FEES

SUBCHAPTER II
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SUBCHAPTER II
REAL ESTATE TRANSFER FEE

77.21 Definitions. In this subchapter: **(1)** "Conveyance" includes deeds and other instruments for the passage of ownership interests in real estate, including contracts and assignments of a vendee's interest therein, including instruments that are evidence of a sale of time–share property, as defined in s. 707.02 (32), and including leases for at least 99 years but excluding leases for less than 99 years, easements and wills.

(Ie) "Mergers of corporations" means the merger or combination of 2 or more corporations, non-stock corporations, limited liability companies, or limited partnerships, or any combination thereof, under a plan of merger or a plan of consolidation permitted by the laws that govern the entities.

(Ik) "Partition" means the division among several persons of real property, including noncontiguous real property, that belongs to them as co–owners.

(Im) "Real estate" includes, but is not limited to, fixtures; roots, vines and trees of perennial crops; stock in a cooperative building; improvements on leased land; timber; and minerals.

(2) "Register" means the register of deeds for the county in which particular real estate is located.

(3) "Value" means:

(a) In the case of any conveyance not a gift, the amount of the full actual consideration paid therefore or to be paid, including the amount of any lien or liens thereon; and

(b) In case of a gift, or any deed of nominal consideration or any exchange of properties, the estimated price the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and at prevailing general price levels.

History: 1971 c. 150; 1989 a. 31; 1991 a. 39; 1993 a. 112; 1999 a. 9; 2001 a. 44.

Cross **Reference:** See also ch. Tax 15, Wis. adm. code. A niemorandum announcing a reorganization of a Iand-owning partnership into a limited liability company and that the LLC was now the owner of the real estate was a document intended to transfer title to real estate. The receipt by members of ownership interests in the LLC was for value so that there was a conveyance under sub.(1) subject to taxation under s. 77.22. Wolter v. DOR, 231 Wis. 2d 651, 605 N.W.2d 283 (Ct. App. 1999).

77.22 Imposition of real estate transfer fee. (1) There is imposed on the grantor of real estate a real estate transfer fee at the rate of 30 cents for each $100 of value or fraction thereof on every conveyance not exempted or excluded under this subchapter. In regard to land contracts the value is the total principal amount that the buyer agrees to pay the seller for the real estate. This fee shall be collected by the register at the time the instrument of conveyance is submitted for recording. Except as provided in s. 77.255, at the time of submission the grantee or his or her duly authorized agent or other person acquiring an ownership interest under the instrument, or the clerk of court in the case of a foreclosure under s. 846.16 (1), shall execute a return, signed by both grantor and grantee, on the form prescribed under sub.(2). The register shall enter the fee paid on the face of the deed or other instrument of conveyance before recording, and, except as provided in s. 77.255, submission of a completed real estate transfer return and collection by the register of the fee shall be prerequisites to acceptance of the conveyance for recording. The register shall have no duty to determine either the correct value of the real estate transferred or the validity of any exemption or exclusion claimed. If the transfer is not subject to a fee as provided in this subchapter, the reason for exemption shall be stated on the face of the conveyance to be recorded by reference to the proper subsection under s. 77.25.

(2) The secretary of revenue shall prescribe the form required under sub.(1). The form shall include an application for a credit under s. 79.10 (5) and shall provide for the submission of the following:

(a) The value of the ownership interest transferred by the instrument of conveyance.

(b) The amount of the fee payable under this section.

(c) Whether the real estate transferred is subject to certification under s. 101.122 (4) (a), waiver under s. 101.122 (4) (b) or stipulation under s. 101.122 (4) (c).

(d) If the real estate transferred is not subject to certification under s. 101.122 (4) (a), waiver under s. 101.122 (4) (b) or stipulation under s. 101.122 (4) (c), the reason why it is not so subject or the form prescribed by the department of commerce under s. 101.122 (6).

(e) The financing terms under which agricultural land is transferred that are relevant to determining only the value of the property.

(f) Any other information the secretary requires.

History: 1971 c. 150; 1977 c. 29; 1981 c. 20; 1985 a. 54; 1985 a. 174 ss. 1, 2, 7; 1985 a. 332; 1987 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 307; 1995 a. 27 ss. 3475m to 3476, 9116 (5).

The transfer by all owners of property held as an in tenancy in common to a partnership consisting of all the original tenants in common was a taxable conveyance. DOR v. Mark, 168 Wis. 2d 288, 483 N.W.2d 302 (Ct. App. 1992).

A niemorandum announcing a reorganization of a land-owning partnership into a lindted liability company and that the LLC was now the owner of the real estate was a docunient intended to transfer title to real estate. The receipt by members of ownership interests in the LLC was for value so that there was a conveyance under s. 77.21 (1) subject to taxation under sub.(1). Wolter v. DOR, 231 Wis. 2d 651, 605 N.W.2d 283 (Ct. App. 1999).

77.27 Penalty for falsifying value. Any person who intentionally falsifies value on a return required to be filed under this subchapter may for each such offense be fined not more than $1,000 or imprisoned in the county jail not more than one year, or both.

This section is violated when a value is intentionally falsified on a Wisconsin real estate transfer return. Falsely declaring a transfer as a sale when it is in fact a gift does not constitute a violation, nor will it support the issuance of a false swearing complaint under s. 946.32, but it may constitute a gift tax avoidance in violation of s. 72.86 (6), 1989 stats. 62 Atty. Gen. 251.

SUBCHAPTER III
GENERAL SALES AND USE TAX

77.52 Imposition of retail sales tax. (1) For the privilege of selling, leasing or renting tangible personal property, including accessories, components, attachments, parts, supplies and materials, at retail a tax is imposed upon all retailers at the rate of 5% of the gross receipts from the sale, lease or rental of tangible personal property, including accessories, components, attachments, parts, supplies and materials, sold, leased or rented at retail in this state.

(Irn) The sales tax applies to the receipts of operators of vending machines located on army, navy or air force installations in this state and dispensing tangible personal property. This

subsection shall not be deemed to require payment of sales tax measured by receipts of such operators who lease the machines to exchanges of the army, air force, navy or marine corps which acquire title to and sell the merchandise through the machines to authorized purchasers from such exchanges. The term "operator" as used in this subsection, means any person who owns or possesses vending machines and who controls the operations of the machines as by placing the merchandise therein or removing the coins there from, and who has access thereto for any purpose connected with the sale of merchandise through the machines, and whose compensation is based, in whole or in part, upon receipts from sales made through such machines.

(2) For the privilege of selling, performing or furnishing the services described under par.(a) at retail in this state to consumers or users, a tax is imposed upon all persons selling, performing or furnishing the services at the rate of 5% of the gross receipts from the sale, performance or furnishing of the services.

(a) The tax imposed herein applies to the following types of services:

1. The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations, if the use of the rooms or lodging is not fixed at the time of sale as to the starting day or the lodging unit. In this subdivision, "transient" means any person residing for a continuous period of less than one month in a hotel, motel or other furnished accommodations available to the public. In this subdivision, "hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins and any other building or group of buildings in which accommodations are available to the public, except accommodations, including mobile homes as defined in s. 66.0435 (1) (d), rented for a continuous period of more than one month and accommodations furnished by any hospitals, sanatoriums, or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes provided that no part of the net earnings of such corporations and associations inures to the benefit of any private shareholder or individual. In this subdivision, "one month" means a calendar month or 30 days, whichever is less, counting the first day of the rental and not counting the last day of the rental.

2. The sale of admissions to amusement, athletic, entertainment or recreational events or places except county fairs, the sale, rental or use of regular bingo cards, extra regular cards, special bingo cards and the sale of bingo supplies to players and the furnishing, for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational devices or facilities, including the sale or furnishing of use of recreational facilities on a periodic basis or other recreational rights, including but not limited to membership rights, vacation services and club memberships.

5. a. The sale of telecommunications services, except services subject to 4 USC 116 to 126, as amended by **P.L.** 106–252, that either originate or terminate in this state; except services that are obtained by means of a toll–free number, that originate outside this state and that terminate in this state; and are charged to a service address in this state, regardless of the location where that charge is billed or paid; and the sale of the rights to purchase telecommunications services, including purchasing reauthorization numbers, by paying in advance and by using an access number and authorization code, except sales that are subject to subd. 5. b.

b. The sale of services subject to 4 USC 116 to 126, as amended by **P.L.** 106–252, if the customer's place of primary use of the services is in this state, as determined under 4 USC 116 to 126, as amended by **P.L.** 106–252. For purposes of this subd. 5. b., all of the provisions of 4 USC 116 to 126, as amended by **P.L.** 106–252, are adopted, except that if 4 USC 116 to 126, as amended by **P.L.** 106–252, or the application of 4 USC 116 to 126, as amended by **P.L.** 106–252, is found unconstitutional the sale of telecommunications services is subject to the tax imposed under this section as provided in subd. 5. a.

5m. The sale of services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction, but not including those services if they are merely an incidental, **as** defined in s. 77.51 (5), element of another service that is sold to that purchaser and is not taxable under this subchapter.

6. Laundry, dry cleaning, pressing and dyeing services, except when performed on raw materials or goods in process destined for sale, except when performed on cloth diapers by a diaper service and except when the service is performed by the customer through the use of coin-operated, self–service machines.

7. Photographic services including the processing, printing and enlarging of film as well as the service of photographers for the taking, reproducing and sale of photographs.

9. Parking or providing parking space for motor vehicles and aircraft for a consideration and docking or providing storage space for boats for a consideration.

10. Except for installing or applying tangible personal property which, when installed or applied, will constitute an addition or capital improvement of real property, the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of all items of tangible personal property unless, at the time of such repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance, a sale in this state of the type of property repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or maintained would have been exempt to the customer from sales taxation under this subchapter, other than the exempt sale of a motor vehicle or truck body to a nonresident under s. 77.54 (5) (a) and other than nontaxable sales under s. 77.51 (14r). For purposes of this paragraph, the following items shall be considered to have retained their character as tangible personal property, regardless of the extent to which any such item is fastened to, connected with, or built into real property: furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and radio antennas, incinerators, television receivers and antennas, record players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps, electronic dust collectors, grills and rotisseries, bar equipment, intercoms, recreational, sporting, gymnasium and athletic goods and equipment including by way of illustration but not of limitation bowling alleys, golf practice equipment, pool tables, punching bags, ski tows, and swimming pools; equipment in offices, business facilities, schools, and hospitals but not in residential facilities including personal residences, apartments, long–term care facilities, as defined under s. 16.009 (1) (em), state institutions, as defined under s. 101.123 (1) (i), Type 1 secured correctional facilities, as defined in s. 938.02 (19), or similar facilities including, by way of illustration but not of limitation, lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and business machines, ice and milk dispensers, beverage–making equipment, vending machines, soda fountains, steam warmers and tables, compressors, condensing units and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs. "Service" does not include services performed by veterinarians. The tax imposed under this subsection applies to the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of items listed in this subdivision, regardless of whether the installation or application of tangible personal property related to the items is an addition to or a capital improvement of real property, except that the tax imposed under this subsection does not apply to the original installation or the complete replacement of an item listed in this subdivision, if such installation or replacement is a real property construction activity under s. 77.51 (2).

11. The producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting. This subdivision does not apply to the printing or imprinting of tangible

personal property which will be subsequently transported outside the state for use outside the state by the consumer for advertising purposes.

12. The sale of cable television system services including installation charges. 20. The sale of landscaping and lawn maintenance services including landscape planning and counseling, lawn and garden services such as planting, mowing, spraying and fertilizing and shrub and tree services.

(am) For purposes of par.(a) 12. "cable television system" means any facility which, for a fee, regularly amplifies and transmits by wire, coaxial cable, light wave or microwave, simultaneously to 50 or more subscribers, programs broadcast by television or radio stations or originated by themselves or any other party. "Cable television system" does not include a master antenna system which serves one residential, commercial or government building or complex of buildings under common ownership or control if that facility does not provide any broadcast signals other than those which may be viewed in that facility.

(2m) (a) With respect to the services subject to tax under sub.(2), no part of the charge for the service may be deemed a sale or rental of tangible personal property if the property transferred by the service provider is incidental to the selling, performing or furnishing of the service, except as provided in par.(b).

(b) With respect to the services subject to tax under sub.(2) (a) 7., 10., 11. and 20., all property physically transferred to the customer in conjunction with the selling, performing or furnishing of the service is a sale of tangible personal property separate from the selling, performing or furnishing of the service.

(3) The taxes imposed by this section may be collected from the consumer or user.

(3m) In regard to the sale of the rights to purchase telecommunications services under sub.(2) (a) 5. a.:

(a) If the sale takes place at a retailer's place of business, the situs of the sale is that place.

(b) If the sale does not take place at a retailer's place of business and an item that will implement the right to purchase telecommunications services is shipped, the situs of the sale is the customer's shipping address.

(c) If the sale does not take place at a retailer's place of business and no item that will implement the right to purchase telecommunications services is shipped, the situs of the sale is the customer's billing address.

(3n) In regard to the sale of the rights to purchase telecommunications services under sub.(2) (a) 5. b., the situs of the sale is as determined under 4 USC 116 to 126, as amended by P.L. 106–252.

(4) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it, or any part thereof, will be refunded. Any person who violates this subsection is guilty of a misdemeanor.

(5) The department may by rule provide that the amount collected by the retailer from the consumer or user in reimbursement of the retailer's tax be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale.

(6) A retailer is relieved from liability for sales tax insofar as the measure of the tax is represented by accounts which have been found to be worthless and charged off for income or franchise tax purposes. If the retailer has previously paid the tax, the retailer may, under rules prescribed by the department, take as a deduction from the measure of the tax the amount found worthless and charged off for income or franchise tax purposes. If any such accounts are thereafter collected in whole or in part by the retailer, the amount as collected shall be included in the first return filed after such collection and the tax paid with the return.

(7) Every person desiring to operate as a seller within this state who holds a valid certificate under s. 73.03 (50) shall file with the department an application for a permit for each place of operations. Every application for a permit shall be made upon a form prescribed by the department and shall set forth the name under which the applicant intends to operate, the location of the applicant's place of operations, and the other information that the department requires. The application shall be signed by the owner if a sole proprietor; in the case of sellers other than sole proprietors, the application shall be signed by the person authorized to act on behalf of such sellers. A nonprofit organization that has gross receipts taxable under s. 77.54 (7m) shall obtain a seller's permit and pay taxes under this subchapter on all taxable gross receipts received after it is required to obtain that permit. If that organization becomes eligible later for the exemption under s. 77.54 (7m) except for its possession of a seller's permit, it may surrender that permit.

(9) After compliance with sub.(7) and s. 77.61 (2) by the applicant, the department shall grant and issue to each applicant a separate permit for each place of operations within the state. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of operations at the place designated in it. It shall at all times be conspicuously displayed at the place for which it was issued.

(11) If any person fails to comply with any provision of this subchapter relating to the sales tax or any rule of the department relating to the sales tax adopted under this subchapter, is delinquent in respect to any tax imposed by the department or fails timely to file any return or report in respect to any tax under ch. 71, 72, 76, 77, 78 or 139 after having been requested to file that return or report, the department upon hearing, after giving the person 10 days' notice in writing specifying the time and place of hearing and requiring the person to show cause why the permit should not be revoked or suspended, may revoke or suspend any one or more of the permits held by the person. The department shall give to the person written notice of the suspension or revocation of any of the permits. The notices required in this subsection may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. If the department suspends or revokes a permanent permit under this subsection, it may grant a temporary permit that is valid for one month and may then grant additional temporary permits if the person pays all amounts owed under this chapter for the month for which the previous temporary permit was issued. Persons who receive a temporary permit waive the notice requirement under s. 77.61 (2). The department shall not issue a new permanent permit after the revocation of a permit unless it is satisfied that the former holder of the permit will comply with the provisions of this subchapter, the rules of the department relating to the sales tax and the provisions relating to other taxes administered by the department.

(12) A person who operates as a seller in this state without a permit or after a permit has been suspended or revoked or has expired, unless the person has a temporary permit under sub.(11), and each officer of any corporation, partnership member, limited liability company member or other person authorized to act on behalf of a seller who so operates, is guilty of a misdemeanor. Permits shall be held only by persons actively operating as sellers of tangible personal property or taxable services. Any person not so operating shall forthwith surrender that person's permit to the department for cancellation. The department may revoke the permit of a person found not to be actively operating as a seller of tangible personal property or taxable services.

(13) For the purpose of the proper administration of this section and to prevent evasion of the sales tax it shall be presumed that all receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property or services is not a taxable sale at retail is upon the person who makes the sale unless that person takes from the purchaser a certificate to the effect that the property or service is purchased for resale or is otherwise exempt; except that no certificate is required for sales of cattle, sheep, goats, and pigs that are sold at a livestock market, as defined in s. 95.68 (1) (e) [s. 95.68 (1) (ag)], and no certificate is required for sales of commodities, as defined in 7 USC 2, that are consigned for sale in a warehouse in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the U.S. commodity futures trading commission if upon the sale the commodity is not removed from the warehouse.

NOTE: The bracketed language indicates the correct cross–reference. Corrective legislation is pending.

(14) (a) The certificate referred to in sub.(13) relieves the seller from the burden of proof only if any of the following is true: 1. The certificate is taken in good faith from a person who is engaged as a seller of tangible personal property or taxable services and who holds the permit provided for in sub.(9) and who, at the time

of purchasing the tangible personal property or services, intends to sell it in the regular course of operations or is unable to ascertain at the time of purchase whether the property or service will be sold or will be used for some other purpose. 2. The certificate is taken in good faith from a person claiming exemption.

(b) The certificate referred to in sub.(13) shall be signed by and bear the name and address of the purchaser, and shall indicate the general character of the tangible personal property or service sold by the purchaser and the basis for the claimed exemption. The certificate shall be in such form as the department prescribes.

(15) If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale, lease or rental in the regular course of the purchaser's operations, the use shall be taxable to the purchaser under s. 77.53 as of the time the property is first used by the purchaser, and the sales price of the property to the purchaser shall be the measure of the tax. Only when there is an unsatisfied use tax liability on this basis because the seller has provided incorrect information about that transaction to the department shall the seller be liable for sales tax with respect to the sale of the property to the purchaser.

(16) Any person who gives a resale certificate for property or services which that person knows at the time of purchase is not to be resold by that person in the regular course of that person's operations as a seller for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction is guilty of a misdemeanor. Any person certifying to the seller that the sale of property or taxable service is exempt, knowing at the time of purchase that it is not exempt, for the purpose of evading payment to the seller of the amount of the tax applicable to the transaction, is guilty of a misdemeanor.

(17) If a purchaser gives a certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

(17m) (a) A person who holds a valid certificate issued under s. 73.03 (50) may apply for a direct pay permit by filing a completed form that the department prescribes.

(b) The department shall issue a direct pay permit, at the beginning of a taxpayer's taxable year, if the following requirements are fulfilled:

1. Because of the nature of the applicant's business, issuing the permit will significantly reduce the work of administering the taxes under this subchapter.

2. The applicant's accounting system will clearly indicate the amount of tax that the applicant owes under this subchapter.

3. The applicant makes enough purchases that are taxable under this subchapter to justify the expense of regular audits by the department.

4. The applicant is not liable for delinquent taxes; including costs, penalties, surcharges and interest; under ch. 71, 72, 76, 78 or 139 or this chapter of $400 or more if any part of the tax is delinquent for at least 5 months.

5. It is in this state's best interests to issue the permit.

6. The applicant purchases enough tangible personal property under circumstances that make it difficult to determine whether the property will be subject to a tax under this subchapter.

7. The applicant holds a permit under sub.(9) or is registered under s. 77.53 (9).

(c) A holder of a permit that is issued under par.(b) may not transfer or assign it.

(d) The department may revoke a permit that is issued under par.(b) if the holder misuses it or the department determines that revocation is in this state's best interests.

(e) **A** retailer may not collect a tax under this subchapter, and is not liable for a tax under this subchapter, on any sale, except those of a type specified as ineligible for an exemption under this paragraph by a rule promulgated by the department, for which the buyer furnishes to the retailer a copy of the permit that is issued under par.(b) or a statement that the buyer holds such a permit, a statement *of* that permit's number and a statement of the date that the permit was issued.

(f) A person who holds a permit that is issued under par.(b) shall keep a record of all retailers from whom the person made a purchase for which the person used a permit that is issued under par.(b) and shall do one of the following:

1. Fulfill the requirements for an exempt sale under par.(e) for every purchase that the person makes that may be exempt under that paragraph and pay the tax under s. 77.53 (1) to the department on all of those purchases for which the tax is due.

2. Maintain accounting records that show the tax under ss. 77.52 (1) and (2) and 77.53 (3) paid on each purchase during each reporting period under s. 77.58 and the total tax paid during each reporting period, pay the tax under ss. 77.52 (1) and (2) and 77.53 (3) on either all or none of the purchases made from each retailer during each reporting period and pay the tax under s. 77.53 (1) to the department on all of the purchases for which the tax is due.

(18) (am) If any retailer liable for any amount of tax under this subchapter sells out the retailer's business or stock of goods or quits the business, the retailer's successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the department that it has been paid or a certificate stating that no amount is due.

(bm) If the purchaser of a stock of goods fails to withhold from the purchase price as required, the purchaser becomes personally liable for the payment of the amount required to be withheld by the purchaser to the extent of the purchase price valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, or within 60 days from the date the former owner's records are made available for audit, whichever period expires later, but in any event not later than 90 days after receiving the request, the department shall either issue the certificate or mail notice to the purchaser at the purchaser's address as it appears on the records of the department of the amount that must be paid as a condition of issuing the certificate. Failure of the department to mail the notice will release the purchaser from any further obligation *to* withhold the purchase price as above provided. The obligation of the successor may be enforced within 4 years of the time the retailer sells out the retailer's business or stock of goods or at the time that the determination against the retailer becomes final, whichever event occurs later.

(19) The department shall by rule provide for the efficient collection of the taxes imposed by this subchapter on sales of property or services by persons not regularly engaged in selling at retail in this state or not having a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessions at fairs and carnivals, and the like. The department may authorize such persons to sell property or sell, perform or furnish services on a permit or non-permit basis as the department by rule prescribes and failure of any person to comply with such rules constitutes a misdemeanor.

History: 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174,221; 1981 c. 20,317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341,510, 544; 1985 a. 29, 149; 1987 a. 27,399; 1989 a. 31.335; 1991 a. 39.316; 1993 a. 112,213, 308, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104, 109.

When gold sold to dentists was used in dental work, the sale was not taxable under sub.(1). DOR v. Milwaukee Refining Corp. 80 Wis. 2d 44,257 N.W.2d 855 (1977).

A data processing service that transfers tangible property such as cards, tapes and printouts, but whose essential service is the sale of intangible coded or processed data, is not taxable under this section. Janesville Data Center v. DOR, 84 Wis. 2d 341,267 N.W.2d 656 (1978).

Meals served by a religious order in carrying out its religious work were not, under the circumstances, subject to sales tax for that portion of charges made to guests for lodging, food, and use of the order's facilities. Kollasch v. Adamany, 104 Wis. 2d 332, 313 N.W.2d 47 (1981).

"In this state" as used in sub.(1) and defined in s. 77.51 (6) does not include airspace. Republic Airlines, Inc. v. W R , 159 Wis. 2d 247, 464 N.W.2d 62 (Ct. App. 1990).

Payments under a taxicab lease from a driver/lessee to the owner/lessor were sales at retail subject to tax. Sanfelippo v. DOR, 170 Wis. 2d 381, 490 N.W.2d 530 (Ct. App. 1992).

Sub.(18) provides no relief from successor liability when the entire purchase price is paid **to** a secured creditor. *Kastengren* v. DOR, 179 Wis. 2d 587, 508 N.W.2d 431 (Ct. App. 1993).

Contractors are considered to be the consumers of personal property used by them in real property construction and are subject to sales tax. Performing a real property construction activity for an exempt entity does not make a contractor exempt. Zignego Co., Inc. v. DOR, 211 Wis. 2d 817,565 N.W.2d 590 (Ct. App. 1997).

A resort's sale of flexible time–share interests in condominiums was subject to sales tax. Sub.(2) (a) 1., as applied to sales **of** flexible time–shares, does not violate the Art. VIII, s.1,"uniformity clause," nor does it violate guarantees of equal protection. Telemark Development, Inc. v. DOR, 218 Wis. 2d 809, 581 N.W.2d 585 (Ct. App. 1998).

CHAPTER 87
FLOOD CONTROL

87.30 Floodplain zoning.

87.30 Floodplain zoning. (1) STATE POWERS.

(a) If any county, city or village does not adopt a reasonable and effective floodplain zoning ordinance within one year after hydraulic and engineering data adequate to formulate the ordinance becomes available, the department shall, upon petition of an interested state agency or a municipality or upon its own motion as soon as practicable and after public hearing, determine and fix by order the limits of any or all floodplains within a county, city or village within which serious damage may occur. Thereafter the department shall as soon as practicable after public hearing adopt a floodplain zoning ordinance applicable to a county, city or village, except that no floodplain zoning ordinance may be enacted unless the hydraulic and engineering studies necessary to determine the floodway or floodplain limits, or both, if both limits are deemed necessary by the department, have been made at state or federal expense. If the department utilizes hydraulic and engineering studies previously completed, the department shall be responsible for ensuring that the studies are reasonable and accurate. Thirty days' notice of all hearings on floodplain determination or zoning before the department shall be given to the county, city or village clerk, the clerks of all towns where lands may be affected and to the department of transportation. Exhibits and testimony shall be a part of the official record. Failure of a county, city or village to adopt a floodplain zoning ordinance for an area where appreciable damage from floods is likely to occur or to adopt an ordinance which will result in a practical minimum of flood damage in an area shall be prima facie proof of the necessity for action specified under this paragraph by the department. The department shall make a decision in writing of insufficiency of any county, city or village floodplain zoning ordinance before adopting an ordinance superseding a county, village or city ordinance. All orders of the department under this subsection which either fix the limits of floodplains or enact local floodplain zoning ordinances shall, when they are in final draft form and before they are issued, be referred to the appropriate committees of the legislature, where the procedure under s. **227.19** shall apply. Section **227.15** does not apply to the orders of the department under this section. Orders of the department under this section shall, after becoming effective, be deemed rules for purposes of s. **227.26,** and may be suspended by the joint committee for review of administrative rules.

NOTE: Chapter 437, laws of 1977, which amended par. (a), contained an extensive note explaining the amendment. See *the* 1977 session law *volume*.

(b) All final orders, determinations or decisions made under this subsection shall be subject to review under ch. **227** and be effective **20** days after the same have been served unless such order, determination and decision specifies a different date upon which the same shall be effective. Such floodplain determination and zoning ordinance shall be of the same effect as if adopted by the county, city or village. Thereafter it is the duty of the county, city, village and town officials to administer and enforce the ordinance in the same manner as if the county, city or village had adopted it. Floodplain determinations and zoning ordinances so adopted may be modified by the county, city or village concerned only with the written consent of the department except that nothing in this subsection may be construed to prohibit a county, city, village or town from adopting a floodplain ordinance more restrictive than that adopted by the state.

(c) Except as provided under par.

(a), the cost of such floodplain determination and ordinance promulgation and enforcement by the state shall be assessed against the county, city or village concerned and collected in substantially the same manner as other taxes levied by the state.

(d) For an amendment to a floodplain zoning ordinance that affects an activity that meets all of the requirements under s. **281.165 (2) or (3)** (a), the department may not proceed under this subsection, or otherwise review the amendment, to determine whether the ordinance, as amended, is insufficient.

(1d) IMPROVEMENTS TO NONCONFORMING BUILDINGS. (a) In this subsection: 1. "Nonconforming building" has the meaning specified by rule by the department for purposes of floodplain zoning under this section and includes a building with a nonconforming use.

2. "Nonconforming use" has the meaning specified by rule by the department for purposes of floodplain zoning under this section.

3. "Nonflood disaster" means a fire *or* an ice storm, tornado, windstorm, mudslide or other destructive act of nature, but excludes a flood.

(b) For nonconforming buildings that are damaged or destroyed by a nonflood disaster a floodplain zoning ordinance shall permit the repair, reconstruction or improvement of any such nonconforming building, in order to restore it after the nonflood disaster except as provided in par. (c).

(c) A floodplain zoning ordinance may not permit the repair, reconstruction or improvement of a nonconforming building if the nonconforming building, after repair, reconstruction or improvement, will fail to meet one or more of the minimum requirements applicable to such a nonconforming building under **42** USC **4001** to **4129 or** under the regulations promulgated thereunder.

(1g) REGULATION OF FLOODPROOFED BASEMENTS. The department may not promulgate any rule or impose any restriction that does any of the following:

(a) Results in an ordinance or other regulation containing provisions for floodproofed residential basements that are more restrictive than those imposed by the federal emergency management agency.

(b) Allows the department to deny an exception for such basements if the federal emergency management agency has granted an exception under **44** CFR **60.6.**

(1m) JURISDICTION OVER DRAINAGE DITCHES LIMITED. Notwithstanding any other provision of law or administrative rule promulgated thereunder, a floodplain zoning ordinance required under sub. (1) does not apply to lands adjacent to farm drainage ditches if:

(a) Such lands are not within the floodplain of a natural navigable stream or river;

(b) Those parts of the drainage ditches adjacent to these lands were nonnavigable streams before ditching; and

(c) Such lands are maintained in nonstructural agricultural use.

(2) ENFORCEMENT AND PENALTIES. Every structure, building, fill, or development placed or maintained within any floodplain in violation of a zoning ordinance adopted under this section, or s. **59.69, 61.35 or 62.23** is a public nuisance and the creation thereof may be enjoined and maintenance thereof may be abated by action at suit of any municipality, the state or any citizen thereof. Any person who places or maintains any structure, building, fill or development within any floodplain in violation of a zoning ordinance adopted under this section, or s. **59.69, 61.35 or 62.23** may be fined not more than *$50* for each offense. Each day during which such violation exists is a separate offense.

History: 1971 **c.** 164; **1975 c.** 232, **301,422; 1977 c. 29** s. 1654 **(8) (c); 1977 c. 437, 447; 1979 c. 34** s. **2102 (58)** (b); **1981 c. 339;** 1985 **a. 182; 1995 a. 201,311,455; 1999 a. 9.**

Cross Reference: See also ch. NR 116, Wis. **adm. code. A flood plain zoning ordinance adopted** by **the DNR under** sub. (1) **was a "rule" under** s. **227.01. Citizens for Sensible Zoning, Inc. v. DNR, 90 Wis. 2d 804,280** N.W.2d **702 (1979).**

The trial court erred when it placed the burden on **the department** to **prove** theat **the city's ordinance was not reasonable and effective. City** of **La Crosse v. DNR, 120 Wis.** 2d **168,353** N.W.2d 68 (Ct. **App. 1984).**

An area need not **he navigable** to **he a** lakebed. **The ordinary high water mark was determinative. State v.** Trudeau, 139 Wis. 2d **91,408** N.W.2d **337 (1987).**

There is nothing in **the** DNR's **general grant of authority** to **regulate floodplains** that permits **the agency** to write **rules that nullify** the **discretion over variance decisions that the legislature has specifically committed** to **local hoards of adjustment. To the extent that a DNR rule** prohibits **county hoards** of adjustment **from** granting **variances** from flood **elevation requirements** when **the** proper statutory standards for **variances have** otherwise been **met, it is invalid. State v.** Outagamie **County Board** of **Adjustment, 2001 W178,244** Wis. **2d 613. 628** N.W.2d **376.**

County **floodplain zoning ordinances adopted** by **the department under this section do** not **need approval** of town boards **in order** to **become effective within all unincorporated areas** of **the county. 62** Atty. **Gen. 264.**

The necessity of **zoning variance or** amendments **notice to the Wisconsin department** of **natural resources under the shoreland zoning and navigable** waters **protection acts.** Whipple, **57 MLR 25.**

The public trust doctrine. 59 MLR 787. Floodplain, wetland and shoreland regulation in Wisconsin. Johnson. WBB May 1988.

CHAPTER 91
FARMLAND PRESERVATION

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SUBCHAPTER I
GENERAL PROVISIONS

91.01 Definitions. In this chapter: **(1)** "Agricultural use" means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; participating in the milk production termination program under 7 USC 1446 (d); and vegetable raising.

(2) "Board" means the land and water conservation board.

(3) "Department" means the department of agriculture, trade and consumer protection.

(4) "Develop" means change to any use other than agricultural use.

(5) "Devoted primarily to agricultural use" means under agricultural use for at least 12 consecutive months during the preceding 36–month period.

(6) "Eligible farmland" means a parcel of 35 or more acres of contiguous land which is devoted primarily to agricultural use, including land designated by the department of natural resources as part of the ice age hail under s. 23.17, which during the year preceding application for a farmland preservation agreement produced gross farm profits, as defined in s. 71.58 (4), of not less than $6,000 or which, during the 3 years preceding application produced gross farm profits, as defined in s. 71.58 (4), of not less than $18,000, or a parcel of 35 or more acres of which at least 35 acres, during part or all of the year preceding application, were enrolled in the conservation reserve program under 16 USC 3831 to 3836.

(7) "Farmland preservation agreement" or "transition area agreement" means a restrictive covenant, evidenced by an instrument whereby the owner and the state agree to hold jointly the right to develop the land except as may be expressly reserved in the instrument and which contains a covenant running with the land, for a term of years, not to develop except as expressly reserved in the instrument.

(8) "Local governing body having jurisdiction" means the city council, village board or town board if that body has adopted a certified ordinance under subch. V; or the county board where such a city, village or town zoning ordinance is not in effect.

(9) "Owner" means a resident of this state owning land and includes an individual, legal guardian, corporation incorporated in this state, business trust, estate, trust, limited liability company, partnership or association or 2 or more persons having a joint or common interest in the land. However, where land is subject to a land contract, it means the vendor in agreement with the vendee.

(10) "Use consistent with agricultural use" means any activity that meets all of the following conditions:

(a) The activity will not convert land that has been devoted primarily to agricultural use.

(b) The activity will not limit the surrounding land's potential for agricultural use.

(c) The activity will not conflict with agricultural operations on the land subject to a farmland preservation agreement.

(d) The activity will not conflict with agricultural operations on other properties.

History: 1977 c. 29, 418; 1981 c. 346; 1983 a. 27; 1987 a. 312 s. 17; 1987 a. 399, 403; 1991 a. 39, 286; 1993 a. 16, 112.

91.03 Interdepartmental cooperation. All other departments and agencies of state government shall cooperate with the board and the department in the exchange of information concerning projects and activities, including takings under eminent domain, which might jeopardize the preservation of land contemplated by this chapter. The department shall periodically advise other departments and agencies of state government of the location and description of land upon which there exist farmland preservation agreements or zoning for exclusively agricultural use and the departments and agencies shall administer their planning and projects consistent with the purposes of this chapter.

History: 1977 c. 29.

91.05 Preliminary agricultural areas delineation. (1) For the purpose of assisting local units of government to preserve agricultural lands, the department and the department of commerce, under standards prepared by the board, and in connection with other state agencies, counties and county land conservation committees shall prepare or cause to be prepared, maps that locate lands in the state which should be considered for preservation because of their agricultural significance.

(2) Maps shall be prepared first for those portions of the state where the need for agricultural preservation is of the highest priority. Priority shall be based upon the degree of threat of agricultural alteration, loss to other usages, agricultural quality and agricultural importance.

(3) Agricultural maps shall be prepared utilizing the best practicable method and shall be based upon data such as soil surveys, aerial photography interpretation, existing agricultural zoning and surveys and may be supplemented by on–site surveys and other studies.

History: 1977 c. 29; 1979 c. 34; 1981 c. 314; 1981 c. 346 s. 38; 1995 a. 27 s. 9116 (5).

91.06 Certification. The board shall review farmland preservation plans and exclusive agricultural use zoning ordinances submitted to it under ss. 91.61 and 91.78 and shall certify to the appropriate zoning authority whether the plans and ordinances meet the standards of subchs. IV and V, respectively. Certifications may be in whole or in part.

History: 1977 c. 29.

The board may prospectively revoke a certification if notice and opportunity to be heard are given to the local zoning authority and landowners. 74 Atty. Gen. 78.

91.07 Rule–making authority. (1) The department shall promulgate rules to implement this chapter, except those provisions relating to the powers and duties of the board.

(2) The board shall promulgate rules to implement its powers and duties under this chapter.

History: 1991 a. 286.

SUBCHAPTER II
FARMLAND PRESERVATION AGREEMENTS

91.11 Eligibility. (1) An owner may apply for a farmland preservation agreement under this subchapter if:

(a) The county in which the land is located has a certified agricultural preservation plan in effect; or (b) The land is in an area zoned for exclusive agricultural use under an ordinance certified under subch. V.

(2) An owner of land located in a county with a population density of less than 100 persons per square mile which has adopted a certified exclusive agricultural use zoning ordinance may apply under this subchapter even if the town in which the land is located has not approved the ordinance.

(3) In any county with a population density of 100 or more persons per square mile, an owner may apply for a farmland preservation agreement under this subchapter only if the county in which the land is located has a certified exclusive agricultural use zoning ordinance under subch. V and the town in which the land is located has approved the ordinance.

(3m) Notwithstanding sub.(3), in any county with a population density of 100 or more persons per square mile, an owner may apply for a farmland preservation agreement under this subchapter from July 1, 1988, to June 30, 1991. Any owner who signed an agreement which was applied for under this subsection is eligible to apply for another agreement prior to the expiration of that agreement.

(4) In any city, town or village that has adopted a certified exclusive agricultural use zoning ordinance under subch. V, or in any town that has approved a certified exclusive agricultural use zoning ordinance adopted by the county under subch. V, an owner may apply for a farmland preservation agreement only if the land is in an area zoned for exclusive agricultural use.

History: *1977 c. 29; 1979 c. 34; 1987 a. 399.*

91.13 **Farmland preservation agreements.** (1) Any owner of eligible farmlands who desires to have the lands covered by a farmland preservation agreement may apply to the county clerk by executing a form provided by the department. If an application is received by the county clerk on or after May 14, 1992, and it is not signed by all persons holding a recorded mortgage on the land to be covered by the agreement, the application is void and may not be processed by the county clerk. The application shall include a land survey or legal description of all eligible farmland to be covered under the agreement, a map showing significant natural features and all structures and physical improvements on the lands or an aerial photograph of all land which is an integral part of the owner's farming operation which is marked to indicate the farmland and structures to be covered by the agreement, the soil classification of the lands and such other data as the department deems reasonably necessary to determine the eligibility of the lands for coverage under the agreement.

(2) Upon receipt of the application, the county clerk shall forward the application to the local governing body having jurisdiction, if not the county, and shall send written notification to the department, county planning and zoning agency, the regional planning commission and the county land conservation committee. If the county has jurisdiction, the clerk shall also notify the board of the town in which the land is situated. If the land is within the boundaries of an incorporated municipality or is subject to an extraterritorial zoning ordinance adopted by a municipality under s. 62.23 (7a), the clerk shall send written notification to the governing body of the city or village.

(3) An agency or local governing body receiving written notice shall upon receipt of notification have 30 days to review, comment and make recommendations to the local governing body having jurisdiction.

(4) After considering the comments and recommendations of the reviewing agencies and local governing bodies, the local governing body having jurisdiction shall approve or reject the application within 120 days after the application is received unless time is extended by mutual agreement of the parties involved. The local governing body's approval or rejection of the application shall be based upon and consistent with the following:

(a) Whether the farmland is designated an agricultural preservation area in a certified agricultural preservation plan established under subch. IV or is an area zoned for exclusive agricultural use under an ordinance certified under subch. V.

(b) The productivity and viability of the land for agricultural use.

(c) The predominance of agricultural use on the land.

(d) The inclusion of all contiguous lands which are in single ownership.

(e) Whether the property is eligible farmland.

(f) Consistency with the county agricultural preservation plan.

(g) Other criteria established by the local governing body consistent with the agricultural preservation purposes of this chapter.

(5) The clerk of the local governing body having jurisdiction shall forward a copy of all approved applications for farmland preservation agreements, along with the comments and recommendations of the reviewing bodies, to the department. If action is not taken by the local governing body within the time prescribed or agreed upon, the applicant may proceed as provided in sub.(7) as if the application was rejected.

(6) The department may reject an application for a farmland preservation agreement which has been approved by a local governing body only if the land is not eligible farmland.

(7) If the application for a farmland preservation agreement is rejected by the local governing body or the department, the application shall be returned to the applicant with a written statement regarding the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the board. The board shall, within 60 days after the appeal has been received, upon consideration of the factors listed in sub.(4) (a) to (g), approve or reject the application.

(8) If an application is approved by the department or, on appeal, by the board, the department shall prepare and send to the applicant a farmland preservation agreement which shall include the following provisions:

(a) Except as provided under s. 91.75 (2), no structure may be built on the land except for use consistent with agricultural use or with the approval of the local governing body having jurisdiction and the department.

(b) Land improvements shall not be made except for use consistent with agricultural use or with the approval of the local governing body having jurisdiction and the department.

(c) A structure or improvement made as an incident to a scenic, access or utility easement or license, a lease for oil and natural gas exploration and extraction, and an easement granted for the purpose of using land as, or land used as, part of the ice age trail under ss. 23.17 and 23.293 and structures and improvements made as an incident to that use or those easements, is consistent with agricultural use under pars.(a) and (b).

(d) Farming operations shall be conducted in substantial accordance with a soil and water conservation plan prepared under s. 92.104. This paragraph applies to any farmland preservation agreement applied for prior to July 1, 1986.

(dm) Farming operations shall be conducted in compliance with reasonable soil and water conservation standards established under s. 92.105. This paragraph applies to a farmland preservation agreement applied for on or after July 1, 1986.

(e) The state agrees to pay, with respect to each year the agreement is in effect, the greater of the credits claimable under subch. IX of ch. 71, as such statute exists on the date the agreement takes effect, or the credits claimable under subch. IX of ch. 71, as such statute exists at the end of the year for which a claim for credit is filed, if all the requirements of subch. IX of ch. 71 are satisfied.

(f) The department shall not require the owner to permit public access onto the land.

(fm) A statement in boldface uppercase type that contains the following language:

"UPON RELINQUISHMENT (WITHDRAWAL OR EXPIRATION) OF THIS AGREEMENT, A PAYBACK OF CREDITS WITH INTEREST MAY BE REQUIRED."

(g) Any other condition and restriction on the land as agreed to by the parties that is deemed necessary to preserve the land for agricultural use if it is not in conflict with the county agricultural preservation plan.

(9) If the owner executes the farmland preservation agreement, the owner shall return it to the department for execution on behalf of the state. An agreement shall become effective on the date it is delivered or mailed to the department for execution. The department shall within 30 days of receipt record the executed agreement with the register of deeds of the county in which the land is situated and notify the applicant, the local governing body

having jurisdiction, all reviewing agencies and the department of revenue.

(10) Agreements under this subchapter shall be for not less than 10 years nor more than 25 years. An owner of eligible farmland which is subject to an agreement with a term of less than 25 years may extend the term of the agreement to 25 years with the approval of the department and of the local governing body having jurisdiction in which the eligible farmland is located.

(11) An applicant may reapply for a farmland preservation agreement following a one–year waiting period from notice of final determination of the original application by the local governing body having jurisdiction, the department, the board or a court on appeal.

(12) The value of the jointly owned development rights as expressed in a farmland preservation agreement shall not be exempt from general property taxation and shall be assessed to the owner of the land as part of the value of the land.

(13) The department may waive its approval authority under sub.(8) (a) or (b) for structures or improvements affecting less than 5 acres of land.

History: 1977 c. 29, 169, 418, 447; 1979 c. 233 s. 8; 1981 c. 346 ss. 33, 38; 1983 a. 311; 1985 a. 29; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 56; 1991 a. 39, 286.

91.14 Transition area agreements. An owner may apply for a transition area agreement under this subchapter if the farmland is located in an area identified as a transition area under a certified county agricultural preservation plan under subch. IV. The provisions of this subchapter, except ss. 91.11 (1) (b) and (4), 91.13 (4) (a) and (10) and 91.15, apply to agreements under this section. Agreements under this section shall be for not less than 5 nor more than 20 years, consistent with the county agricultural preservation plan.

History: 1977 c. 29.

91.15 Exemption from special assessments. A city, village, town, county or other governmental agency may not impose special assessments for sanitary sewers, water, lights or nonfarm drainage on land zoned for exclusively agricultural use under subch. V or for which a farmland preservation agreement under this subchapter has been recorded unless the assessments were imposed prior to the recording of the agreement or prior to zoning of the land for exclusively agricultural use under subch. V. Land covered by this exemption shall be denied use of an improvement created by the special assessment as long as the owner of the land has a recorded agreement under this subchapter or the land is zoned for exclusively agricultural use under subch. V, unless the owner has paid the amount that would have been paid had the land not been excluded.

History: 1977 c. 29, 418; 1983 a. 311.

91.17 Change of ownership. (1) Land subject to a farmland preservation agreement may be sold without a lien being filed under s. 91.19, subject to the reservation of rights contained in the agreement. The seller shall notify the department of any such transfer. The purchaser shall be liable under any subsequent lien under s. 91.19 only for the amount of tax credits paid on that portion of the land purchased.

(2) When the owner of land subject to a farmland preservation agreement dies or is certified by a physician to be totally and permanently disabled, the land may be released from the program under this chapter and shall not be subject to a lien under s. 91.19 (8).

(3) A residence or structure located on a parcel of 5 acres or less which is subject to an agreement and which, for purposes of farm consolidation and in compliance with the ordinances of the city, village or town and county in which it is located, is separated from other land subject to that agreement is not subject to a lien under s. 91.19 when that agreement expires if the residence or structure existed prior to the effective date of that agreement.

History: 1977 c. 29, 169; 1987 a. 399; 1993 a. 16.

91.19 Relinquishment of agreements. (1) A farmland preservation agreement shall be relinquished by the department on behalf of the state at the expiration of the term of the agreement.

(1m) Upon request, a farmland preservation agreement shall be relinquished by the department on behalf of the state when the owner of land subject to the agreement dies or is certified by a physician to be totally and permanently disabled.

(2) The department may relinquish the farmland preservation agreement or may release part of the land from a farmland preservation agreement prior to the termination date contained in the instrument as follows:

(a) The owner of the land may submit an application, on forms prescribed by the department, to the local governing body having jurisdiction requesting that the agreement be relinquished or that part of the land be released from the agreement. Upon receipt of the application, the clerk of the local governing body shall send written notification thereof to the persons specified under s. 91.13 (2), and such persons shall have 30 days from receipt of notification to review, comment and make recommendations to the local governing body having jurisdiction.

(b) After considering the comments and recommendations of the reviewing agencies and holding a public hearing, following the publication in the county of a class 2 notice, under ch. 985, the local governing body having jurisdiction shall approve or reject the application within 120 days after it is filed, unless the time is extended by mutual agreement of the parties involved. The local governing body having jurisdiction shall not approve an application for relinquishment or release under this subsection unless it finds one or more of the following:

1. That relinquishment or release will allow the owner to resolve foreclosure or bankruptcy proceedings by a voluntary settlement with a mortgagee or a creditor.

2. That significant natural physical changes in the land have occurred that are generally irreversible and permanently affect the land.

3. That surrounding conditions prohibit agricultural use.

4. Subject to par.(c), that relinquishment or release will allow the owner to develop the land to assist local economic development.

5. Subject to par.(c), that relinquishment or release will allow for the transfer of the land and subsequent agriculturally related, utility, religious or institutional uses that are consistent with agricultural use and that are found to be necessary in light of the alternative locations available for such uses.

(c) 1. The local governing body having jurisdiction may not approve an application for relinquishment or release under par.(b) 4. or 5. unless it finds that all of the following conditions exist:

a. Adequate public facilities to serve the proposed development or use exist or will be provided as part of the development.

b. The land is suitable for the proposed development or use.

c. The proposed development or use will not cause air pollution, water pollution or soil erosion that exceeds applicable state or local standards, adversely affect rare or irreplaceable natural areas or otherwise harm the environment.

d. The proposed development or use is consistent with remaining agricultural uses in the area.

e. The proposed development or use is consistent with the county's certified agricultural preservation plan, if a plan is in effect.

f. The proposed development is not for residential use.

g. The proposed development or use is consistent with local economic development plans.

h. There is no alternative location for the proposed development or use that is suitable.

2. As part of its review of an application for relinquishment or release under par.(b) 4. or 5., the local governing body having jurisdiction shall also consider all of the following factors:

b. The agricultural productivity of the land involved.

c. Whether the proposed development or use minimizes the amount of agricultural land converted to nonagricultural uses.

d. The economic costs and benefits of the proposed development or use to the local economy compared to the costs and benefits of the land for agricultural use.

e. The costs of providing public facilities to the proposed development or use, and the ability of affected local units of government to provide them.

(3) If the request for relinquishment of the farmland preservation agreement or release of part of the land from the agreement is approved by the local governing body having jurisdiction, a copy of the application, along with the comments and recommendations of the reviewing agencies, shall be

forwarded to the board. The board shall, within 60 days, upon consideration of the factors in sub.(2) (b) and (c) 2., approve or reject the application for relinquishment or release. If the board approves the application it shall notify the local governing body having jurisdiction and the department of revenue, prepare an instrument under sub.(?) and record it with the register of deeds of the county in which the land is located.

(4) If action is not taken by the local governing body having jurisdiction within the time period prescribed or agreed upon, the applicant may proceed as provided in sub.(5) as if the application was rejected.

(5) If the application for relinquishment of the agreement or release of part of the land from the agreement is rejected by the local governing body having jurisdiction, the application shall be returned to the applicant with a written statement regarding the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the board. The board shall, within 60 days after the appeal has been received, upon consideration of the factors listed in sub.(2) (b) and (c) 2., approve or reject the request for relinquishment or release. If the board approves the application it shall notify the local governing body having jurisdiction and the department of revenue, prepare an instrument under sub.(?) and record it with the register of deeds of the county in which the land is located.

(6) The department shall release from a farmland preservation agreement any land acquired for use as an electric generating facility authorized under s. 196.491 (3), or which involves acquisition of the fee by a utility or a cooperative organized under ch. 185 for purposes of generating electricity or other utility uses.

(6m) The department shall release from a farmland preservation agreement any lands acquired by the state or the federal government for public improvements or structures, including highway improvements.

(6p) The department shall release from a farmland preservation agreement any land subject to a farmland preservation agreement if the owner of the land has, before December 31, 1988, obtained state, county, city, village and town licenses, permits or approvals, other than those required under this chapter, to develop the land as a concert park.

(6s) (a) The department may release from a farmland preservation agreement any land acquired or to be acquired by a local unit of government, as defined in s. 106.215 (1) (e), for public improvements or structures, including highway improvements, if all of the following occur: 1. An application for release of the land, made by either the owner or the local unit of government, is approved by the local governing body having jurisdiction and the board under the procedures of subs.

(2) to (5). 2. The department finds that the conditions listed in sub.(2) (c) 1. exist. 3. The department considers the factors listed in sub.(2) (c) 2.

(b) If an owner of land subject to a farmland preservation agreement opposes an application brought by a local unit of government for release of that land, the owner may appeal the approval of that application by the local governing body having jurisdiction to the board according to the procedures in par.(c).

(c) If the application for release of any land from the agreement is approved by the local governing body having jurisdiction, the application shall be returned to the applicant, and a copy of the application to the owner, with a written statement regarding the reasons for approval. Within 30 days after receipt of a copy of the approved application, the owner may appeal the approval to the board. The board shall, within 60 days after the appeal has been received, upon consideration of the factors listed in sub.(2) (b) and (c) 2., approve or reject the request to disapprove the release. If the board approves the owner's appeal it shall notify the local governing body having jurisdiction.

(d) The board may waive its approval authority under this subsection for applications affecting less than 5 acres of land.

(6t) The department shall relinquish from a farmland preservation agreement land that has been subject to a farmland preservation agreement for at least 10 years if the owner of the land so requests.

(7) Whenever a farmland preservation agreement is relinquished under sub.(2) or (Gt) or all or part of the land is released from a farmland preservation agreement under sub.(2) or (6p) or a transition area agreement is relinquished under sub.(2) or, subject to subs.(12) and (13), a transition area agreement is relinquished under sub.(1) or (lm), the department shall cause to be prepared and recorded a lien against the property formerly subject to the agreement for the total amount of all credits received by all owners of such lands under subch. IX of ch. 71 during the last 10 years that the land was eligible for such credit, plus interest at the rate of 9.3% per year compounded annually on the credits received from the time the credits were received until the lien is paid for farmland preservation agreements relinquished under sub.(6t) and 6% per year compounded annually on the credits received from the time the credits were received until the lien is paid for other agreements. No interest shall be compounded for any period during which the farmland *is* subject to a subsequent farmland preservation agreement or transition area agreement or is zoned for exclusive agricultural use under an ordinance certified under subch. V.

(8) Subject to subs.(12) and (13), upon the relinquishment of a farmland preservation agreement under sub.(1) or (1m), the department shall cause to be prepared and recorded a lien against the property formerly subject to the farmland preservation agreement for the total amount of the credits received by all owners thereof under subch. IX of ch. 71 during the last 10 years that the land was eligible for such credit, plus 6% interest per year compounded from the time of relinquishment. No interest shall be compounded for any period during which the farmland is subject to a subsequent farmland preservation agreement or transition area agreement or is zoned for exclusive agricultural use under an ordinance certified under subch. V.

(9) A lien recorded under this section shall be effective upon recording and shall be subordinate to a lien of mortgage which is recorded prior to the recording of the lien under this section.

(10) The lien may be paid and discharged at any time and shall become payable to the state by the owner of record at the time the land or any portion of it is sold by the owner of record to any person except the owner's child or if the land is converted to a use prohibited by the former farmland preservation agreement. Upon reentry in an agreement under this subchapter or upon zoning for exclusively agricultural use under an ordinance certified under subch. V, the portion of the lien on the land reentered or so zoned shall be discharged. The discharge of a lien does not affect the calculation of any subsequent lien under sub.(7) or (8). The proceeds from the payment shall be paid into the general fund.

(12) No lien may be filed under sub.(7) or (8), on the date of relinquishment, release or termination, for tax credits paid on lands or any portion of them which are zoned for exclusively agricultural use under an ordinance certified under subch. V.

(13) No lien may be filed under sub.(7) or (8) for any amount of tax credits paid under subch. IX of ch. 71 to any owner of farmland if, up to the date of relinquishment under sub.(1) or (Im) of the applicable farmland preservation agreement or transition area agreement, all of the requirements under this subchapter that relate to the agreement have been satisfied by the owner.

History: 1977 *c.* 29,169,418; 1979 *c.* 221; 1983 *a.* 311; 1987 *a.* 312 **s. 17;** 1987 **a.** 399; 1989 *a.* 31; 1991 **a.** 39,286; 1993 *a.* 16; 1995 a. 27.

91.21 Penalty for use change. (1) If the owner or a successor in title of the land upon which a farmland preservation agreement has been recorded under this chapter changes the use of the land to a prohibited use without first acting under ss. 91.17 and 91.19 and the land is not relinquished under s. 91.19 (6p) or (6t), the owner or successor in title may be enjoined by the state, acting through the attorney general, or by the local governing body having jurisdiction, acting through its attorney, and is subject to a civil penalty for actual damages, but in no case to exceed double the value of the land as established at the time the application for the agreement was approved.

(3) If the owner *or* a successor in title of the land upon which a farmland preservation agreement has been recorded under this chapter fails to comply with s. 91.13 (8) (d) or (dm), such person shall be given one year to restore compliance before the remedies of sub.(1) shall be applicable.

History: 1977 *c.* 29; 1989 a. 31; 1991 *a.* 39,286.

91.75 Ordinance standards. A zoning ordinance shall be deemed an "exclusive agricultural use ordinance" if it includes those jurisdictional, organizational or enforcement provisions

necessary for its proper administration, if the land in exclusive agricultural use districts is limited to agricultural use and is identified as an agricultural preservation area under any agricultural preservation plans adopted under subch. IV and if the regulations on the use of agricultural lands in such districts meet the following standards which, except for sub.(4), are minimum standards:

(1) A minimum lot size is specified.

(2) (a) In this subsection: 1. "Gross income" has the meaning given for Wisconsin adjusted gross income in s. 71.01 (13). 2. "Owner", as defined in s. 91.01 (9), also includes a partner in a partnership, a member in a limited liability company and a shareholder in a corporation. 3. "Preexisting residence" means a residence whose initial construction begins before May 14, 1992.

(b) Except as provided in par.(c), the only residences, whether preexisting residences or not, that are allowed as permitted or conditional uses are those that have a use consistent with agricultural use and that are occupied by any of the following:

1. **An** owner of the parcel.

2. **A** person who, or a family at least one adult member of which, earns the majority of his or her gross income from conducting the farm operations on the parcel.

3. **A** parent or child of an owner who conducts the majority of the farm operations on the parcel.

4. **A** parent or child of an owner who resides on the parcel and who previously conducted the majority of the farm operations on the parcel.

(c) Preexisting residences located in areas subject to zoning under this section that do not conform to par.(b), but that were either permitted or continued residential uses under s. 91.75, 1989 stats., may be continued in residential use and may be exempted from any limitations imposed or authorized under s. 59.69 (10).

(3) No structure or improvement may be built on the land unless consistent with agricultural uses.

(4) Such ordinances shall be considered local ordinances for purposes of s. 196.491 (3) (i) and shall provide that gas and electric utility uses not requiring authorization under s. 196.491 (3) are special exceptions or permitted or conditional uses and are uses that are consistent with agricultural use.

(5) Special exceptions and conditional uses are limited to those agricultural–related, religious, other utility, institutional or governmental uses that are consistent with agricultural use and are found to be necessary in light of the alternative locations available for such uses. The department shall be notified of the approval of any special exceptions and conditional uses in areas zoned for exclusive agricultural use.

(6) For purposes of farm consolidation and if permitted by local regulation, farm residences or structures which existed prior to the adoption of the ordinance may be separated from a larger farm parcel. Farm residences or structures with up to 5 acres of land which are separated from a larger farm parcel under this section are not subject to the lien under s. 91.19 (8) to (10), as required in s. 91.77 (2) or 91.79.

(7) A structure or improvement made as an incident to a lease for oil and natural gas exploration and extraction, and an easement granted for the purpose of using land as, or land used as, part of the ice age trail under ss. 23.17 and 23.293 and structures and improvements made as an incident to that use or those easements, is consistent with agricultural uses under sub.(3) and may be permitted as a special exception or conditional use under sub.(5).

(8) (a) In this subsection, "farm family business" means any lawful activity, except a farm operation, conducted primarily for any of the following:

1. The purchase, sale, lease or rental of personal or real property.

2. The manufacture, processing or marketing of products, commodities or any other personal property.

3. The sale of services.

(b) A farm family business may be permitted as a special exception or conditional use under sub.(5) if limited to existing farm residences or structures or portions of the existing farmstead that are not dedicated to agricultural uses. No more than 2 persons who are not members of the resident farm family may be employed in the farm family business.

(9) (a) In this subsection, "locally approved reclamation plan" means any of the following:

1. A reclamation plan, submitted as required by a nonmetallic mining reclamation ordinance adopted under s. 66.038, 1995 stats., or s. 295.13, that fulfills reclamation standards established by the ordinance.

2. If no nonmetallic mining reclamation ordinance applies to a proposed nonmetallic mining site, a reclamation plan that is approved by a county planning and zoning agency or commission created under s. 59.69 (2) or a county land conservation committee created under s. 92.06, whichever is authorized to give the approval under the exclusive agricultural zoning ordinance.

(b) Nonmetallic mineral extraction, including clay and gravel extraction, may be permitted as a special exception or conditional use under sub.(5) if it is subject to a locally approved reclamation plan that is submitted by the mine operator or person proposing to perform the nonmetallic mineral extraction to the local governing body having jurisdiction and that provides for the restoration of the nonmetallic mineral extraction site to agricultural use.

History: 1977 c. 29, 169, 418; 1983 a. 311; 1987 a. 399; 1991 a. 39, 286; 1993 a. 112,464; 1995 a. 201,227; 1997 a. 252; 1999 a. 9.

Cross Reference: See also s. NR 135.03, Wis. adm code. "Governmental use," as used in an exclusive agricultural zoning ordinance, was interpreted to mean any service, function, or facility that a governmental unit is authorized by statute to provide. A radio tower licensed to the University Board of Regents for the operation of a student radio station was a governmental use. Board of Regents of the University of Wisconsin v. Dane County Board of Adjustment, 2000 WI App 211, 238 Wis. 2d 810,618 N.W.2d 537.

Community living arrangements may he entitled to locate in exclusive agricultural zoning districts under some circumstances. 76 Atty. Gen. 126.

CHAPTER 100
MARKETING; TRADE PRACTICES

100.18 Fraudulent representations.

Cross–reference: See definitions in s. 93.01

100.18 Fraudulent representations. **(1)** No person, firm, corporation or association, or agent or employee thereof, with intent to sell, distribute, increase the consumption of or in any wise dispose of any real estate, merchandise, securities, employment, service, or anything offered by such person, firm, corporation or association, or agent or employee thereof, directly or indirectly, to the public for sale, hire, use or other distribution, or with intent to induce the public in any manner to enter into any contract or obligation relating to the purchase, sale, hire, use or lease of any real estate, merchandise, securities, employment or service, shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper, magazine or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, letter, sign, placard, card, label, or over any radio or television station, or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public relating to such purchase, sale, hire, use or lease of such real estate, merchandise, securities, service or employment or to the terms or conditions thereof, which advertisement, announcement, statement or representation contains any assertion, representation or statement of fact which is untrue, deceptive or misleading.

(2) (a) In advertising or otherwise representing the sale or furnishing of any property or services combined with or conditioned on the purchase of any other property or services described in such advertisement or other representation, it is deceptive for a retailer to:

1. Fail to state the price or amount which must be paid for the property or services included in such sale, along with any other condition to the receipt of such property or services, if the advertisement or representation does not refer to the price of the property or services as the "regular price". The price or amount which must be paid shall be set forth clearly, conspicuously and in such manner that the total price or amount to be paid may be readily ascertained.

2. Sell the property or services at more than the regular price or fail to state any other condition to the receipt of the property or services included in the sale, if the advertisement or representation refers to the price of the property or services as the "regular price".

3. Mark up the regular price of the property or services which must be purchased.

4. Substitute property or services of inferior value or quality for the property or services which must be purchased.

(b) This subsection does not apply to advertisements or representations concerning custom-made property.

(c) In this subsection, "regular price" means the lowest price for the same quantity and quality of product or the same services, at which the seller or advertiser of the product or services openly and actively sold the product or services in the geographic trade area of the advertisement or representation during the seller's or advertiser's most recent and regular 30–day course of business.

(3) It shall be deemed deceptive advertising, within the meaning of this section, for any person, firm or corporation, engaged in the business of buying or selling new or secondhand furs, wearing apparel, jewelry, furniture, pianos, phonographs, or other musical instruments, motor vehicles, stocks, or generally any form of property, real, personal or mixed, or in the business of furnishing any kind of service or investment, to advertise such articles, property or service for sale or purchase, in any manner indicating that the sale or purchase is being made by a private party or householder not engaged in such business. And every such firm, corporation or association, engaged in any such business, in advertising goods, property or service for sale or purchase, shall affirmatively and unmistakably indicate and state that the seller or purchaser is a business concern and not a private party.

(3m) It is deceptive advertising to represent the retailing of merchandise to be a selling–out or closing–out sale if the merchandise is not of a bankrupt, insolvent, assignee, liquidator, adjuster, trustee, personal representative, receiver, wholesaler, jobber, manufacturer, or of any business that is in liquidation, that is closing out, closing, or disposing of its stock, that has lost its lease or has been or is being forced out of business, or that is disposing of stock on hand because of damage by fire, water, or smoke. This subsection does not apply to any "closing–out sale" of seasonable merchandise or any merchandise having a designated model year if the person conducting the sale is continuing in business.

(5) Any person, firm, corporation or association engaged in any business mentioned in sub.(3), or in any other kind of business, whether conducting such business in a store, business block, residence or other building, shall at all times keep a conspicuous sign posted on the outside of his or her establishment and another conspicuous sign in the salesroom, which sign shall clearly state the name of the association, corporation or individual who actually owns said merchandise, property or service which is being offered to the public and not the name of any other person; provided, however, that the exterior sign shall not be required where the seller has no control over the exterior of the premises where such business is conducted.

(6) All advertising which shows or in any manner relates to the price at which motor fuel is offered for sale at retail, except multiple gallon computers attached to or forming a part of any dispensing equipment shall show only (a) the single gallon unit price including all applicable taxes in one amount or (b) the single gallon product price, the taxes applicable thereto, and the total single gallon unit price including all applicable taxes. In any such advertising, all numerals which represent either price or taxes shall be of the same type and size except that fractions of a cent shall be shown in figures one–half the height, width and prominence of the whole numbers.

(8) Every wholesaler and every other person selling or distributing motor fuel in this state shall keep posted in a conspicuous place, most accessible to the public at his or her place of business, and on every pump from which delivery is made directly into the fuel tank attached to a motor vehicle, a placard showing the net selling price per gallon of all grades of motor fuel and the amount of all taxes per gallon thereon. On pumps or other dispensing equipment from which motor fuel is sold and delivered directly into fuel supply tanks attached to motor vehicles, such posting shall be in figures not less than one inch high, except that no such placard shall be required on a computer pump whereon the total net selling price per gallon including all taxes is legibly shown on its face. Except for sales to drivers of motor vehicles used by physically disabled persons under s. 100.51 (5), all sales shall be made at the posted price. Delivery slips shall also show the net selling price per gallon of all grades of motor fuel and the amount of all taxes per gallon thereon. If the wholesaler or person has more than one place of business in this state, the wholesaler or person shall post that placard at all of his or her places of business. All prices posted shall remain in effect for at least 24 hours after they are posted. It shall be considered deceptive advertising to advertise or represent in any manner the price of motor fuel offered for sale at retail to be less than the price so posted on each pump.

(9) (a) It is deemed deceptive advertising, within the meaning of this section, for any person or any agent or employee thereof to make, publish, disseminate, circulate or place before the public in this state in a newspaper or other publication or in the form of book, notice, handbill, poster, bill, circular, pamphlet, letter, sign, placard, card, label or over any radio or television station or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public relating to the purchase, sale, hire, use or lease of real estate, merchandise, securities, service or employment or to the

terms or conditions thereof which advertisement, announcement, statement or representation is part of a plan or scheme the purpose or effect of which is not to sell, purchase, hire, use or lease the real estate, merchandise, securities, service or employment as advertised.

(b) This section does not apply to the owner, publisher, printer, agent or employee of a newspaper or other publication, periodical or circular, or of a radio or television station, who in good faith and without knowledge of the falsity or deceptive character thereof, publishes, causes to be published or takes part in the publication of such advertisement.

(9m) It is deemed deceptive advertising to misrepresent the nature of a local energy resource system under s. I01.I75.

(10) (a) It is deceptive to misrepresent the nature of any business by use of the words manufacturer, factory, mill, importer, wholesaler or words of similar meaning, in a corporate or trade name or otherwise.

(b) It is deceptive to represent the price of any merchandise as a manufacturer's or wholesaler's price, or a price equal thereto, unless the price is not more than the price which retailers regularly pay for the merchandise. The effective date of this subsection shall be January 1, 1962.

(10m) It is deceptive or misleading advertising for a person who sells new motor vehicles *to* compare new motor vehicle selling prices, including the offered prices or the actual sale prices, to the manufacturer's suggested retail price for that vehicle unless it is clearly and conspicuously disclosed that the latter price is a manufacturer's suggested retail price and may not represent actual sale prices.

(10r) It is deceptive and misleading for a person who is conducting business in a community or region from a location outside that community or region to use the name of the community or region, or other description of the community or region, in the corporate or trade name of the business or in any other information that is published if the use of the name or description of the location creates the misrepresentation that the business is located in the community or region.

(11) (a) The department of agriculture, trade and consumer protection shall enforce this section. Actions to enjoin violation of this section or any regulations thereunder may be commenced and prosecuted by the department in the name of the state in any court having equity jurisdiction. This remedy is not exclusive.

(b) 2. Any person suffering pecuniary loss because of a violation of this section by any other person may sue in any court of competent jurisdiction and shall recover such pecuniary loss, together with costs, including reasonable attorney fees, except that no attorney fees may be recovered from a person licensed under ch. 452 while that person is engaged in real estate practice, as defined in s. 452.01 (6). Any person suffering pecuniary loss because of a violation by any other person of any injunction issued under this section may sue for damages therefore in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including reasonable attorney fees, except that no attorney fees may be recovered from a person licensed under ch. 452 while that person is engaged in real estate practice, as defined in s. 452.01 (6).

3. No action may be commenced under this section more than 3 years after the occurrence of the unlawful act or practice which is the subject of the action. No injunction may be issued under this section which would conflict with general or special orders of the department or any statute, rule or regulation of the United States or of this state.

(c) 1. Whenever the department has reason to believe that a person is in possession, custody or control of any information or documentary material relevant to the enforcement of this section it may require that person to submit a statement or report, under oath or otherwise, as to the facts and circumstances concerning any activity in the course of trade or commerce; examine under oath that person with respect to any activity in the course of trade or commerce; and execute in writing and cause to be served upon such person a civil investigative demand requiring the person to produce any relevant documentary material for inspection and copying.

2. The department, in exercising powers under this subsection, may issue subpoenas, administer oaths and conduct hearings to aid in any investigation.

3. Service of any notice by the department requiring a person to file a statement or report, or service of a subpoena upon a person, or service of a civil investigative demand shall be made in compliance with the rules of civil procedure of this state.

4. If a person fails to file any statement or report, or fails to comply with any civil investigative demand, or fails to obey any subpoena issued by the department, such person may be coerced as provided in s. 885.12, except that no person shall be required to furnish any testimony or evidence under this subsection which might tend to incriminate the person.

(d) The department or the department of justice, after consulting with the department, or any district attorney, upon informing the department, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this section. The court may in its discretion, prior to entry of final judgment, make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action, provided proof thereof is submitted to the satisfaction of the court. The department and the department of justice may subpoena persons and require the production of books and other documents, and the department of justice may request the department to exercise its authority under par.(c) to aid in the investigation of alleged violations of this section.

(e) In lieu of instituting or continuing an action pursuant to this section, the department or the department of justice may accept a written assurance of discontinuance of any act or practice alleged to be a violation of this section from the person who has engaged in such act or practice. The acceptance of such assurance by either the department or the department of justice shall be deemed acceptance by the other state officials enumerated in par.(d) if the terms of the assurance so provide. An assurance entered into pursuant to this section shall not be considered evidence of a violation of this section, provided that violation of such an assurance shall be treated as a violation of this section, and shall be subjected to all the penalties and remedies provided therefore.

(12) (a) This section does not apply to the insurance business.

(b) This section does not apply to a person licensed as a broker or salesperson under s. 452.09 while that person is engaged in real estate practice, as defined in s. 452.01 (6), unless that person has directly made, published, disseminated, circulated or placed before the public an assertion, representation or statement of fact with the knowledge that the assertion, representation or statement of fact is untrue, deceptive or misleading.

History: 1977 c. 29 s. 1650m (4); 1979 c. 89, 327, 350; 1981 c. 351; 1983 a. 215; 1985 a. 284,332; 1989 a. 31; 1991 a. 278; 1993 a. 158,492; 1995 a. 27, 179; 1997 a. 111, 201; 2001 a. 102.

Cross-reference: See s. 136.001 *(2)* concerning future service plans. Sub.(1) applies to oral representations made in private conversations to prospective purchasers. State v. Automatic Merchandisers of America, Inc. 64 Wis. 2d 659, 221 N.W.2d 683 (1974).

A complaint alleging deceptive advertising contrary to sub.(1) stated a cause of action not only against the corporate defendant but against its officer personally when the complaint's use of the word "continue" indicated reference to both past and future conduct and when use of the word "defendants" referred to both the corporation and its officer. State v. Advance Marketing Consultants, Inc. 66 Wis. 2d 706,225 N.W.2d 887 (1975).

Sub.(2) is constitutional. State v. Amoco Oil Co. 97 Wis. 2d 226, 293 N.W.2d 487 (1980).

The state may join as parties defendant assignees of contracts allegedly obtained by deceptive practices, even though the assignees did not engage in deception. State v. Excel Management Services, 111 Wis. 2d 479,331 N.W.2d 312 (1983).

A consumer is protected from untrue, deceptive, or misleading representations made to promote the sale of a product. Advertising need not **be** involved. Bonn v. Haubrich, 123 Wis. 2d 168,366 N.W.2d 503 (Ct. App. 1985).

Subs.(1) and (9) (a) require that a complaint do more than merely state that there were incentives to **sell** a more expensive product: it must allege instances of prohibited conduct to withstand a motion to dismiss. State v. American TV, 146 Wis. 2d 292,430 N.W.2d 709 (1988).

A party prevailing on appeal is entitled to reasonable appellate attorney fees. Radford v. J.J.B. Enterprises, Ltd. 163 Wis. 2d 534, 472 N.W.2d 790 (Ct. App. 1991).

The statute of limitations under sub.(11) (b) **3.** commences at the time of the act or transaction, not on the date of discovery. Skrupky v. Elbert, 189 Wis. 2d 31, 526 N.W.2d 264 (Ct. App. 1994).

When a claim of negligent representation was fully **tried,** it was not necessary that a claim under this section should have been pleaded in order for the plaintiff to assert a post-verdict claim for attorney fees under sub (11) (b) 2. Gorton v. American Cyanamid Co. 194 Wis. 2d 203,533 N.W.2d 746 (1995).

An award of reasonable attorney fees under this section belongs to the person suffering the pecuniary loss. not the attomey. However. the ultimate ownershin of the award may be controlled by the parties' fee agreement. Gorton v Hostak, Henzl & Bichler, S.C. 217 Wis. 2d 493, 577 N.W.2d 617 (1998).

Sub.(11) (b) 3. **is** a statute **of** repose. **A** cause of action must **be** commenced within 3 years of the false representation regardless of when the resulting injury is

discovered. Kain v. Bluemound East Industrial Park, Inc. 2001 WI App 230, 248 Wis. 2d 172,635 N.W.2d 640.

This section provides a cause of action and remedies separate from common law claims of intentional misrepresentation, strict liability misrepresentation, and negligent misrepresentation. Kailin v. Armstrong, 2002 WI App 70, 252 Wis. 2d 676, 643 N.W.2d 132.

A statement made to one person may constitute a statement made to "the public" under this section. Once a contract was made, buyers are no longer "the public." The section is aimed at untrue, deceptive, or misleading statements made to induce certain actions. Statements made by the seller after a person entered into a contract to purchase do not cause the person to make the purchase or enter into the contract. Kailin v. Armstrong, 2002 WI App 70,252 Wis. 2d 676,643 N.W.2d 132.

This section is reasonably geared toward notice and workable precision and is not so imprecise as to be constitutionally vague. Carpets By The Carload, Inc. v. Warren, 368 F. Supp. 1075.

One person can constitute "the public" under sub.(1). Jersild v. Aker, 775 F. Supp. 1198 (1991).

Actual interest payments incurred as a result of misrepresentations may be recovered by the defrauded party. Jersild v. Aker, 775 F. Supp. 1198 (1991).

The protections under this section are not restricted to Wisconsin residents. A cause of action under this section requires actual pecuniary loss and not a mere showing of deception. Demotropoulous v. Bank One Milwaukee, 915 F. Supp. 1379 (1996).

There is no indication that the application of this section is restricted to use by consumers. Stoughton Trailers, Inc. v. Henkmel Corp. 965 F. Supp. 1227 (1997).

Sub.(11) (b) 3. is a statute of repose to which the discovery rule does not apply. Staudt v. Artifex, 16 F. Supp. 2d 1023 (1998).

Protection for consumers against unfair and deceptive business. Jeffries, 57 MLR 559.

Private enforcement of consumer laws in Wisconsin. Waxman. WBB May 1983.

CHAPTER 106
APPRENTICE, EMPLOYMENT AND EQUAL RIGHTS PROGRAMS

SUBCHAPTER III
EQUAL RIGHTS PROGRAMS

106.50 Open housing.

Cross Referenee: See **the** definitions ins. 103.001.

SUBCHAPTER III
EQUAL RIGHTS PROGRAMS

106.50 Open housing. (1) INTENT. It is the intent of this section to render unlawful discrimination in housing. It is the declared policy of this state that all persons shall have an equal opportunity for housing regardless of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, age or ancestry and it is the duty of the political subdivisions to assist in the orderly prevention or removal of all discrimination in housing through the powers granted under ss. 66.0125 and 66.1011. The legislature hereby extends the state law governing equal housing opportunities to cover single–family residences which are owner-occupied. The legislature finds that the sale and rental of single–family residences constitute a significant portion of the housing business in this state and should be regulated. This section shall be deemed an exercise of the police powers of the state for the protection of the welfare, health, peace, dignity and human rights of the people of this state.

(1m) DEFINITIONS. In this section: (ad) "Advertise" means to publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign in connection with the sale, financing or rental of housing.

(am) "Age", in reference to a member of a protected class, means at least 18 years of age.

(b) "Aggrieved person" means a person who claims to have been injured by discrimination in housing or believes that he or she will be injured by discrimination in housing that is about to occur.

(c) "Complainant" means a person who files a complaint alleging discrimination in housing.

(d) "Conciliation" means the attempted resolution of issues raised by a complaint or by the investigation of the complaint, through informal negotiations involving the aggrieved person, the complainant, the respondent and the department.

(e) "Condominium" has the meaning given in s. 703.02 (4).

(f) "Condominium association" means an association, as defined in s. 703.02 (lm).

(g) "Disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of having such an impairment or being regarded as having such an impairment. "Disability" does not include the current illegal use of a controlled substance, as defined in s. 961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m), unless the individual is participating in a supervised drug rehabilitation program.

(h) "Discriminate" means to segregate, separate, exclude or treat a person or class of persons unequally in a manner described in sub. (2), (2m) or (2r) because of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, age or ancestry.

(i) "Dwelling unit" means a structure or that part of a structure that is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons who are maintaining a common household, to the exclusion of all others.

(j) "Family" includes one natural person.

(k) "Family status" means any of the following conditions that apply to a person seeking to rent or purchase housing or to a member or prospective member of the person's household regardless of the person's marital status:

1. **A** person is pregnant.

2. **A** person is in the process of securing sole or joint legal custody, periods of physical placement or visitation rights of a minor child.

3. A person's household includes one or more minor or adult relatives.

4. A person's household includes one or more adults or minor children in his or her legal custody or physical placement or with whom he or she has visitation rights.

5. A person's household includes one or more adults or minor children placed in his or her care under a court order, under a guardianship or with the written permission of a parent or other person having legal custody of the adult or minor child.

(km) '-Hardship condition" means a situation under which a tenant in housing for older persons has legal custody or physical placement of a minor child or a minor child is placed in the tenant's care under a court order, under a guardianship or with the written *permission* of a parent or other person having legal custody of the minor child.

(L) "Housing" means any improved property, or any portion thereof, including a mobile home as defined in s. 66.0435 (1) (d) or condominium, that is used or occupied, or is intended, arranged or designed to be used or occupied, as a home or residence. "Housing" includes any vacant land that is offered for sale or rent for the construction or location thereon of any building, structure or portion thereof that is used or occupied, or is intended, arranged or designed to be used or occupied, as a home or residence.

(m) "Housing for older persons" means any of the following:

1. Housing provided under any state or federal program that the secretary determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program.

2. Housing solely intended for, and solely occupied by, persons 62 years of age or older.

3. Housing primarily intended and primarily operated for occupancy by at least one person *55* years of age or older per dwelling unit.

(mm) "Interested person" means an adult relative or friend of a member of a protected class, or an official or representative of a private agency, corporation or association concerned with the welfare of a member of a protected class.

(nm) "Member of a protected class" means a group of natural persons, or a natural person, who may be categorized based on one or more of the following characteristics: sex, race, color, disability, sexual orientation as defined in s. 111.32 (13m), religion, national origin, marital status, family status, lawful source of income, age or ancestry.

(om) "Political subdivision" means a city, village, town or county.

(q) "Relative" means a parent, grandparent, greatgrandparent, stepparent, step grandparent, brother, sister, child, stepchild, grandchild, step grandchild, greatgrandchild, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepbrother, stepsister, half brother or half sister or any other person related by blood, marriage or adoption.

(r) "Rent" means to lease, to sublease, to let or to otherwise grant for a consideration the right of a tenant to occupy housing not owned by the tenant.

(s) "Respondent" means the person accused in a complaint or amended complaint of discrimination in housing and any other person identified in the course of an investigation as allegedly having discriminated in housing.

(t) "Sexual orientation" has the meaning given in s. 111.32 (13m).

(IS) DEPARTMENT TO ADMINISTER. This section shall be administered by the department through its division of equal rights. The department may promulgate such rules as are necessary to carry out this section. No rule may prohibit the processing of any class action complaint or the ordering of any class–based remedy, or may provide that complaints may be consolidated for administrative convenience only.

(2) DISCRIMINATION PROHIBITED. It is unlawful for any person to discriminate:

(a) By refusing to sell, rent, finance or contract to construct housing or by refusing to negotiate or discuss the terms thereof.

(b) By refusing to permit inspection or exacting different or more stringent price, terms or conditions for the sale, lease, financing or rental of housing.

(c) By refusing to finance or sell an unimproved residential lot or to construct a home or residence upon such lot.

(d) By advertising in a manner that indicates discrimination by a preference or limitation.

(e) For a person in the business of insuring against hazards, by refusing to enter into, or by exacting different terms, conditions or privileges with respect to, a contract of insurance against hazards to a dwelling.

(f) By refusing to renew a lease, causing the eviction of a tenant from rental housing or engaging in the harassment of a tenant.

(g) In providing the privileges, services or facilities that are available in connection with housing.

(h) By falsely representing that housing is unavailable for inspection, rental or sale.

(i) By denying access to, or membership or participation in, a multiple listing service or other real estate service.

(j) By coercing, intimidating, threatening or interfering with a person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, a right granted or protected under this section, or with a person who has aided or encouraged another person in the exercise or enjoyment of a right granted or protected under this section.

(k) In making available any of the following transactions, or in the terms or conditions of such transactions for a person whose business includes engaging in residential real estate–related transactions:

1. The making or purchasing of loans or the provision of other financial assistance for purchasing, constructing, improving, repairing or maintaining housing or the making or purchasing of loans or the provision of other financial assistance secured by residential real estate.

2. Selling, brokering or appraising residential real property.

(L) By otherwise making unavailable or denying housing.

(2m) REPRESENTATIONS DESIGNED TO INDUCE PANIC SALES. No person may induce or attempt to induce a person to sell or rent housing by representations regarding the present or prospective entry into the neighborhood of a person of a particular economic status or a member of a protected class, or by representations to the effect that such present or prospective entry will or may result in any of the following:

(a) The lowering of real estate values in the area concerned.

(b) A deterioration in the character of the area concerned.

(c) An increase in criminal or antisocial behavior in the area Concerned.

(d) **A** decline in the quality of the schools or other public facilities serving the area.

(2r) DISCRIMINATION AGAINST PERSONS WITH DISABILITIES PROHIBITED.

(b) ***Types of discrimination prohibited.*** In addition to discrimination prohibited under subs. (2) and (2m), no person may do any of the following:

1. Segregate, separate, exclude or treat unequally in the sale or rental of, or otherwise make unavailable or deny, housing to a buyer or renter because of a disability of that buyer or renter, a disability of a person residing in or intending to reside in that housing after it is sold, rented or made available or a disability of a person associated with that buyer or renter.

2. Segregate, separate, exclude or treat unequally a person in the terms, conditions or privileges of sale or rental of housing, or in the provision of services or facilities in connection with such housing, because of a disability of that person, a disability of a person residing in or intending to reside in that housing after it is sold, rented or made available or a disability of a person associated with that person.

3. Refuse to permit, at the expense of a person with a disability, reasonable modifications of existing housing that is occupied, or is to be occupied, by such a person if the modifications may be necessary to afford the person full enjoyment of the housing, except that in the case of rental housing the landlord may, where it is reasonable to do so, condition permission for a modification on the tenant's agreement to restore the interior of the housing to the condition that existed before the modification, other than reasonable wear and tear. The landlord may not increase any customarily required security deposit. Where it is necessary to ensure that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of a restoration agreement a requirement that the tenant pay into an interest–bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant. If escrowed funds are not used by the landlord for restorations, they shall be returned to the tenant.

4. Refuse to make reasonable accommodations in rules, policies, practices or services that are associated with the housing, when such accommodations may be necessary to afford the person equal opportunity to use and enjoy housing, unless the accommodation would impose an undue hardship on the owner of the housing.

(bm) ***Animals assisting persons with disabilities.*** 1. If an individual's vision, bearing or mobility is impaired, it is discrimination for a person to refuse to rent or sell housing to the individual, cause the eviction of the individual from housing, require extra compensation from an individual as a condition of continued residence in housing or engage in the harassment of the individual because he or she keeps an animal that is specially trained to lead or assist the individual with impaired vision, hearing or mobility if all of the following apply:

a. Upon request, the individual shows to the lessor, seller or representative of the condominium association credentials issued by a school recognized by the department as accredited to train animals for individuals with impaired vision, hearing or mobility.

b. The individual accepts liability for sanitation with respect to, and damage to the premises caused by, the animal.

2. Subdivision 1. does not apply in the case of the rental of owner-occupied housing if the owner or a member of his or her immediate family occupying the housing possesses and, upon request, presents to the individual a certificate signed by a physician which states that the owner or family member is allergic to the type of animal the individual possesses.

(c) Design and construction of covered multifamily housing. In addition to discrimination prohibited under pars.(b) and (bm) and subs. (2) and (2m), no person may design or construct covered multifamily housing, as defined in s. 101.132 (1) (d), unless it meets the standards specified in s. 101.132 (2) (a) 1. to 4. In addition, no person may remodel, as defined in s. 101.132 (1) (h), housing with 3 or more dwelling units unless the remodeled housing meets the standards specified in s. 101.132 (2) (a) 1. to 4. as required under s. 101.132 (2) (b) 1., 2. or 3., whichever is applicable.

(5m) EXEMPTIONS AND EXCLUSIONS. (a) 1. Nothing in this section prohibits discrimination based on age or family status with respect to housing for older persons.

le. Under this paragraph, housing under sub.(1m) (m) 3. may qualify as housing for older persons only if the owner of the housing maintains records containing written verification that all of the following factors apply to the housing:

b. At least 80% of the dwelling units under sub. (lm) (m) 3. are occupied by at least one person 55 years of age or older. c. Policies are published and procedures are adhered to that demonstrate an intent by the owner or manager to provide housing under sub. (Im) (m) 3. for persons 55 years of age or older. The owner or manager may document compliance with this subd. le.

c. by maintaining records containing written verification of the ages of the occupants of the housing.

lm. No person may discriminate by refusing to continue renting to a person living in housing for older persons under sub.(lm) (m) 3. who is subject to a hardship condition.

2. Under this paragraph, housing may qualify as housing for older persons with respect to persons first occupying the housing on or after September 1, 1992, regardless of whether a person who had not attained the age of 62 resided in the housing on that date or regardless of whether one or more dwelling units were unoccupied on that date, if the persons who first occupy the housing on or after that date have attained the age of 62.

(b) Nothing in this section shall prohibit a person from exacting different or more stringent terms or conditions for financing housing based on the age of the individual applicant for financing if the terms or conditions are reasonably related to the individual applicant.

(c) Nothing in this section shall prohibit the development of housing designed specifically for persons with disabilities and preference in favor of persons with disabilities in relation to such housing.

(d) Nothing in this section requires that housing be made available to an individual whose tenancy would constitute a direct threat to the safety of other tenants or persons employed on the property or whose tenancy would result in substantial physical damage to the property of others, if the risk of direct threat or damage cannot be eliminated or sufficiently reduced through reasonable accommodations. A claim that an individual's tenancy poses a direct threat or a substantial risk of harm or damage must be evidenced by behavior by the individual that caused harm or damage, that directly threatened harm or damage, or that caused a reasonable fear of harm or damage to other tenants, persons employed on the property, or the property. No claim that an individual's tenancy would constitute a direct threat to the safety of other persons or would result in substantial damage to property may be based on the fact that a tenant has been or may be the victim of domestic abuse, as defined in s. 813.12 (1) (am).

(e) It is not discrimination based on family status to comply with any reasonable federal, state or local government restrictions relating to the maximum number of occupants permitted to occupy a dwelling unit.

(em) 1. Subject to subd.2., nothing in this section applies to a decision by an individual as to the person with whom he or she will, or continues to, share a dwelling unit, as defined in s. 101.71 (2) except that dwelling unit does not include any residence occupied by more than 5 persons.

2. Any advertisement or written notice published, posted or mailed in connection with the rental or lease of a dwelling unit under subd.1. may not violate sub.(2) (d), 42 USC 3604 (c), or any rules or regulations promulgated under this section or 42 USC 3601 to 3619, except that such an advertisement or written notice may be for a person of the same sex as the individual who seeks a person to share the dwelling unit for which the advertisement or written notice is placed.

(f) 1. Nothing in this section prohibits an owner or agent from requiring that a person who seeks to buy or rent housing supply information concerning family status and marital, financial and business status but not concerning race, color, physical condition, disability, sexual orientation, ancestry, national origin, religion, creed or, subject to subd.2., age.

2. Notwithstanding subd.1., an owner or agent may require that a person who seeks to buy or rent housing under sub.(1m) (m) 3. supply information concerning his or her age for the purpose of verifying compliance with par.(a) 1e. b.

(g) A person may not be held personally liable for monetary damages for a violation of sub.(2), (2m) or (2r) if the person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons. For purposes of this paragraph, a person may show reasonable reliance, in good faith, on the application of the exemption under this subsection relating to housing for older persons only if the person shows all of the following:

1. That he or she has no actual knowledge that the housing is not or will not be eligible for the exemption.

2. That the owner of the housing has stated formally, in writing, that the housing complies with the requirements for the exemption.

(6) FAIR HOUSING ADMINISTRATIVE ENFORCEMENT.

(a) ***Complaints.*** 1. The department may receive and investigate a complaint charging a violation of sub.(2), (2m) or (2r) if the complaint is filed with the department not later than one year after the alleged discrimination occurred or terminated.

2. The complaint shall include a written statement of the essential facts constituting the discrimination that is charged, and shall be signed by the complainant.

3. The complaint may be filed by an aggrieved person, by an interested person, by the department of workforce development under par.(b) or, if the complaint charges a violation of sub.(2r) (c), by the department of commerce. The department of workforce development shall, upon request, provide appropriate assistance in completing and filing complaints.

4. The department shall serve notice on the aggrieved person acknowledging the filing of the complaint and advising the complainant of the time limits and choice of forums provided under this subsection and the right to bring a private civil action under sub.(6m).

5. Upon the filing of an initial, amended, final or supplemental complaint, the department shall promptly serve a copy of the complaint upon the respondent, except where testing may be conducted. The initial complaint shall be served before the commencement of the investigation by the department, except where testing may be conducted. The notice shall be sent by certified mail, return receipt requested. The notice to the respondent shall include a written statement from the department directing the respondent to respond in writing to the allegations in the complaint within 20 days after the date of the notice and further stating that, if the respondent fails to answer the cornplaint in writing, the department will make an initial determination as to whether discrimination has occurred based only on the department's investigation and the information supplied by the complainant.

6. The department may dismiss the complaint if the complainant fails to respond to the department within 20 days from the date of mailing of any correspondence from the department concerning the complaint, if the department's correspondence requests a response and if the correspondence is sent by certified mail, return receipt requested, to the last known–address of the complainant.

(b) ***Powers and duties of department.*** The department of workforce development and its duly authorized agents may hold hearings, subpoena witnesses, take testimony and make investigations as provided in this subsection. The department of workforce development may test and investigate for the purpose of establishing violations of sub.(2), (2m) or (2r) and may make, sign and file complaints alleging violations of sub.(2), (2m) or (2r). In addition, the department of commerce may make, sign and file complaints alleging violations of sub.(2r) (c). The department of workforce development shall employ examiners to hear and decide complaints of discrimination under this section, and to assist in the administration of this section. The examiners may make findings and issue orders under this subsection. The department of workforce development shall develop and implement an investigation manual for use in conducting investigations under par.(c).

(c) ***Investigation and finding of probable cause.*** 1. The department shall investigate all complaints that allege a violation of this section and that are filed within the time specified under par.(a). The department may subpoena persons or documents for the purpose of investigation. If during an investigation it appears that the respondent has engaged in discrimination against the complainant which is not alleged in the complaint, the department may advise the complainant that the complaint should be amended. If the complaint is amended, the department shall also investigate the allegations of the amended cornplaint.

2. At the conclusion of the investigation of the allegations, the department shall make a determination as to whether probable cause exists to believe that discrimination has occurred or is about to occur. In making a determination of probable cause, the department shall consider whether the facts concerning the alleged discrimination are sufficient to warrant the initiation of a civil action. If the department determines that probable cause exists, the department shall immediately issue a charge on behalf of the aggrieved person. Service of copies of the charge shall be made on the complainant, the respondent and the aggrieved person by certified mail, return receipt requested. When a charge is filed, a complainant, a respondent or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in that charge decided in a civil action under sub.(6m) in lieu of a hearing under par.(f). The election shall be made no later than 20 days after the receipt by the electing person of service of the charge, along with information about how to make the election. If an election is made, the person making the election shall give notice of doing so to the department and to all other complainants

and respondents to whom the charge relates. The department shall notify the aggrieved persons that an election is made.

3. No charge may be issued regarding alleged discrimination after the beginning of the trial of a civil action commenced by the aggrieved party under sub.(6m) or 42 USC 3613, seeking relief with respect to that discriminatory act.

4. If the department initially determines that there is no probable cause to believe that discrimination occurred as alleged in the complaint, it may dismiss those allegations. The department shall, by a notice to be served with the determination, notify the parties of the complainant's right to appeal the dismissal of the claim to the secretary for a hearing on the issue by a hearing examiner. Service of the determination shall be made by certified mail, return receipt requested. If the hearing examiner determines that no probable cause exists, that determination is the final determination of the department and may be appealed under par.(j).

(d) ***Temporary judicial relief.*** At any time after a complaint is filed alleging discrimination in violation of sub.(2), (2m) or (2r), the department may file a petition in the circuit court for the county in which the act of discrimination allegedly occurred or for the county in which a respondent resides or transacts business, seeking a temporary injunction or restraining order against the respondent to prevent the respondent from performing an act that would tend to render ineffectual an order that the department may enter with respect to the complaint, pending final determination of proceedings under this section.

(e) Conciliation. 1. Upon the filing of a complaint alleging discrimination in violation of sub.(2), (2m) or (2r), the department may endeavor to eliminate the discrimination by conference, conciliation and persuasion. The department shall notify the parties that conciliation services are available.

2. Conciliation efforts may be undertaken by the department during the period beginning with the filing of the complaint and ending with the dismissal of the complaint under par.(c) 4. or the issuance of a charge under par.(c) 2.

3. If conciliation resolves the dispute, a written conciliation agreement shall be prepared which shall state all measures to be taken by each party. The agreement may provide for dismissal of the complaint if the dismissal is without prejudice to the complainant's right to pursue the complaint against any respondent who fails to comply with the terms of the agreement. The agreement shall be signed by the respondent, the complainant and the aggrieved person and is subject to approval by the department. A conciliation agreement entered into under this subdivision is a public record and is subject to inspection under s. 19.35, unless the parties to the agreement request that the record be exempt from disclosure and the department finds that disclosure is not required to further the purposes of this section.

4. Whenever the department has reasonable cause to believe that a respondent has breached a conciliation agreement, the department shall refer the matter to the department of justice with a recommendation that a civil action be filed for enforcement of the agreement.

(f) Hearing procedures. 1. After the department issues a charge under par.(c) 2., the department shall serve the charge, along with a written notice of hearing, specifying the nature and acts of discrimination which appear to have been committed, and requiring the respondent to answer the charge at a hearing before an examiner. The notice shall specify a time of hearing, not less than 10 days after service of the charge, and a place of hearing within the county in which the violation is alleged to have occurred.

2. If an election is not made under par.(c) 2., the hearing shall be conducted by a hearing examiner. A person who is aggrieved, with respect to the issues to be determined at the hearing, may be represented by counsel.

3. The department or a party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney shall be in substantially the same form as provided in s. 805.07 (4) and shall be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of issuance, send a copy of the subpoena to the hearing examiner who is responsible for conducting the hearing.

4. The testimony at the hearing shall be recorded by the department. Discovery shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence. The hearing under this paragraph shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record. The burden of proof is on the party alleging discrimination.

5. If after the hearing the examiner finds by a fair preponderance of the evidence that the respondent has violated sub.(2), (2m) or (2r), the examiner shall make written findings and order the respondent to take actions that will effectuate the purpose of sub.(2), (2m) or (2r), and may order other penalties, damages and costs as provided in pars.(h) and (i). The department shall serve a certified copy of the final findings and order on the aggrieved party, the complainant and the respondent. The order shall have the same force as other orders of the department and be enforced as provided in this subsection except that the enforcement of the order is automatically stayed upon the filing of a petition for review under par.(j).

6. If the examiner finds that the respondent has not engaged in discrimination as alleged in the complaint, the department shall serve a certified copy of the examiner's findings on the aggrieved party, the complainant and the respondent together with an order dismissing the complaint. If the complaint is dismissed, costs in an amount not to exceed $100 plus actual disbursements for the attendance of witnesses may be assessed against the department in the discretion of the department.

(g) ***Time limitations.*** 1. The department shall commence proceedings with respect to a complaint before the end of the 30th day after receipt of the complaint.

2. The department shall investigate the allegations of the complaint and complete the investigation not later than 100 days after receipt of the complaint. If the department is unable to complete the investigation within 100 days, it shall notify the complainant and respondent in writing of the reasons for not doing so.

3. The department shall make final administrative disposition of a complaint within one year after the date of receipt of a complaint, unless it is impracticable to do so. If the department is unable to do so, it shall notify the complainant and respondent in writing of the reasons for not doing so.

(h) ***Damages and penalties.*** 1. If the hearing examiner finds that a respondent has engaged in or is about to engage in a discriminatory act prohibited under sub.(2), (2m) or (2r), the hearing examiner shall promptly issue an order for such relief as may be appropriate, which may include economic and non economic damages suffered by the aggrieved person, regardless of whether he or she intervened in the action, and injunctive or other equitable relief. The hearing examiner may not order punitive damages.

2. In addition to any damages ordered under subd.1., the hearing examiner may assess a forfeiture against a respondent who is not a natural person in an amount not exceeding $10,000, unless the respondent who is not a natural person has been adjudged to have committed any prior discriminatory act under sub.(2), (2m) or (2r). If a respondent who is not a natural person has been adjudged to have committed one other discriminatory act under sub.(2), (2m) or (2r) during the preceding 5–year period, based on the offense date of the prior discriminatory act, the hearing examiner may assess a forfeiture in an amount not exceeding $25,000. If a respondent who is not a natural person has been adjudged to have committed 2 or more prior discriminatory acts under sub.(2), (2m) or (2r) during the preceding 7–year period, based on the offense date of the prior discriminatory act, the hearing examiner may assess a forfeiture in an amount not exceeding $50,000.

3. In addition to any damages ordered under subd.1., the administrative law judge may assess a forfeiture against a respondent who is a natural person in an amount not exceeding $10,000, unless the respondent who is a natural person has been adjudged to have committed any prior discriminatory act under sub.(2), (2m) or (2r). If a respondent who is a natural person has been adjudged to have committed one other prior discriminatory act under sub.(2), (2m) or (2r) based on an offense date that is before September 1, 1992, the administrative law judge may

assess a forfeiture in an amount not exceeding $25,000. If a respondent who is a natural person has been adjudged to have committed 2 or more prior discriminatory acts under sub.(2), (2m) or (2r) based on an offense date that is before September 1, 1992, the administrative law judge may assess a forfeiture in an amount not exceeding $50,000.

(i) ***Attorney fees and costs.*** The hearing examiner may allow a prevailing complainant, including the state, reasonable attorney fees and costs. The state shall be liable for those fees and costs if the state is a respondent and is determined to have committed a discriminatory act under sub.(2), (2m) or (2r).

(j) ***Judicial review.*** Within 30 days after service upon all parties of an order or determination of the department under this subsection, the respondent, the complainant or the aggrieved party may appeal the order or the determination to the circuit court for the county in which the alleged discrimination took place by the filing of a petition for review. The court shall review the order or determination as provided in ss. 227.52 to 227.58.

(6m) CIVIL ACTIONS. (a) Any person, including the state, alleging a violation of sub.(2), (2m) or (2r) may bring a civil action for injunctive relief, for damages, including punitive damages, and, in the case of a prevailing plaintiff, for court costs and reasonable attorney fees.

(b) An action commenced under par.(a) may be brought in the circuit court for the county where the alleged violation occurred or for the county where the person against whom the civil complaint is filed resides or has a principal place of business, and shall be commenced within one year after the alleged violation occurred or terminated. The one–year statute of limitations under this paragraph shall be tolled while an administrative proceeding with respect to the same complaint is pending.

(c) The court may issue a permanent or temporary injunction or restraining order to assure the rights granted by this section. The court may order other relief that the court considers appropriate, including monetary damages, actual and punitive, a forfeiture as provided in sub.(6) (h) and costs and fees as provided in sub.(6) (i).

(d) If the attorney general has reasonable cause to believe that any person is engaged in a pattern or practice of discrimination in violation of sub.(2), (2m) or (2r) or that any person has been denied any of the rights granted under sub.(2), (2m) or (2r), and such denial raises an issue of general public importance, the department of justice may commence a civil action.

(8) DISCRIMINATION **BY** LICENSED **OR** CHARTERED PERSONS.

(a) If the department finds reasonable cause to believe that an act of discrimination has been or is being committed in violation of this section by a person taking an action prohibited under sub.(2), (2m) or (2r) and that the person is licensed or chartered under state law, the department shall notify the licensing or chartering agency of its findings and may file a complaint with such agency together with a request that the agency initiate proceedings to suspend or revoke the license or charter of such person or take other less restrictive disciplinary action.

(b) Upon filing a complaint under par.(a), the department shall make available to the appropriate licensing or chartering agency all pertinent documents and files in its custody, and shall cooperate fully with such agency in the agency's proceedings.

History: 1971 c. 185 s. 1; 1971 c. 228 s. 42; 1971 c. 230; 1971 c. 307 s. 51; Stats. 1971 s. 101.22; 1975 c. 94, 275, 421, 422; 1977 c. 29; 1977 c. 418 s. 929 (55); 1979 c. 110; 1979 c. 177 s. 85; 1979 c. 188, 221, 355; 1981 c. 112, 180; 1981 c. 391 s. 210; 1983 a. 27, 189; 1985 a. 238, 319; 1987 a. 262; 1989 a. 47 ss. 2 to 5, 8 to 11; 1989 a. 94, 106, 139, 359; 1991 a. 295. 315; 1993 a. **27;** 1995 a. 27 s. 3687; **Stats.** 1995 s. 106.04; 1995 a. 225; 1995 a. 448 ss. 66.68; 1997 a. 112.237.312:, 1999 a. 82 ss. 3R to 74; Stats. 1999 s. 106.50; 1999 a. 150 s. 672; 1999 a. 162; 2001 a. **30** s. 108; 2001 a. 109.

NOTE: 1991 **Wis.** Act 295, which affected **this** section, **contains** extensive legislative **council** notes.

Cross Reference: See also ch. DWD ***220,*** Wis. adm. code. "Harassment" under sub.(2) (f) includes sexual harassment as defined in s. 111.32 (13). Sexual harassment injures the tenant's dignity and civil rights, and those injuries are compensable. Chomicki v. Wittekind, 128 Wis. 2d 188, 381 N.W.2d 561 (Ct. App. 1985).

A violation of sub.(2) (d) requires that an ordinary reader find that an advertisement suggests a particular class is preferred or "dispreferred." Milwaukee Fair Housing Council v. LIRC, 173 Wis. 2d 199, 496 N.W.2d 159 (Ct. App. 1992).

The state, in administering the fair housing act, may not order a zoning board to issue a variance based on characteristics unique to the landowner rather than the land. County **of** Sawyer Zoning Board v. Department of Workforce Development, 231 Wis. 2d 534, 605 N.W.2d 627 (Ct. App. 1999).

To establish a disability under this section, the complainant must show: 1) that he or she has an actual impairment, a record of impairment, or is regarded as having an impairment; and **2)** that the impairment, whether real or perceived, is one that substantially limits one or more major life activities, or is regarded by the respondent as substantially limiting one or more major life activities. Kitten v. DWD, **2002** WI 54, 252 Wis. 2d 561, 644 N.W.2d 649.

The Wisconsin open housing law permits, but does not require, the department to receive and process class action complaints of housing discrimination. 70 Atty. Gen. 250.

The insurer of an apartment had a duty to defend an owner and manager for liability under this section. Gardner v. Romano, **688** F. Supp. 489 (E. D. Wis. 1988).

Federal rent vouchers are not clearly within the meaning of "lawful source of income." Knapp v. Eagle Property Management Corp. 54 F.3d **1272** (1995).

Closing the Door on Cohabitants Under Wisconsin's Open Housing Law, Neuman. 1995 WLR 965.

CHAPTER 224
MISCELLANEOUS BANKING AND FINANCIAL INSTITUTIONS PROVISIONS

SUBCHAPTER III
MORTGAGE BANKERS, LOAN ORIGINATORS
AND MORTGAGE BROKERS

224.71 Definitions.

Cross–reference: See definitions **in** s. 220.01

SUBCHAPTER III
MORTGAGE BANKERS, LOAN ORIGINATORS AND MORTGAGE BROKERS

224.71 Definitions. In this subchapter: **(Ib)** "Bona fide office" of a mortgage banker or mortgage broker means an office that meets all of the following conditions: (a) Is located in this state.

(b) Has regular hours of operation.

(c) Is accessible to the public.

(d) Serves as an office for the transaction of business.

(e) Is staffed by an individual registered under this subchapter who is an employee of the mortgage banker or mortgage broker and is not shared with another business.

(f) Is separate from the offices of other entities.

(g) Contains the books and records of the mortgage banker or mortgage broker, or copies of the books and records, unless the mortgage banker or mortgage broker has agreed to furnish copies of its books and records, as soon as practicable, upon the request of the division.

(Ic) "Division" means the division of banking.

(1g) "Loan" means a loan secured by a lien or mortgage, or equivalent security interest, on real property.

(Ir) "Loan originator'' means a person who, on behalf of a mortgage banker or mortgage broker, finds a loan or negotiates a land contract, loan or commitment for a loan.

(3) (a) "Mortgage banker" means a person who is not excluded by par.

(b) and who does any of the following:

1. Originates loans for itself, as payee on the note evidencing the loan, or for another person.

2. Sells loans or interests in loans to another person.

3. Services loans or land contracts or provides escrow services.

(b) "Mortgage banker" does not include any of the following:

1. A bank, trust company, savings bank, savings and loan association, insurance company, or a land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law.

1m. A community–based organization, as defined in s. 16.30(1), or a housing authority, as defined in s. 16.30(2).

2. A credit union which negotiates loans or any licensee under ch. 138 which negotiates loans or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan.

3. Employees of persons described in subds. 1. to 2. if the employee is performing his or her duties as an employee.

4. A landlord who, in connection with leasing real property, makes a loan to a tenant that is secured by leasehold improvements that are fixtures or improvements to real property.

5. An employee or agent of persons described in subd. 4. if the employee or agent is performing his or her duties in making leasehold improvement loans in connection with leasing real property.

6. **A** person who originates, sells, or services loans only with the person's own funds for the person's own investment and the person has originated, sold or serviced no more than 4 loans during the previous 12 months.

7. The department of veterans affairs when administering the veteran's housing loan program under subch. II of ch. 45.

(4) (a) "Mortgage broker'' means a person who is not excluded by par.

(b) and who, on behalf of a loan applicant or an investor and for commission, money or other thing of value, finds a loan or negotiates a land contract, loan or commitment for a loan or engages in table funding.

(b) "Mortgage broker" does not include any of the following:

1. A bank, trust company, savings bank, savings and loan association, insurance company, or a land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law.

1m. A community–based organization, as defined in s. 16.30 (1), or a housing authority, as defined in s. 16.30 (2).

2. A credit union which negotiates loans or any licensee under ch. 138 which negotiates loans or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan.

3. Employees of persons described in subds. 1. to 2. if the employee is performing his or her duties as an employee.

(5) "Table funding" means a transaction in which a person conducts a loan closing in the person's name with funds provided by a 3rd party and the person assigns the loan to the 3rd party within 24 hours of the loan closing.

History: 1987 a. 359; 1987 a. 403 s. 182; **Stats.** 1987 s. 440.71; 1989 a. 45; 1995 a. 27 s. 6590; Stats. 1995 s. 224.71; 1997 a. 27, 145; 2001 a. **16.**

Cross Reference: See **also** s. DFI–Bkg 40.01, Wis. adm. code. Wisconsin's **new** mortgage banking law. Thompson. Wis. **Law.** March 1989.

CHAPTER 236
PLATTING LANDS AND RECORDING AND VACATING PLATS

SUBCHAPTER I
PRELIMINARY PROVISIONS

236 01 Purpose of chapter.
236 015 Applicability ofchapter.
236.02 Definitions.
236 03 Survey and plat; when required.

SUBCHAPTER VI
PENALTIES AND REMEDIES

236.31 Penalties and remedies for transfer of lots without recorded plat
236.335 Prohibited subdividing; forfeit.

SUBCHAPTER I
PRELIMINARY PROVISIONS

236.01 Purpose of chapter. The purpose of this chapter is to regulate the subdivision of land to promote public health, safety and general welfare; to further the orderly layout and use of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage and other public requirements; to provide for proper ingress and egress; and to promote proper monumenting of land subdivided and conveyancing by accurate legal description. The approvals to be obtained by the subdivider **as** required in this chapter shall be based on requirements designed to accomplish the aforesaid purposes.

236.015 Applicability of chapter. This chapter does not apply to transportation project plats that conform to s. 84.095. History: 1997 a. 282.

236.02 Definitions. In this chapter, unless the context or subject matter clearly requires otherwise:

(1) "Alley" means a public or private right-of–way shown on a plat, which provides secondary access to a lot, block or parcel of land.

(2) "Copy" means a true and accurate copy of all sheets of the original subdivision plat. Such copy shall be on durable white matte finished paper with legible dark lines and lettering.

(2m) "Correction instrument" means an instrument drafted by a licensed land surveyor that complies with the requirements of s. 236.295 and that, upon recording, corrects a subdivision plat or a certified survey map.

(3) "County planning agency" means a rural county planning agency authorized by s. 27.019, a county park commission authorized by s. 27.02 except that in a county with a county executive or county administrator, the county park manager appointed under s. 27.03 (2), a county zoning agency authorized by s. 59.69 or any agency created by the county board and authorized by statute to plan land use.

(4) "Department" means the department of administration.

(5) "Extraterritorial plat approval jurisdiction" means the unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or 1 1/2 miles of a fourth class city or a village.

(6) "Municipality" means an incorporated city or village.

(7) An "outlot" is a parcel of land, other than a lot or block, so designated on the plat.

(8) "Plat" is a map of a subdivision.

(9) "Preliminary plat" is a map showing the salient features of a proposed subdivision submitted to an approving authority for purposes of preliminary consideration.

(9c) "Record" means, with respect to a final plat or a certified survey map, to record and file the document with the register of deeds.

(9m) "Recorded private claim" means a claim of title to land based on a conveyance from a foreign government made before the land was acquired by the United States.

(11) "Replat" is the process of changing, or the map or plat which changes, the boundaries of a recorded subdivision plat or part thereof. The legal dividing of a large block, lot or outlot within a recorded subdivision plat without changing exterior boundaries of said block, lot or outlot is not a replat.

(12) "Subdivision" is a division of a lot, parcel or tract of land by the owner thereof or the owner's agent for the purpose of sale or of building development, where:

(a) The act of division creates 5 or more parcels or building sites of 1 1/2 acres each or less in area; or

(b) Five or more parcels or building sites of 1 1/2 acres each or less in area are created by successive divisions within a period of 5 years.

(13) "Town planning agency" means a town zoning committee appointed under s. 60.61 (4) (a) or any agency created by the town board and authorized by statute to plan land use.

History: 1979 c. 221; 1979 c. 233 s. 8; 1979 c. 248 ss. 2, 25 (4); 1979 c. 361; 1983 a. 189, 473, 532, 538; 1985 a. 29; 1987 a. 399; 1993 a. 490; 1995 a. 27 ss. 6307m, 6308, 9116 (5); 1995 a. 201; 1997 a. 27; 1999 a. 96; 2001 a. 16.

In determining lot sizes under sub. (8), [now sub. (12)], the lots may not extend across navigable waters or public easements of passage, nor include any land whose servitude is inconsistent with its integrated functional use and unified ownership. 66 Atty. Gen. 2.

Chapter 236 does not require a replat when the division of a lot or redivision **of** more than one lot does not meet the definition of a "subdivision" under this section. 67 Atty. Gen. 121.

Certified survey maps under s. 236.34 cannot substitute for subdivision surveys under sub. (8), [now sub. (12)]. Penalties under s. 236.31 apply to improper use of certified surveys. 67 Atty. Gen. 294.

236.03 Survey and plat; when required. (1) Any division of land which results in a subdivision as defined in s. 236.02 (12) (a) shall be, and any other division may be, surveyed and a plat thereof approved and recorded as required by this chapter. No map or survey purporting to create divisions of land or intending to clarify metes and bounds descriptions may be recorded except as provided by this chapter.

(2) This chapter does not apply to cemetery plats made under s. 157.07 and assessors' plats made under s. 70.27, but such assessors' plats shall, except in counties having a population of 500,000 or more, comply with ss. 236.15 (1) (a) to (g) and 236.20 (1) and (2) (a) to (e), unless waived under s. 236.20 (2) (L).

(3) Subsection (1) shall not apply to the sale or exchange of parcels of public utility or railroad right-of–way to adjoining property owners if the governing body of the municipality or town in which the property is located and the county planning agency, where such agency exists, approves such sale or exchange on the basis of applicable local ordinances or the provisions of this chapter.

History: 1983 a. 189 s. 329 (23); 1983 a. 473; 1993 a. 490.

The provisions of s. 236.41 relating to vacation of streets are inapplicable *to* assessors plats under s. 70.27.

Once properly filed and recorded, an assessor's plat becomes the operative document of record, and only sections specified in s. 236.03 (2) apply to assessor's plats. Schaetz v. Town of Scott, 222 Wis. 2d 90, 585 N.W.2d 889 (Ct. App. 1998).

A replat of a recorded subdivision must comply with the formal platting requirements of ch. 236 relating to new subdivision plats, including those relating to the survey, approval, and recording. 63 Atty. Gen. 193.

SUBCHAPTER VI
PENALTIES AND REMEDIES

236.31 Penalties and remedies for transfer of lots without recorded plat. (1) Any subdivider or the subdivider's agent who offers or contracts to convey, or conveys, any subdivision **as** defined in s. 236.02 (12) or lot or parcel which lies in a subdivision as defined in s. 236.02 (12) knowing that the final plat thereof has not been recorded may be fined not more than $500 or imprisoned not more than 6 months or both; except where the preliminary or final plat of the subdivision has been filed for approval with the town or municipality in which the subdivision lies, an offer or contract to convey may be made if that offer or

contract states on its face that it is contingent upon approval of the final plat and shall be void if such plat is not approved.

(2) Any municipality, town, county or state agency with subdivision review authority may institute injunction or other appropriate action or proceeding to enjoin a violation of any provision of this chapter, ordinance or rule adopted pursuant to this chapter. Any such municipality, town or county may impose a forfeiture for violation of any such ordinance, and order an assessor's plat to be made under s. 70.27 at the expense of the subdivider or the subdivider's agent when a subdivision is created under s. 236.02 (12) (b) by successive divisions.

(3) Any conveyance or contract to convey made by the subdivider or the subdivider's agent contrary to this section or involving a plat which was not entitled to be recorded under s. 236.25 (2) shall be voidable at the option of the purchaser or person contracting to purchase, his or her heirs, personal representative or trustee in insolvency or bankruptcy within one year after the execution of the document or contract; but such document or contract shall be binding on the vendor, the subdivider's assignee, heir or devisee.

History: 1979 c. 248 s. 25 (6); 1979 c. 355,357; 1983 a. 189 s. 329 (23).

Sub. (3) does not allow a purchaser to force a seller to violate sub. (1) and become subject to criminal penalties by doing so. Gordie Boucher Lincoln–Mercury **v.** J & H Landfill, 172 Wis. 2d 333,493 N.W.2d 375 **(Ct.** App. 1992).

Certified survey maps under s. 236.34 cannot substitute **for** subdivision surveys under s. 236.02 (8) [now sub. (12)]. Penalties under s. 236.31 apply to improper use of certified surveys. 67 Atty. Gen. 294.

236.335 Prohibited subdividing; forfeit. No lot or parcel in a recorded plat may be divided, or used if so divided, for purposes of sale or building development if the resulting lots or parcels do not conform to this chapter, to any applicable ordinance of the approving authority or to the rules of the department of workforce development under s. 236.13. Any person making or causing such a division to be made shall forfeit not less than $100 nor more than $500 to the approving authority, or to the state if there is a violation of this chapter or the rules of the department of workforce development.

History: 1979 c. 221; 1995 a. 27 s. 9130 (4); 1997 a. 3.

The circumstances under which lots in a recorded subdivision may be legally divided without replatting are discussed. 64 Atty. Gen. 80.

CHAPTER 240

FRAUDULENT CONVEYANCES AND CONTRACTS RELATING TO REAL ESTATE

240.01 Conveyances. when void.
240.02 Conveyances not fraudulent, when.
240.03 Conveyances with power of revocation, void.
240.04 Such conveyances valid. when.
240.05 Same subject.
240.10 Real estate agency contracts.

240.01 Conveyances, when void. Every conveyance of any estate or interest in land, or the rents and profits of lands and every charge upon lands or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents or profits, as against such purchasers, shall be void.

240.02 Conveyances not fraudulent, when. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have actual or legal notice thereof at the time of his or her purchase. unless it shall appear that the grantee in such conveyance or person to be benefited by such charge was privy to the fraud intended.

History: 1991 a. 316

240.03 Conveyances with power of revocation, void. Every conveyance or charge of or upon any estate or interest in lands containing any provision for the revocation, determination or alteration of such estate or interest or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from such grantor for a valuable consideration of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked. detemiined or altered by such grantor by virtue of the power reserved or expressed in such pnor conveyance or charge.

240.04 Such conveyances valid, when. Where a power to revoke a conveyance of any lands or the rents and profits thereof and to reconvey the same shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents or profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of revocation were recited therein and the intent to revoke the former conveyance expressly declared.

240.05 Same subject. If a conveyance to a purchaser, under either s. 240.03 or 240.04, shall be made before the person making the same shall be entitled to execute a power of revocation it shall nevertheless be valid from the time the power of revocation shall actually vest in such person in the same manner and to the same extent as if then made.

History: 1991 a. 316.

240.10 Real estate agency contracts. (1) Every contract to pay a commission to a real estate agent or broker or to any other person for selling or buying real estate shall be void unless such contract or note or memorandum thereof describes that real estate; expresses the price for which the same may be sold or purchased, the cornmission to be paid and the period during which the agent or broker shall procure a buyer or seller; is in writing; and is subscribed by the person agreeing to pay such commission, except that a contract to pay a commission to a person for locating a type of property need not describe the property.

(2) Every contract to pay a commission to any real estate agent or broker or to any person for leasing real estate for a term exceeding *3* years shall be void unless such contract, note or memorandum thereof describes that real estate; expresses the rent to be paid or a method to determine the same, the length of the lease, the commission to be paid, and the period during which said person shall procure a tenant; is in writing; and is subscribed by the person agreeing to pay such commission, except that a contract to pay a commission *to* a person for locating a type of property need not describe the property.

History: 1991 **a.** 163.

If a defective commission agreement signed by a principal clearly refers to a certain transaction in which a binding lease or sales contract has previously been made, it does not defeat the purpose of sub. (1) to allow the integration of that document into the commission agreement. even though there is not a specific reference to the document itself; however, if the reference to the transaction is not clear and certain, then integration should not be allowed, even in the case of a previously existing lease or sales contract. Buckman v. E. H. Schaefer & Associates, Inc. 50 Wis. 2d 755, 185 N.W.2d 328 (1971).

If an *otherwise sufficient written* memorandum is executed after the broker has performed his or her services, the fact that it specifically states that all services have been completed and is signed by the principal should be deemed substantial compliance with the requirement that a time period be stated. Buckman **v.** E. H. Schaefer &Associates, Inc. 50 Wis. 2d 755, 185 N.W.2d 32X (1971).

A valid real estate contract existed, notwithstanding the absence of a co–owner's signature. Winston *v. Minkin*, 63 Wis. 2d 46. 216 N.W.2d 38.

This section **was** not applicahlc in a broker's suit for a commission for negotiating lease when oral authorization allegedly given *to* the broker **was** communicated to the broker in Wisconsin but the place of performance of the alleged contract was Tennessee. Paulson v. Shapiro, 490 F.2d 1 (1973).

This section barred an action in quantum meruit for services related to the sale of real estate. Farnsworth, McKoane & Co. v. North Shore Savings & Loan Association. 504 F. Supp. 673 (1981).

CHAPTER 254
ENVIRONMENTAL HEALTH

SUBCHAPTER I
GENERAL PROVISIONS

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254.015 Departmental power; designation.
254.02 Health risk assessments.

SUBCHAPTER II
TOXIC SUBSTANCES

254.11 Definitions.
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254.12 Use or sale of lead–bearing paints.
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254.151 Lead poisoning or lead exposure prevention grants.
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254.156 Definition of lead–bearing paint and lead poisoning or lead exposure.
254.158 Screening recommendations.
254.162 Screening requirements.
254.164 Care for children with lead poisoning or lead exposure.
254.166 Departmental response to reports of lead poisoning or lead exposure.
254.167 Conduct of lead investigation.
254.168 Lead inspections of facilities serving children under 6 years of age.
254.171 Dwellings and units of dwellings where child has elevated blood lead level.
254.172 Prevention and control of lead–bearing paint hazards in dwellings and premises.
254.173 Immunity from liability for lead poisoning or lead exposure; restrictions
254.174 Technical advisory committees.
254.176 Certification requirements.

Cross–reference: See definitions in s. 250.01.

SUBCHAPTER I
GENERAL PROVISIONS

254.01 Definitions. In this chapter: **(1)** "Environmental health" means the assessment, management, control and prevention of environmental factors that may adversely affect the health, comfort, safety or well–being of individuals.

(2) "Human health hazard" means a substance, activity or condition that is known to have the potential to cause acute or chronic illness or death if exposure to the substance, activity or condition is not abated.

History: 1993 a. 27.

254.015 Departmental power; designation. The department may designate a local health department to carry out a function of the department under this chapter.

History: 1993 a. 27.

254.02 Health risk assessments. (1) In this section:

(a) "Adverse health effect" means a condition that results in human morbidity, mortality, impaired reproductive function or toxicity or teratogenic, carcinogenic or mutagenic effects.

(b) "Health risk assessment'' means the determination of the relationship between the magnitude of exposure to environmental hazards and the probability of occurrence of adverse health effects.

(2) The department is the lead state agency for health risk assessment.

(3) (a) The department of agriculture, trade and consumer protection, the department of corrections, the department of commerce, and the department of natural resources shall enter into memoranda of understanding with the department to establish protocols for the department to review proposed rules of those state agencies relating to air and water quality, occupational health and safety, institutional sanitation, toxic substances, indoor air quality, food protection or waste handling and disposal.

(b) The department shall review proposed rules in the areas under par.(a) and make recommendations to the appropriate state agency if public health would be adversely impacted or if prevention of human health hazards or disease is not adequately addressed by the proposed rules. The department shall make recommendations for enforcement standards to address public health concerns of the proposed rules.

(4) The department and the state laboratory of hygiene shall enter into a memorandum of understanding that delineates the public health testing and consultative support that the state laboratory of hygiene shall provide to local health departments.

(5) The department shall assess the acute or chronic health effect from occupational or environmental human health hazards exposure as follows:

(a) The chief medical officer for environmental health shall establish a system for assessment, collection and surveillance of disease outcome and toxic exposure data.

(b) State agencies and local health departments shall report known incidents of environmental contamination to the department. The department shall investigate human health implications of an incident and determine the need to perform a health risk assessment. The department may require the party that is responsible for an incident to perform a health risk assessment.

(6) State agencies that require health risk assessments as part of their permit issuance or regulatory responsibilities shall enter into a memorandum of understanding with the department that permits the state health officer to establish a risk management protocol to review and make recommendations on the completeness of the health risk assessments.

History: 1993 a. 27; 1995 a. 27 ss. 6327,9116 (5).

SUBCHAPTER 11
TOXIC SUBSTANCES

254.11 Definitions. In this subchapter: **(1)** "Asbestos" means chrysotile, crocidolite, amosite, fibrous tremolite, fibrous actinolite or fibrous anthophyllite.

(2) "Asbestos abatement activity" means any activity which disturbs asbestos–containing material, including but not limited to the repair, enclosure, encapsulation or removal of asbestos–containing material and the renovation or demolition of any part of a structure.

(3) "Asbestos–containing material" means asbestos or any material or product which contains more than one percent of asbestos.

(4) "Asbestos management activity" means an inspection for asbestos–containing material, the design of an asbestos response action or the development of an asbestos management plan.

(4g) "Certificate of lead–free status" means a certificate issued by a certified lead risk assessor or other person certified under s. 254.176 that documents a finding by the assessor that a premises, dwelling or unit of a dwelling is free of lead–bearing paint as of the date specified on the certificate.

(4h) "Certificate of lead–safe status" means a certificate issued by a certified lead **risk** assessor or other person certified under s. 254.176 that documents that the assessor detected no lead–bearing paint hazards affecting the premises, dwelling or unit of the dwelling on the date specified on the certificate.

(5) "Dwelling" means any structure, all or part of which is designed or used for human habitation.

(5m) "Elevated blood lead level" means a level of lead in blood that is any of the following:

(a) Twenty or more micrograms per 100 milliliters of blood, as confirmed by one venous blood test.

(b) Fifteen or more micrograms per 100 milliliters of blood, as confirmed by 2 venous blood tests that are performed at least 90 days apart.

(6) "Fibrous" means having parallel sides and a length which is at least 3 times the diameter and which results in an aspect ratio of 3 to one or more.

(7) "Hematofluorometer" means an instrument used in identification of minute amounts of a substance in human blood by detection and measurement of the characteristic wavelength of the light emitted by the substance during fluorescence.

(7g) "Imminent lead hazard'' means a lead hazard that, if allowed to continue, will place a child under 6 years of age at risk of developing lead poisoning or lead exposure, as determined by the department or other state agency, a local health department or a federal agency.

(7r) "Interim control activity" means any set of measures designed to temporarily reduce human exposure or likely exposure to a lead hazard, including specialized cleaning, repair, maintenance, painting, temporary containment and ongoing monitoring of lead hazards or potential lead hazards.

(8) "Lead–bearing paint" means any paint or other surface coating material containing more than 0.06% lead by weight, calculated as lead metal, in the total nonvolatile content of liquid paint or more than 0.7 milligram of lead per square centimeter in the dried film of applied paint.

(8d) "Lead–bearing paint hazard" has the meaning specified by rule by the department.

(8g) "Lead hazard" means any substance, surface or object that contains lead and that, due to its condition, location or nature, may contribute to the lead poisoning or lead exposure of a child under 6 years of age.

(8j) "Lead hazard abatement" means any set of measures designed to permanently eliminate a lead hazard, including all of the following:

(a) The removal of lead–bearing paint and lead–contaminated dust, the permanent containment or encapsulation of lead–bearing paint, the replacement of surfaces or fixtures painted with lead–bearing paint, and the removal or covering of lead-contaminated soil.

(b) All preparation, clean–up, disposal and postabatement clearance testing activities associated with the measures under par.(a).

(8n) "Lead hazard reduction" means actions designed to reduce human exposure to lead hazards, including lead hazard abatement and interim control activities involving lead–bearing paint or lead–contaminated dust or soil or clearance activities that determine whether an environment contains a lead hazard.

(8r) "Lead inspection" means the inspection of a dwelling or premises for the presence of lead, including examination of painted or varnished surfaces, paint, dust, water and other environmental media.

(8s) "Lead investigation" means a measure or set of measures designed to identify the presence of lead or lead hazards, including examination *of* painted or varnished surfaces, paint, dust, water and other environmental media.

(8u) "Lead management activity" means a lead inspection or the design or management of lead hazard reduction.

(9) "Lead poisoning or lead exposure" means a level of lead in the blood of 10 or more micrograms per 100 milliliters of blood.

(9g) "Lead risk assessor" has the meaning specified by rule by the department.

(9r) "Occupant" means a person who leases or lawfully resides in a dwelling or premises.

(10) "Owner" means a person who has legal title to any dwelling or premises.

(10m) "Premises" means any of the following:

(a) An educational or child care facility, including attached structures and the real property upon which the facility stands, that provides services to children under 6 years of age.

(b) Other classes of buildings and facilities, including attached structures and real property upon which the buildings or facilities stand, that the department determines by rule to pose a significant risk of contributing to the lead poisoning or lead exposure of children under 6 years of age.

(11) "Public employee" has the meaning given under s. 101.055 (2) (b).

(12) "School" means any local education agency, as defined in 20 USC 3381, the owner of any nonpublic, nonprofit elementary or secondary school building or any governing authority of any school operated under 20 USC 921 to 932.

(13) "Third–party payer" means a disability insurance policy that is required to provide coverage for a blood lead test under s. 632.895 (10) (a); a health maintenance organization or preferred provider plan under ch. 609; a health care coverage plan offered by the state under s. 40.51 (6); a self–insured health plan offered by a city or village under s. 66.0137 (4), a political subdivision under s. 66.0137 (4m), a town under s. 60.23 (25), a county under s. 59.52 (11) (c), or a school district under s. 120.13 (2) (b); or a sickness care plan operated by a cooperative association under s. 185.981.

History: 1993 a. 27 s. 190, 191, 192, 425,427 to 430; 1993 a. 183; 1993 a. 450 ss. 15 to 19, 25 to 34; 1995 a. 417; 1999 a. 113; 1999 a. 150 s. 672; 2001 a. 16.

254.115 Denial, non renewal and revocation of certification and permit based on tax delinquency.

(1) Except as provided in sub.(1m), the department shall require each applicant to provide the department with the applicant's social security number, if the applicant is an individual, or the applicant's federal employer identification number, if the applicant is not an individual, as a condition of issuing or renewing any of the following:

(a) Certification under s. 254.176.

(b) A certification card under s. 254.20 (3) or (4).

(c) A permit for operation of a campground under s. 254.47 (1) or (2m).

(d) A permit under s. 255.08 (2) (a) or (b).

(1m) If an individual who applies for or to renew a certification, certification card or permit under sub.(1) does not have a social security number, the individual, as a condition of obtaining the certification, certification card or permit, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A certification, certification card or permit issued or renewed in reliance upon a false statement submitted under this subsection is invalid.

(2) The department may not disclose any information received under sub.(1) to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

(3) Except as provided in sub.(1m), the department shall deny an application for the issuance or renewal of a certification, certification card or permit specified in sub.(1) if the applicant does not provide the information specified in sub.(1).

(4) The department shall deny an application for the issuance or renewal of a certification, certification card or permit specified in sub.(1), or shall revoke the certification, certification card or permit specified in sub.(1), if the department of revenue certifies under s. 73.0301 that the applicant for or holder of the certification, certification card or permit is liable for delinquent taxes.

History: 1997 a. 237; 1999 a. 9.

254.12 Use or sale of lead–bearing paints. (1) No person. may apply lead–bearing paints:

(a) To any exposed surface on the inside of a dwelling;

(b) To the exposed surface of a structure used for the care of children; or

(c) To any fixture or other object placed in or upon any exposed surface of a dwelling and ordinarily accessible to children.

(2) No person may sell or transfer any fixture or other object intended to be placed upon any surface on the inside of a dwelling, containing a lead–bearing paint and ordinarily accessible to children.

History: 1979 c. 221; 1993 a. 16; 1993 a. 27 s. 431; Stats. 1993 s. 254.12; 1993 a. 450.

254.13 Reporting requirements. (1) Every physician who diagnoses lead poisoning or lead exposure, or any nurse, hospital administrator, director of a clinical laboratory or local health officer who has verified information of the existence of any person found or suspected to have lead poisoning or lead exposure, shall report to the department or to the local health officer of the region

in which the person resides within 48 hours after verifying this information. The local health officer shall report to the department the name, address, laboratory results, date of birth and any other information about the person that the department considers essential. Any physician, nurse, hospital administrator, director of a clinical laboratory, local health officer or allied health professional making such a report in good faith shall be immune from any civil or criminal liability that otherwise might be incurred from making the report.

(2) A person who screens a child under 6 years of age for lead poisoning or lead exposure under this subchapter, or any rule promulgated under this subchapter, shall report the results of the screening to the department within the time period for reporting by rule. The department shall promulgate rules specifying the form of the reports required under this subsection. A person making a report under this subsection in good faith is immune from civil or criminal liability that might otherwise be incurred from making the report.

History: 1979 c. 221; 1989 a. 31; 1993 a. 27 s. 432; **Stats.** 1993 s. 254.13; 1993 a. 450.

Cross Reference: See also **ch.** HFS 181, Wis. **adm. code.**

254.15 Departmental duties. The department shall:

(1) Develop and implement a comprehensive statewide lead poisoning or lead exposure prevention and treatment program that includes lead poisoning or lead exposure prevention grants under s. 254.151; any childhood lead poisoning screening requirement under rules promulgated under ss. 254.158 and 254.162; any requirements regarding care coordination and follow–up for children with lead poisoning or lead exposure required under rules promulgated under s. 254.164; departmental responses to reports of lead poisoning or lead exposure under s. 254.166; any lead investigation requirements under rules promulgated under ss. 254.167; any lead inspection requirements under rules promulgated under 254.168; any lead hazard reduction requirements under rules promulgated under s. 254.172; certification, accreditation and approval requirements under ss. 254.176 and 254.178; any certification requirements and procedures under rules promulgated under s. 254.179; and any fees imposed under s. 254.181.

(2) Provide laboratory testing of biological and environmental lead specimens for lead content to any physician, hospital, clinic, municipality or private organization that cannot secure or provide testing through other sources. The department may not assume responsibility for blood lead analysis required in programs in operation on April 30, 1980.

(3) Develop or encourage the development of appropriate programs and studies to identify sources of lead poisoning or lead exposure, and assist other entities in the identification of lead in children's blood and of the sources of the lead poisoning or lead exposure.

(4) Provide technical assistance and consultation to local, county or regional governmental or private agencies to promote and develop lead poisoning or lead exposure prevention programs that afford opportunities for employing residents of communities and neighborhoods affected by lead poisoning or lead exposure from lead–bearing paint, and that provide appropriate training, education and information to inform these residents of the opportunities for employment.

(5) Provide recommendations for the identification and treatment of lead poisoning or lead exposure.

(6) Develop educational programs to communicate to parents, educators and officials of local boards of health the health danger of lead poisoning or lead exposure from lead–bearing paint among children.

History: 1979 c. 221; 1987 a. 399; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1993 a. 27 ss. 434, 435; **Stats.** 1993 s. 254.15; 1993 a. 183; 1993 a. 450 ss. 21, 43; 1999 a. 113, 186.

254.151 Lead poisoning or lead exposure prevention grants. From the appropriation under s. 20.435 (5) (ef), the department shall award the following grants under criteria that the department shall establish in rules promulgated under this section:

(1) To fund educational programs about the dangers of lead poisoning or lead exposure.

(2) To fund lead poisoning or lead exposure screening, care coordination and follow–up services, including lead inspections, to children under age 6 who are not covered by a 3rd–party payer.

(3) To fund administration or enforcement of responsibilities delegated under s. 254.152.

(4) To fund other activities related to lead poisoning or lead exposure.

(5) To fund any combination of the purposes under subs. (1) to (4).

(6) To develop and implement outreach and education programs for health care providers to inform them of the need for lead poisoning or lead exposure screening and of the requirements of this subchapter relating to lead poisoning or lead exposure.

(7) In each fiscal year, $125,000 to fund lead screening and outreach activities at a community–based human service agency that provides primary health care, health education and social services to low–income individuals in 1st class cities.

History: 1993 a. 450; 1995 a. 27; 1997 a. 27.

Cross Reference: See also **ch.** HFS 182, Wis. **adm. code.**

254.152 Delegation to local health departments. Except with respect to the department's authority to promulgate rules under this chapter, the department may designate local health departments as its agents in administering and enforcing ss. 254.11 to 254.178 and any rules promulgated under those sections. The department may not designate a local health department as its agent unless the department provides a grant that the department determines to be sufficient for the local health department to carry out any responsibilities as an agent designated under this section.

History: 1993 a. 450.

254.154 Local authority. This subchapter does not prohibit any city, village, town or other political subdivision from enacting and enforcing ordinances establishing a system of lead poisoning or lead exposure control that provides the same or higher standards than those set forth in this subchapter. Nothing in this subchapter other than s. 254.173 (2) and (3) may be interpreted or applied in any manner to impair the right of any person, entity, municipality or other political subdivision to sue for damages or equitable relief. Nothing in this subchapter may be interpreted or applied in any manner to impair the right of a municipality or other political subdivision to impose a penalty for or restrain the violation of an ordinance specified in this section.

NOTE: This section is amended eff. 9–1-05 **by 1999 Wis. Act 113 to read:**

254.154 Local authority. This subchapter does not prohibit any city, village, town or other political subdivision from enacting and enforcing ordinances establishing a system of lead poisoning or lead exposure control that provides the same or higher standards than those set forth in this subchapter. Nothing in this subchapter other than s. 254.173 (2) **may be interpreted or applied in any manner to impair the right of any person, entity, municipality or other political subdivision to sue for damages or equitable relief. Nothing in this subchapter may be interpreted or applied in any manner to impair the right of a municipality or other political subdivision to impose a penalty for or restrain the violation of an ordinance specified in this section.**

NOTE: This section is repealed and recreated eff. 9–1-08 by 1999 Wis. Act 113 to read:

254.154 Local authority. This subchapter does not prohibit any city, village, town or other political subdivision from enacting and enforcing ordinances establishing a system of lead poisoning or lead exposure control that provides the same or higher standards than those set forth in this subchapter. Nothing in this subchapter may be interpreted or applied in any manner to impair the right of any person, entity, municipality or other political subdivision to sue for damages or equitable relief. Nothing in this subchapter may be interpreted or applied in any manner to impair the right of a municipality or other political subdivision to impose a penalty for or restrain the violation of an ordinance specified in this section.

History: 1979 c. 221; 1989 a. 31; 1993 a. 27 s. 436; **Stats.** 1993 s. 254.16; 1993 a. 450 s. 48; **Stats.** 1993 s. 254.154; 1999 a. 113.

254.156 Definition of lead–bearing paint and lead poisoning or lead exposure. Notwithstanding s. 254.11 (intro.), (8) and (9), whenever the centers for disease control and prevention of the federal department of health and human services specifies a standard for the determination of lead–bearing paint or lead poisoning or lead exposure that differs from that specified in s. 254.11 (8) or (9), the department shall promulgate a rule defining "lead–bearing paint" or "lead poisoning or lead exposure" to correspond to the specification of the centers for disease control and prevention. Rules promulgated under this section supersede s. 254.11 (8) and (9) with respect to the requirements of this subchapter.

History: 1993 a. 450.

254.158 Screening recommendations. The department may promulgate rules specifying recommended lead poisoning or lead exposure screening methods and intervals for children under **6** years of age. Any rules promulgated under this section:

(1) Shall meet any federal requirements for the screening of children under **6** years of age.

(1m) May include an appropriate questionnaire regarding potential exposure to lead and products containing lead.

(2) Shall permit at least the following persons to provide screening services:

(a) A person licensed to practice medicine or osteopathy under ch. **448.**

(b) A nurse registered, permitted or licensed under ch. **441.**

(c) A public health nurse under s. **250.06** (1).

(3) Shall exempt a child from the lead screening recommendations if the child's parent, guardian or legal custodian signs a written waiver objecting to the lead poisoning screening for reasons of health, religion or personal conviction.

(4) Shall exempt a child from the lead poisoning screening recommendations if the child's parent, guardian or legal custodian presents written evidence of a lead screening that was conducted within the previous 6 months, or other time period specified by the department by rule, and that was conducted in accordance with the laws or rules of another state whose laws or rules the department determines to be at least as stringent as the screening methods and intervals recommended under this section.

History: 1993 a. 450.

254.162 Screening requirements. (1) INSTITUTIONS AND PROGRAMS PROVIDING SERVICES TO CHILDREN UNDER 6 YEARS OF AGE. The department may promulgate rules requiring the following institutions and programs to obtain written evidence that each child under **6** years of age participating in the institution or program has obtained a lead screening, or is exempt from obtaining one, under the recommended lead screening levels and intervals contained in the rules promulgated by the department under s. **254.158,** within the time periods specified by the department:

(a) Multidisciplinary evaluations for early intervention under s. **51.44.**

(b) Head start programs administered by a head start agency under **42** USC **9836.**

(c) Day care providers certified under s. **48.651** and day care centers licensed under s. **48.65,** provisionally licensed under s. **48.69** or established or contracted for under s. **120.13 (14).**

(d) School–based programs serving children under 6 years of age, including kindergartens, special education and related services for children with disabilities, as defined in s. **115.76 (5),** and other early childhood programs.

(e) Health care programs that provide services to children under **6** years of age and that receive state funding.

(f) Other institutions or programs that provide services to children under **6** years of age.

(2) INFORMATION REQUIREMENT. If a program or institution is required to request written evidence of a lead screening under rules promulgated under sub.(1), the institution or program shall, at the time that it makes the request, inform the parent, guardian or legal custodian of the child in writing, in a manner that is prescribed by the department by rule, of the importance of lead screening, of how and where the lead screening may be obtained, and of the conditions under which a child is exempt from the recommended lead screening requirements under the department's rules.

History: 1993 a. 450; **1997 a.** 164.

254.164 Care for children with lead poisoning or lead exposure. The department may promulgate rules establishing standards for the care coordination and follow–up of children under **6** years of age with lead poisoning or lead exposure. Any rules promulgated under this section shall meet any federal requirements for the care coordination and follow–up of children under **6** years of age with elevated blood lead levels. Rules promulgated under this subsection may specify different care coordination and follow–up requirements based on different blood lead levels and may, where appropriate, require that the care coordination and follow–up include any of the following:

(1) Physical, developmental and nutritional assessment.

(2) Parent education.

(3) Medical evaluation.

(4) A lead inspection of all or part of the child's dwelling or other dwellings or premises that may have contributed to the child's lead poisoning or lead exposure.

(5) Assistance in developing a plan for lead hazard reduction or other actions needed to reduce exposure to lead and the consequences of such exposure.

(6) Where necessary, assistance in obtaining permanent or temporary lead–safe housing.

(7) Nutritional supplements.

(8) Follow–up services, including monitoring the provision of services to the child.

History: 1993 a. 450.

254.166 Departmental response to reports of lead poisoning or lead exposure. (1) The department may, after being notified that an occupant of a dwelling or premises who is under **6** years of age has blood lead poisoning or lead exposure, present official credentials to the owner or occupant of the dwelling or premises, or to a representative of the owner, and request admission to conduct a lead investigation of the dwelling or premises. If the department is notified that an occupant of a dwelling or premises who is a child under **6** years of age has an elevated blood lead level, the department shall conduct a lead investigation of the dwelling or premises or ensure that a lead investigation of the dwelling or premises is conducted. The lead investigation shall be conducted during business hours, unless the owner or occupant of the dwelling or premises consents to an investigation during non business hours or unless the department determines that the dwelling or premises presents an imminent lead hazard. The department shall use reasonable efforts to provide prior notice of the lead investigation to the owner of the dwelling or premises. The department may remove samples or objects necessary for laboratory analysis to determine the presence of a lead hazard in the dwelling or premises. The department shall prepare and file written reports of all lead investigations conducted under this section and shall make the contents of these reports available for inspection by the public, except for medical information, which may be disclosed only to the extent that patient health care records may be disclosed under ss. **146.82** to **146.835.** If the owner or occupant refuses admission, the department may seek a warrant to investigate the dwelling or premises. The warrant shall advise the owner or occupant of the scope of the lead investigation.

(2) If the department determines that a lead hazard is present in any dwelling or premises, the department may do any of the following:

(a) Cause to be posted in a conspicuous place upon the dwelling or premises a notice of the presence of a lead hazard.

(b) Inform the local health officer of the results of the lead inspection and provide recommendations to reduce or eliminate the lead hazard.

(c) Notify the occupant of the dwelling or premises or the occupant's representative of all of the following:

1. That a lead hazard is present on or in the dwelling or premises.

2. The results of any lead investigations conducted on or in the dwelling or premises.

3. Any actions taken to reduce or eliminate the lead hazard.

(d) Notify the owner of the dwelling or premises of the presence of a lead hazard. The department may issue an order that requires reduction or elimination of an imminent lead hazard within **5** days after the order's issuance and reduction or elimination of other lead hazards within **30** days after the order's issuance, except that, for orders that are issued between October 1 and May 1 and that relate only to exterior lead hazards that are not imminent lead hazards, the order may require elimination or reduction of the lead hazard no earlier than the June 1 immediately following the order's issuance. If the department determines that the owner has good cause for not complying with the order within the 5–day or 30–day time period, the department may extend the time period within which the owner is required to comply with the order. The failure to comply with the department's order within the time prescribed or as extended by the department shall be prima facie

evidence of negligence in any action brought to recover damages for injuries incurred after the time period expires. If an order to conduct lead hazard reduction is issued by the department or by a local health department and if the owner of the dwelling or premises complies with that order, there is a rebuttable presumption that the owner of the dwelling or premises has exercised reasonable care with respect to lead poisoning or lead exposure caused, after the order has been complied with, by lead hazards covered by the order, except that with respect to interim control activities the rebuttable presumption continues only for the period for which the interim control activity is reasonably expected to reduce or eliminate the lead hazard.

(e) If an order is issued under par.(d), conduct or require a certified lead risk assessor or other person certified under s. 254.176 to conduct a lead investigation, a check of work completed and dust tests for the presence of hazardous levels of lead to ensure compliance with the order.

(4) The department shall give priority to eliminating lead hazards from dwellings in which children under 6 years of age with diagnosed lead poisoning or lead exposure reside.

History: 1979 c. 221; 1989 a. 31; 1993 a. 27 s. 433; **Stats.** 1993 s. 254.14; 1993 a. 450 ss. 39 to 41; Stats. 1993 s. 254.166; 1999 a. 113.

254.167 Conduct of lead investigation. Subject to the limitation under s. 254.174, the department may promulgate rules establishing procedures for conducting lead investigations of dwellings and premises. The rules promulgated under this section may include the following:

(1) Specific procedures for investigating, testing or sampling painted, varnished or other finished surfaces, drinking water, household dust, soil and other materials that may contain lead.

(2) Specific procedures for the notification of owners, operators, occupants or prospective occupants, mortgagees and lien holders of lead levels identified during a lead investigation and of any health risks that are associated with the lead level and condition of the lead found during the lead investigation.

(3) The form of lead investigation reports, the requirements for filing the reports with the department and the procedures by which members of the public may obtain copies of lead investigation reports.

(4) Requirements for the posting of warnings, where appropriate, of the presence of a lead hazard.

History: 1993 a. 450: 1999 a. 113.

Cross Reference: See also ch. HFS 163, Wis. adm. **code.**

254.168 Lead inspections of facilities serving children under 6 years of age. Subject to the limitation under s. 254.174, the department may promulgate rules that, after June 30, 1998, require any of the following facilities to have periodic lead inspections at intervals determined by the department or to otherwise demonstrate that the facility does not contain a lead hazard, if any part of the facility was constructed before January 1, 1978:

(1) A foster home licensed under s. 48.62.

(2) A group home licensed under s. 48.625.

(3) A shelter care facility under s. 48.66.

(4) A day care provider certified under s. 48.651.

(5) A day care center licensed under s. 48.65, provisionally licensed under s. 48.69 or established or contracted for under s. 120.13 (14).

(6) A private or public nursery school or kindergarten.

(7) Any other facility serving children under 6 years of age that presents a risk for causing lead poisoning or lead exposure in children.

History: 1993 a. 450.

254.171 Dwellings and units of dwellings where child has elevated blood lead level. If an owner of a dwelling or unit of a dwelling receives written notice from the department or a local health department that a child under 6 years of age, who resides in the owner's owner–occupied dwelling or unit or who resides in the owner's dwelling or unit under the terms of a rental agreement, has an elevated blood lead level, the owner shall obtain a certificate of lead–free status or certificate of lead–safe status for the affected dwelling or unit in a timely manner, based on the reasonable availability of lead risk assessors or other persons certified under s. 254.176 to conduct any necessary lead investigation or lead hazard reduction activities and based on the time required for issuance of a certificate of lead–free status or a certificate of lead–safe status. A certificate of lead–safe status obtained under this section may not be for less than 12 months in duration. Nothing in this section precludes the department or the department's agent from conducting a lead investigation or issuing an order under s. 254.166.

History: 1999 a. 113.

254.172 Prevention and control of lead–bearing paint hazards in dwellings and premises.

(1) Subject to the limitation under s. 254.174, the department may promulgate rules governing lead hazard reduction that the department determines are consistent with federal law.

(2) If a certified lead risk assessor or other person certified under s. 254.176 conducts a lead investigation of a dwelling or premises, he or she shall conduct the lead investigation and issue a report in accordance with any rules promulgated under s. 254.167. If the report indicates that the dwelling or premises meets criteria under s. 254.179 (1) (a) for issuance of a certificate of lead–free or of a certificate of lead–safe status, the lead risk assessor or other person shall issue the appropriate certificate, subject to s. 254.181.

History: 1993 a. 450; 1999 a. 113, 186.

Cross Reference: See also ch. HFS 163, Wis. **adm. code.**

254.173 Immunity from liability for lead poisoning or lead exposure; restrictions. (1) LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds all of the following:

1. That a national task force appointed by the federal department of housing and urban development, the task force on lead– based paint hazard reduction and financing, found that 1,700,000 children under 6 years of age have blood lead levels at or above the federally established level of concern. The task force also found that the most common cause of childhood lead poisoning is ingestion of lead-contaminated dust and chips from lead–bearing paint. The other significant cause is dust from bare lead–contaminated soil.

2. That high levels of lead in a child's blood can cause permanent nervous system damage and even relatively low blood lead levels can cause significant nervous system effects. Of 58,797 children who were screened in this state in fiscal year 1995–96, 11,170, or 19%, were newly identified as having blood lead levels that constitute lead poisoning or lead exposure.

(b) The legislature encourages property owners to address the problems associated with lead–bearing paint by bringing their property into compliance with the applicable state standards and finds that an appropriate method to so encourage property owners is to hold them not liable with respect to a person who develops lead poisoning or lead exposure in the property. The purpose of these standards and this restriction on liability is to reduce the exposure of children and others to lead–bearing paints, thereby substantially reducing the number of persons who develop lead poisoning or lead exposure. In addition, these standards and this restriction on liability will improve the quality of this state's housing stock and result in greater availability of insurance coverage for lead hazards.

NOTE: Section 254.173 **(title) and sub. (1) are repealed eff. 9–1–08 by** 1999 **Wis. Act** 113.

(2) IMMUNITY; CONDITIONS; RESTRICTIONS. An owner of a dwelling or unit of a dwelling and his or her employees and agents are immune from civil and criminal liability and may not be subject to an agency proceeding under ch. 227, other than for the enforcement of rules promulgated by the department under this subchapter, for their acts or omissions related to lead poisoning or lead exposure of a person who resides in or has visited the dwelling or unit if, at the time that the lead poisoning or lead exposure occurred, a certificate of lead–free status or a certificate of lead– safe status was in effect for the dwelling or unit. This subsection does not apply if it is shown by clear and convincing evidence that one of the following has occurred:

(a) The owner or his or her employee or agent obtained the certificate by fraud.

(b) The owner or his or her employee or agent violated a condition of the certificate.

(c) During renovation, remodeling, maintenance or repair after receiving the certificate, the owner or his or her employee or agent created a lead–bearing paint hazard that was present in the dwelling or unit of the dwelling at the time that the lead poisoning or lead exposure occurred.

(d) The owner or his or her employee or agent failed to respond in a timely manner to notification by a tenant, by the department or by a local health department that a lead–bearing paint hazard might be present.

(e) The lead poisoning or lead exposure was caused by a source of lead in the dwelling or unit of the dwelling other than lead–bearing paint.

NOTE: Sub. (2) is repealed eff. 9–1–08 by 1999 Wis. Act 113.

(3) TEMPORARY IMMUNITY; EXCEPTION. (a) An Owner Of a dwelling or unit of a dwelling and his or her employees and agents are immune from civil and criminal liability and may not be subject to an agency proceeding under ch. 227, other than for the enforcement of rules promulgated by the department under this subchapter, for their acts or omissions related to lead poisoning or lead exposure that occur during the first 60 days after the owner acquires the dwelling or unit, except that this subsection does not apply to lead poisoning or lead exposure that results from a lead–bearing paint hazard created by the owner or his or her employee or agent.

(b) Immunity under par.(a) applies only if all of the following occur:

1. The owner obtains a certificate of lead–free status or a certificate of lead–safe status for the dwelling or unit.

2. The owner shows by clear and convincing evidence that the property was in compliance with the standard to obtain a certificate of lead–free status or a certificate of lead–safe status by the end of the 60–day period and that the owner obtained the certificate in a reasonable amount of time following the owner's acts to achieve compliance.

(c) Immunity does not apply under this subsection if, during the 60–day period under par.(a), one of the following applies: 1. The owner receives an order under s. 254.166 (2) (d) and fails to comply with the order. 2. The dwelling or unit is vacant and the owner fails to comply with interim lead hazard control measures specified by the department by rule.

NOTE: Sub. (3) is repealed eff. 9–1–05 by 1999 Wis. Act 113.

History: 1999 a. 113.

254.174 Technical advisory committees. Before the department may promulgate rules under s. 254.167, 254.168, 254.172 or 254.179, the department shall appoint a technical advisory committee under s. 227.13 and shall consult with the technical advisory committee on the proposed rules. Any technical advisory committee required under this section shall include representatives from local health departments that administer local lead programs, representatives from the housing industry, persons certified under s. 254.176, representatives from the medical or public health professions, advocates for persons at risk of lead poisoning and a resident of a 1st class city. Any technical advisory committee required under this section before promulgating rules under s. 254.168 shall also include representatives of facilities serving children under 6 years of age.

History: 1993 a. 450; 1999 a. 113.

254.176 Certification requirements. (1) Except as provided in sub.(2) and s. 250.041, and subject to s. 254.115, the department may establish by rule certification requirements for any person who performs lead hazard reduction or a lead management activity or who supervises the performance of any lead hazard reduction or lead management activity.

(2) No certification is required under this section for lead hazard reduction conducted by any of the following persons, unless the lead hazard reduction is being done to comply with an order by the department or another state or local agency that requires the use of persons certified under this section:

(a) A person whose activities are limited to interim control activities, unless the activities are directly funded by a grant from the federal department of housing and urban development.

(b) A person whose activities do not involve lead–bearing paint or lead-contaminated soil or dust.

(c) A homeowner who engages in lead hazard reduction only in or on his or her own non rental residential dwelling or real property.

(d) A person licensed, certified or registered under ch. 145 who engages in activities that constitute lead hazard reduction, only to the extent that these activities are within the scope of his or her license, certification or registration.

(e) A person who engages in the business of installing or servicing heating, ventilating or air conditioning equipment if the person is registered with the department of commerce and if the person engages in activities that constitute lead hazard reduction, only to the extent that the activities are within the scope of his or her registration.

(3) Except as provided in s. 250.041 and subject to s. 254.115, the department may promulgate rules establishing certification requirements for persons required to be certified under this section. Any rules promulgated under this section:

(a) Shall include requirements and procedures for issuing, renewing, revoking and suspending under this section certifications issued under this section.

(c) Shall require completion of an appropriate training course accredited under s. 254.178 or of a training course determined by the department to be comparable to the appropriate training course under s. 254.178.

(d) May provide for requirements other than training as a condition for full certification.

(e) Shall specify fees for certifying persons under this section, except that no fee may be imposed on any person employed by the state or by any political subdivision of the state for a certification required to perform duties within the scope of the employment.

(f) Shall require the issuance of a photo identification card to each person certified under this section.

(4) The department shall maintain lists of all persons who are certified under this section and shall make the lists available to the public. The department may charge a fee for lists provided under this subsection to cover the department's costs in providing the lists.

(5) After notice and opportunity for hearing, the department may revoke, suspend, deny or refuse to renew any certification issued under this section in accordance with the procedures set forth in ch. 227, except that the only hearing rights available for a denial, revocation or non renewal of any certification issued under this section based on tax delinquency are those set forth in s. 73.0301 (5).

History: 1993 a. 450; 1995 a. 27 ss. 6330,9116 (5); 1997 a. 191, 237; 1999 a. 113.

CHAPTER 406

UNIFORM COMMERCIAL CODE — BULK TRANSFERS

406.101 Short title.
406.102 "Bulk transfers": transfers of equipment; enterprises subject to this chapter; bulk transfers subject to this chapter.
406.103 Transfers excepted from this chapter.
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Cross-reference: See definitions in s. 401.201

406.101 Short title. This chapter shall bc known and may be cited as uniform commercial code—bulk transfers.

406.102 "Bulk transfers"; transfers of equipment; enterprises subject to this chapter; bulk transfers subject to this chapter. (1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part in value of the inventory, as defined in s. 409.102 (1j (Ls), of an enterprise subject to this chaptcr.

(2) A transfer of a substantial part of the equipment, as defined in s. 409.102 (1) (i), of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this chapter are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(3m) The sale, transfer or assignment, in bulk, of any stock of merchandise or of fixtures, pertaining to the merchandise, including any sale, transfer or assignment made in consideration of any existing indebtedness, otherwise than in the ordinary course of trade and in the usual conduct of business by retailers of alcohol beverages, is subject to this chapter.

(4) Except as limited by s. 406.103 all bulk transfers of goods located within this state are subject to this chapter.

History: 1981 c. 79; 2001 a. 10.

406.103 Transfers excepted from this chapter. (1) The following transfers are not subject to this chapter:

(a) Those made to give security for the performance of an obligation;

(b) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(c) Transfers in settlement or realization of a lien or other security interest;

(d) Sales by receivers, personal representatives, trustees in bankruptcy, or any public officer under judicial process;

(e) Sales made in the course ofjudicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(f) Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(g) A transfer to a new business enterprise organized to take over and continue the business: if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and the transferor receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(hj Transfers of property which is exempt from execution.

(2) Public notice under sub. (1) **(f)** or (g) may be given by publication of a class 2 notice, under ch. 985, where the transfcror had its principal place of business in this state. The notice shall include the names and addresses of the transferor and transferee and the effective date of the transfer.

History: 1991 a. 316; 2001 a. 102.

406.104 Schedule of property, list of creditors. (1) Except as provided with respect to auction sales (s. 406.108), a bulk transfer subject to this chapter is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of the transferor's existing creditors prepared as stated in this section: and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(cj The transferee preserves the list and schedule for 6 months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule with the department of financial institutions.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or the transferor's agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against the transferor even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue. The list of creditors shall include the name and address of the clerk of the municipality in which the property was last assessed.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

History: 1991 a. 316; 1995 a. 27.

406.105 Notice to creditors. In addition to the requirements of s. 406.104, any bulk transfer subject to this chapter except one made by auction sale (s. 406.108) is ineffective against any creditor of the transferor unless at least 10 days before the transferee takes possession of the goods or pays the major part of the purchase price, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons specified in s. 406.107.

History: 1991 a. 316.

406.107 The notice. (1) The notice to creditors (s. 406.105) shall state:

(aj That a bulk transfer is about to be made; and

(b) The names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within 3 years last past so far as known to the transferee: and

(c) Whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor arc not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

{a) The location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) The address where the schedule ofproperty and list of creditors (s. 406.104) may be inspected;

(c) Whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) Whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment.

(3) The notice in any case shall be delivered personally or sent by registered mail or certified mail to all the persons shown on the list of creditors furnished by the transferor (s. 406.104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

406.108 Auction sales; "auctioneer". (1) A bulk transfer is subject to this chapter even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of the transferor's creditors and assist in the preparation of a schedule of the property to be sold, both prepared as stated in s. 406.104.

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

(a) Receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in s. 406.104; and

(b) Give notice of the auction personally or by registered or certified mail at least 10 days before it occurs to all persons shown on the list of creditors and to all other persons who are known to the auctioneer to hold or assert claims against the transferor.

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor **up** to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.

History: 1991 **a. 316.**

406.109 What creditors protected. The creditors of the transferor mentioned in this chapter are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (ss. 406.105 and 406.107) are not entitled to notice.

406.110 Subsequent transfers. When the title of a transferee to property is subject to a defect by reason of the transferee's noncompliance with the requirements of this chapter, then:

(1) A purchaser of any of such property from such transferee who pays no value or who takes with notice of such noncompliance takes subject to such defect, but

(2) A purchaser for value in good faith and without such notice takes free of such defect.

History: *1991* **a.** 316.

406.111 Limitation of actions and levies. No action under this chapter shall be brought nor levy made more than 6 months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within 6 months after its discovery.

CHAPTER 440
DEPARTMENT OF REGULATION AND LICENSING

SUBCHAPTER I
GENERAL PROVISIONS

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Cross reference: See also RL, Wis. adm. code.

SUBCHAPTER I
GENERAL PROVISIONS

440.01 Definitions. (1) In chs. 440 to 480, unless the context requires otherwise:

(a) "Department" means the department of regulation and licensing.

(am) "Financial institution" has the meaning given in s. 705.01 (3).

(b) "Grant" means the substantive act of an examining board, section of an examining board, affiliated credentialing board or the department of approving the applicant for credentialing and the preparing, executing, signing or sealing of the credentialing.

(c) ''Issue" means the procedural act of the department of transmitting the credential to the person who is credentialed.

(d) "Limit", when used in reference to limiting a credential, means to impose conditions and requirements upon the holder of the credential, and to restrict the scope of the holder's practice.

(dm) "Renewal date" means the date on which a credential expires and before which it must be renewed for the holder to maintain without interruption the rights, privileges and authority conferred by the credential.

(e) "Reprimand means to publicly warn the holder of a credential.

(f) "Revoke", when used in reference to revoking a credential, means to completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential.

(g) "Secretary" means the secretary of regulation and licensing.

(h) "Suspend", when used in reference to suspending a credential, means to completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential.

(2) In this subchapter: (a) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480.

(b) "Credentialing" means the acts of an examining board, section of an examining board, affiliated credentialing board or the department that relate to granting, issuing, denying, limiting, suspending or revoking a credential.

(bm) "Credentialing board" means an examining board or an affiliated credentialing board in the department.

(c) "Examining board" includes the board of nursing.

(cs) "Minority group member" has the meaning given in s. 560.036 (1) (f).

(cv) "Psychotherapy" has the meaning given in s. 457.01 (8m).

(d) "Reciprocal credential" means a credential granted by an examining board, section of an examining board, affiliated credentialing board or the department to an applicant who holds a credential issued by a governmental authority in a jurisdiction outside this state authorizing or qualifying the applicant to perform acts that are substantially the same as those acts authorized by the credential granted by the examining board, section of the examining board, affiliated credentialing board or department.

History: 1977 c. 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102, 107; 1995 a. 233, 333; 1997 a. 35 s. 448; 1997 a. 237 ss. 532, 539m; 1999 a. 9 s. 2915; 2001 a. 80.

Procedural due process and the separation of functions in state occupational licensing agencies. 1974 WLR 833.

440.02 Bonds. Members of the staff of the department who are assigned by the secretary to collect moneys shall be bonded in an amount equal to the total receipts of the department for any month.

440.03 General duties and powers of the department.

(1) The department may promulgate rules defining uniform procedures to be used by the department, the real estate board, the real estate appraisers board, and all examining boards and affiliated credentialing boards attached to the department or an examining board, for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

(1m) The department may promulgate rules specifying the number of business days within which the department or any examining board or affiliated credentialing board in the department must review and make a determination on an application for a permit, as defined in s. 560.41 (2), that is issued under chs. 440 to 480.

(2) The department may provide examination development services, consultation and technical assistance to other state agencies, federal agencies, counties, cities, villages, towns, national or regional organizations of state credentialing agencies, similar credentialing agencies in other states, national or regional accrediting associations, and nonprofit organizations. The department may charge a fee sufficient to reimburse the department for the costs of providing such services. In this subsection, "nonprofit organization" means a nonprofit corporation as defined in s. 181.0103 (17), and an organization exempt from tax under 26 USC 501.

(3) If the secretary reorganizes the department, no modification may be made in the powers and responsibilities of the examining boards or affiliated credentialing boards attached to the department or an examining board under s. 15.405 or 15.406.

(3m) The department may investigate complaints made against a person who has been issued a credential under chs. 440 to 480.

(3q) Notwithstanding sub.(3m), the department of regulation and licensing shall investigate any report that it receives under s. 146.40 (4r) (am) 2. or (em).

(4) The department may issue subpoenas for the attendance of witnesses and the production of documents or other materials prior to the commencement of disciplinary proceedings.

(5) The department may investigate allegations of negligence by physicians licensed to practice medicine and surgery under ch. 448.

(5m) The department shall maintain a toll–free telephone number to receive reports of allegations of unprofessional conduct, negligence or misconduct involving a physician licensed under subch. II of ch. 448. The department shall publicize the toll– free telephone number and the investigative powers and duties of the department and the medical examining board as widely as possible in the state, including in hospitals, clinics, medical offices and other health care facilities.

(6) The department shall have access to any information contained in the reports filed with the medical examining board, an affiliated credentialing board attached to the medical examining board and the board of nursing under s. 655.045, as created by 1985 Wisconsin Act 29, and s. 655.26.

(7) The department shall establish the style, content and format of all credentials and of all forms for applying for any credential issued or renewed under chs. 440 to 480. All forms shall include a place for the information required under sub. (11m) (a). Upon request of any person who holds a credential and payment of a $10 fee, the department may issue a wall certificate signed by the governor.

(7m) The department may promulgate rules that establish procedures for submitting an application for a credential or credential renewal by electronic transmission. Any rules promulgated under this subsection shall specify procedures for complying with any requirement that a fee be submitted with the application. The rules may also waive any requirement in chs. 440 to 480 that an application submitted to the department, an examining board or an affiliated credentialing board be executed, verified, signed, sworn or made under oath, notwithstanding ss. 440.26 (2) (b), 440.42 (2) (intro.), 440.91 (2) (intro.), 443.06 (1) (a), 443.10 (2) (a), 445.04 (2), 445.08 (4), 445.095 (1) (a), 448.05 (7), 450.09 (1) (a), 452.10 (1) and 480.08 (2m).

(8) The department may promulgate rules requiring holders of certain credentials to do any of the following:

(a) Display the credential in a conspicuous place in the holder's office or place of practice or business, if the holder is not required by statute to do so.

(b) Post a notice in a conspicuous place in the holder's office or place of practice or business describing the procedures for filing a complaint against the holder.

(9) The department shall include all of the following with each biennial budget request that it makes under s. 16.42:

(a) A recalculation of the administrative and enforcement costs of the department that are attributable to the regulation of each occupation or business under chs. 440 to 480 and that are included in the budget request.

(b) A recommended change to each fee specified under s. 440.05 (1) for an initial credential for which an examination is not required, under s. 440.05 (2) for a reciprocal credential and under s. 440.08 (2) (a) for a credential renewal if the change is necessary to reflect the approximate administrative and enforcement costs of the department that are attributable to the regulation of the particular occupation or business during the period in which the initial or reciprocal credential or credential renewal is in effect and, for purposes of the recommended change to each fee specified under s. 440.08 (2) (a) for a credential renewal, to reflect an estimate of any additional moneys available for the department's general program operations, during the budget period to which the biennial budget request applies, as a result of appropriation transfers that have been or are estimated to be made under s. 20.165 (1) (i) prior to and during that budget period.

(11) The department shall cooperate with the department of health and family services to develop a program to use voluntary, uncompensated services of licensed or certified professionals to assist the department of health and family services in the evaluation of community mental health programs in exchange for continuing education credits for the professionals under ss. 448.40 (2) (e) and 455.065 (5).

(11m) (a) Each application form for a credential issued or renewed under chs. 440 to 480 shall provide a space for the department to require each of the following, other than an individual who does not have a social security number and who submits a statement made or subscribed under oath or affirmation as required under par. (am), to provide his or her social security number:

1. An applicant for an initial credential or credential renewal. If the applicant is not an individual, the department shall require the applicant to provide its federal employer identification number.

2. An applicant for reinstatement of an inactive license under s. 452.12 (6) (e).

(am) If an applicant specified in par. (a) 1. or 2. is an individual who does not have a social security number, the applicant shall submit a statement made or subscribed under oath that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A credential or license issued in reliance upon a false statement submitted under this paragraph is invalid.

(b) The department shall deny an application for an initial credential or deny an application for credential renewal or for reinstatement of an inactive license under s. 452.12 (6) (e) if any information required under par. (a) is not included in the application form or, in the case of an applicant who is an individual and who does not have a social security number, if the statement required under par. (am) is not included with the application form.

(c) The department of regulation and licensing may not disclose a social security number obtained under par. (a) to any person except the coordinated licensure information system under s. 441.50 (7); the department of workforce development for purposes of administering s. 49.22; and, for a social security number obtained under par. (a) 1., the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

(12m) The department of regulation and licensing shall cooperate with the departments of justice and health and family services in developing and maintaining a computer linkup to provide access to information regarding the current status of a credential issued to any person by the department of regulation and licensing, including whether that credential has been restricted in any way.

(13) The department may conduct an investigation to determine whether an applicant for a credential issued under chs. 440 to 480 satisfies any of the eligibility requirements specified for the credential, including whether the applicant does not have an arrest or conviction record. In conducting an investigation under this subsection, the department may require an applicant to provide any information that is necessary for the investigation or, for the purpose of obtaining information related to an arrest or conviction record of an applicant, to complete forms provided by the department of justice or the federal bureau of investigation. The department shall charge the applicant any fees, costs or other expenses incurred in conducting the investigation under this subsection.

(14) (a) 1. The department shall grant a certificate of registration as a music therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a music therapist by the Certification Board for Music Therapists, National Music Therapy Registry, American Music Therapy Association or by another national organization that certifies, registers or accredits music therapists.

b. The organization that certified. registered or accredited the person under subd. 1. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd. 1. a.

2. The department shall grant a certificate of registration as an art therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as an art therapist by the Art Therapy Credentials Board or by another national organization that certifies, registers or accredits art therapists.

b. The organization that certified, registered or accredited the person under subd. 2. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd. 2. a.

3. The department shall grant a certificate of registration as a dance therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a dance therapist by the American Dance Therapy Association or by another national organization that certifies, registers or accredits dance therapists.

b. The organization that certified, registered or accredited the person under subd. 3. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd. 3. a.

(am) The department may promulgate rules that establish requirements for granting a license to practice psychotherapy to a person who is registered under par.(a). Rules promulgated under this paragraph shall establish requirements for obtaining such a license that are comparable to the requirements for obtaining a clinical social worker, marriage and family therapist, or professional counselor license under ch. 457. If the department promulgates rules under this paragraph, the department shall grant a license under this paragraph to a person registered under par.(a) who pays the fee specified in s. 440.05 (1) and provides evidence satisfactory to the department that he or she satisfies the requirements established in the rules.

(b) A person who is registered under par.(a) shall notify the department in writing within 30 days if an organization specified in par.(a) 1. a., 2. a. or 3. a. revokes the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a., or 3. a. The department shall revoke a certificate of registration granted under par.(a) if such an organization revokes such a certification, registration, or accreditation. If the department revokes the certificate of registration of a person who also holds a license granted under the rules promulgated under par.(am), the department shall also revoke the license.

(c) The renewal dates for certificates granted under par.(a) and licenses granted under par.(am) are specified in s. 440.08 **(2)** (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee specified in s. 440.08 (2) (a) and evidence satisfactory to the department that the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a. or 3. a. has not been revoked.

(d) The department shall promulgate rules that specify the services within the scope of practice of music, art, or dance therapy that a person who is registered under par.(a) is qualified to perform. The rules may not allow a person registered under par.(a) to perform psychotherapy unless the person is granted a license under the rules promulgated under par.(am).

Cross reference: See also **chs.** RL **140,141, and 142,** Wis. **adm code.**

(e) Subject to the rules promulgated under sub.(1), the department may make investigations and conduct hearings to determine whether a violation of this subsection or any rule promulgated under par.(d) has occurred and may reprimand a person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) or may deny, limit, suspend, or revoke a certificate of registration granted under par.(a) or a license granted under the rules promulgated under par.(am) if the department finds that the applicant or certificate or license holder has violated this subsection or any rule promulgated under par.(d).

(f) A person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) who violates this subsection or any rule promulgated under par.(d) may be fined not more than $200 or imprisoned for not more than 6 months or both.

(15) The department shall promulgate rules that establish the fees specified in ss. 440.05 (10) and 440.08 (2) (d).

(16) Annually, the department shall distribute the form developed by the medical and optometry examining boards under 2001 Wisconsin Act 16, section 9143 (3c), to all school districts and charter schools that offer kindergarten, to be used by pupils to provide evidence of eye examinations under s. 118.135.

History: 1977 c. 418 ss. 24, 792; 1979 c. 34, 221, 337; 1981 c. 94; 1985 a. 29, 340 1989 a. 31,340; 1991 a. 39; 1993 a. 16. 102, 107.443.445.490.491: 1995 a. 27 ss. 6472j, 9126 (19); 1995 a. 233; 1997 a. 27, 75, 79; 1997 a. 191 ss. 312, 313, 318; 1997 a. 231, 237; 1997 a. 261 ss. 1 to 4, 7, 10, 13; 1997 a. 311; 1999 a. 9, 32; 2001 a. 16, 66, 80.

Cross reference: See also RL, Wis. **adm. code.**

440.035 General duties of examining boards and affiliated credentialing boards. Each examining board or affiliated credentialing board attached to the department or an examining board shall:

(1) Independently exercise its powers, duties and functions prescribed by law with regard to rule–making, credentialing and regulation.

(2) Be the supervising authority of all personnel, other than shared personnel, engaged in the review, investigation or handling of information regarding qualifications of applicants for credentials, examination questions and answers, accreditation, related investigations and disciplinary matters affecting persons who are credentialed by the examining board or affiliated credentialing board, or in the establishing of regulatory policy or the exercise of administrative discretion with regard to the qualifications or discipline of applicants or persons who are credentialed by the examining board, affiliated credentialing board or accreditation.

(3) Maintain, in conjunction with their operations, in central locations designated by the department, all records pertaining to the functions independently retained by them.

(4) Compile and keep current a register of the names and addresses of all persons who are credentialed to be retained by the department and which shall be available for public inspection during the times specified in s. 230.35 (4) (a). The department may also make the register available to the public by electronic transmission.

History: 1977 c. 418 ss. 25, 793,929 (41); 1979 c. 32 s. 92 (1); 1979 c. 34; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 107; 1997 a. 27, 191,237.

440.04 Duties of the secretary. The secretary shall:

(1) Centralize, at the capital and in such district offices as the operations of the department and the attached examining boards and affiliated credentialing boards require, the routine housekeeping functions required by the department, the examining boards and the affiliated credentialing boards.

(2) Provide the bookkeeping, payroll, accounting and personnel advisory services required by the department and the legal services, except for representation in court proceedings and the preparation of formal legal opinions, required by the attached examining boards and affiliated credentialing boards.

(5) With the advice of the examining boards or affiliated credentialing boards:

(a) Provide the department with such supplies, equipment, office space and meeting facilities as are required for the efficient operation of the department.

(b) Make all arrangements for meetings, hearings and examinations.

(c) Provide such other services as the examining boards or affiliated credentialing boards request.

(6) Appoint outside the classified service an administrator for any division established in the department and a director for any bureau established in the department as authorized in s. 230.08 (2). The secretary may assign any bureau director appointed in accordance with this subsection to serve concurrently as a bureau director and a division administrator.

(7) Unless otherwise specified in chs. 440 to 480, provide examination development, administration, research and evaluation services as required.

(8) Collect data related to the registration of speech–language pathologists and audiologists under subch. III of ch. 459 and, on January 15, 1993, report the data and recommendations on whether the licensure of speech–language pathologists and audiologists under subch. II of ch. 459 is appropriate to the chief clerk of each house of the legislature for distribution in the manner provided under s. 13.172 (2).

(9) Annually prepare and submit a report to the legislature under s. 13.172 (2) on the number of minority group members who applied for licensure as a certified public accountant under ch. 442, the number who passed the examination required for licensure as a certified public accountant and the number who were issued a certified public accountant license under ch. 442, during the preceding year.

History: 1977 c. 418 s. 26; 1979 c. 34; 1981 c. 20; 1985 a. 29; 1987 a. 27; 1989 a. 316; 1991 a. 39; 1993 a. 102,107; 1995 a. 333.

440.042 Advisory committees. (1) The secretary may appoint persons or advisory committees to advise the department and the boards, examining boards and affiliated credentialing boards in the department on matters relating to the regulation of credential holders. The secretary shall appoint an advisory committee to advise the department on matters relating to carrying out the duties specified in s. 440.982 and making investigations, conducting hearings and taking disciplinary action under s. 440.986. A person or an advisory committee member appointed under this subsection shall serve without compensation, but may be reimbursed for his or her actual and necessary expenses incurred in the performance of his or her duties.

(2) Any person who in good faith testifies before the department or any examining board, affiliated credentialing board or board in the department or otherwise provides the department or any examining board, affiliated credentialing board or board in the department with advice or information on a matter relating to the regulation of a person holding a credential is immune from civil liability for his or her acts or omissions in testifying or otherwise providing such advice or information. The good faith of any person specified in this subsection shall be presumed in any civil action and an allegation that such a person has not acted in good faith must be proven by clear and convincing evidence.

History: **1993** a. **16** ss. **3269,3299; 1993** a. **107: 1997** a. 156; **1999** a. **32.**

440.045 Disputes. Any dispute between an examining board or an affiliated credentialing board and the secretary shall be arbitrated by the governor or the governor's designee after consultation with the disputants.

History: **1977** c. **418** s. **27; 1979** c. **34; 1993** a. **107.**

The relationship between the department, cosmetology examining board, and governor is discussed. **70** Atty. Gen. **172.**

440.05 Standard fees. The following standard fees apply to all initial credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 444.03, 444.05, 444.11, 447.04 (2) (c) 2., 449.17, 449.18 and 459.46:

(1) (a) Initial credential: $53. Each applicant for an initial credential shall pay the initial Credential fee to the department when the application materials for the initial credential are submitted to the department.

(b) Examination: If an examination is required, the applicant shall pay an examination fee to the department. If the department prepares, administers, or grades the examination, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of preparing, administering, or grading the examination. If the, department approves an examination prepared, administered, and graded by a test service provider, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of approving the examination, including selecting, evaluating, and reviewing the examination.

(2) Reciprocal credential, including any credential described in s. 440.01 (2) (d) and any credential that permits temporary practice in this state in whole or in part because the person holds a credential in another jurisdiction: The applicable credential renewal fee under s. 440.08 (2) (a) and, if an examination is required, an examination fee under sub.(1).

(6) Apprentice, journeyman, student or other temporary credential, granted pending completion of education, apprenticeship or examination requirements: $10.

(7) Replacement of lost credential, name or address change on credential, issuance of duplicate credential or transfer of credential: $10.

(9) Endorsement of persons who are credentialed to other states: $10.

(10) Expedited service: If an applicant for a credential requests that the department process an application on an expedited basis, the applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

History: **1977** c. **29,418; 1979** c. **34; 1979** c. **175** s. **53; 1979** c. **221** s. **2202 (45); 1983** a. **27; 1985** a. **29; 1987** a. **264, 265, 329, 399, 403; 1989** a. **31, 229, 307, 316, 336,340,341,359; 1991** a. **39, 269, 278, 315; 1993** a. **16; 1995** a. **27; 1997** a. **27, 96; 1999** a. **9; 2001** a. **16.**

Cross reference: See also ch. RL **4,** Wis. adm. code.

440.055 Credit card payments. (2) If the department permits the payment of a fee with use of a credit card, the department shall charge a credit card service charge for each transaction. The credit card service charge shall be in addition to the fee that is being paid with the credit card and shall be sufficient to pay the costs to the department for providing this service to persons who request it, including the cost of any services for which the department contracts under sub.(3).

(3) The department may contract for services relating to the payment of fees by credit card under this section.

History: **1995** a. **27; 1999** a. **9.**

440.06 Refunds and reexaminations. The secretary may establish uniform procedures for refunds of fees paid under s. 440.05 or 440.08 and uniform procedures and fees for reexaminations under chs. 440 to 480.

History: **1977** c. **418; 1979** c. **175** s. **53; 1979** c. **221** s. **2202 (45); 1991** a. **39; 1993** a. **102.**

Cross reference: See also ch. RL **4,** Wis. adm. code.

440.07 Examination standards and services. (1) In addition to the standards specified in chs. 440 to 480, examinations for credentials shall reasonably relate to the skills likely to be needed for an applicant to practice in this state at the time of examination and shall seek to determine the applicant's preparedness to exercise the skills.

(2) The department, examining board or affiliated credentialing board having authority to credential applicants may do any of the following:

(a) Prepare, administer and grade examinations.

(b) Approve, in whole or in part, an examination prepared, administered and graded by a test service provider.

(3) The department may charge a fee to an applicant for a credential who fails an examination required for the credential and requests a review of his or her examination results. The fee shall be based on the cost of the review. No fee may be charged for the review unless the amount of the fee or the procedure for determining the amount of the fee is specified in rules promulgated by the department.

History: **1987** a. **27; 1991** a. **39; 1993** a. **102, 107.**

Cross reference: See also ch. RL **4,** Wis. adm. code. Department of Regulation and Licensing test scores were subject to disclosure under the open records law. *Munroe* v. *Braatz,* **201** Wis. 2d **442,549** N.W.2d **452** (Ct. App. **1996).**

440.08 Credential renewal. (1) NOTICE OF RENEWAL. The department shall give a notice of renewal to each holder of a credential at least 30 days prior to the renewal date of the credential. Notice may be mailed to the last address provided to the department by the credential holder or may be given by electronic transmission. Failure to receive a notice of renewal is not a defense in any disciplinary proceeding against the holder or in any proceeding against the holder for practicing without a credential. Failure to receive a notice of renewal does not relieve the holder from the obligation to pay a penalty for late renewal under sub.(3).

(2) RENEWAL DATES, FEES AND APPLICATIONS. (a) Except as provided in par.(b) and in ss. 440.51, 442.04, 444.03, 444.05, 444.11, 448.065, 447.04 (2) (c) 2., 449.17, 449.18 and 459.46, the renewal dates and renewal fees for credentials are as follows:

1. Accountant, certified public: January 1 of each even–numbered year; $59.

3. Accounting corporation or partnership: January 1 of each even–numbered year; $56.

4. Acupuncturist: July 1 of each odd–numbered year; $70.

4m. Advanced practice nurse prescriber: October 1 of each even–numbered year; $73.

5. Aesthetician: July 1 of each odd–numbered year; $87.

6. Aesthetics establishment: July 1 of each odd–numbered year; $70.

7. Aesthetics instructor: July 1 of each odd–numbered year; $70.

8. Aesthetics school: July 1 of each odd–numbered year; $115.

9. Aesthetics specialty school: July 1 of each odd–numbered year; $53.

11. Appraiser, real estate, certified general: January 1 of each even–numbered year; $162.

11m. Appraiser, real estate, certified residential: January 1 of each even–numbered year; $167.

12. Appraiser, real estate, licensed: January 1 of each even–numbered year; $185.

13. Architect: August 1 of each even–numbered year; $60.

14. Architectural or engineering firm, partnership or corporation: February 1 of each even–numbered year; $70.

14f. Athletic trainer: July 1 of each even–numbered year; $53.

14g. Auction company: January 1 of each odd–numbered year; $56.

14r. Auctioneer: January 1 of each odd–numbered year; $174.

15. Audiologist: February 1 of each odd–numbered year; $106.

16. Barbering or cosmetology establishment: July 1 of each odd–numbered year; $56.

17. Barbering or cosmetology instructor: July 1 of each odd–numbered year; $91.
18. Barbering or cosmetology manager: July 1 of each odd–numbered year; $71.
19. Barbering or cosmetology school: July 1 of each odd–numbered year; $138.
20. Barber or cosmetologist: July 1 of each odd–numbered year; $63.
21. Cemetery authority: January 1 of each odd–numbered year; $343.
22. Cemetery preneed seller: January 1 of each odd–numbered year; $61.
23. Cemetery salesperson: January 1 of each odd–numbered year; $90.
23m. Charitable organization: August 1 of each year; $15.
24. Chiropractor: January 1 of each odd–numbered year; $168.
25. Dental hygienist: October 1 of each odd–numbered year; $57.
26. Dentist: October 1 of each odd–numbered year; $131.
26m. Dentist, faculty member: October 1 of each odd–numbered year; $131.
27. Designer of engineering systems: February 1 of each even–numbered year; $58.
27m. Dietitian: November 1 of each even–numbered year; $56.
28. Drug distributor: June 1 of each even–numbered year; $70.
29. Drug manufacturer: June 1 of each even–numbered year; $70.
30. Electrologist: July 1 of each odd–numbered year; $76.
31. Electrology establishment: July 1 of each odd–numbered year; $56.
32. Electrology instructor: July 1 of each odd–numbered year; $86.
33. Electrology school: July 1 of each odd–numbered year; $71.
34. Electrology specialty school: July 1 of each odd–numbered year; $53.
35. Engineer, professional: August 1 of each even–numbered year; $58.
35m. Fund–raising counsel: September 1 of each even–numbered year; $53.
36. Funeral director: January 1 of each even–numbered year; $135.
37. Funeral establishment: June 1 of each odd–numbered year; $56.
38. Hearing instrument specialist: February 1 of each odd–numbered year; $106.
38g. Home inspector: January 1 of each odd–numbered year; $53.
38m. Landscape architect: August 1 of each even–numbered year; $56.
39. Land surveyor: February 1 of each even–numbered year; $77.
42. Manicuring establishment: July 1 of each odd–numbered year; $53.
43. Manicuring instructor: July 1 of each odd–numbered year; $53.
44. Manicuring school: July 1 of each odd–numbered year; $118.
45. Manicuring specialty school: July 1 of each odd–numbered year; $53.
46. Manicurist: July 1 of each odd–numbered year; $133.
46m. Marriage and family therapist: July 1 of each odd–numbered year; $84.
46r. Massage therapist or bodyworker: March 1 of each odd–numbered year; $53.

NOTE: Subd. 46r. is created eff. 3–1-03 by 2001 Wis. Act 74.

48. Nurse. licensed practical: May 1 of each odd–numbered year; $69.
49. Nurse, registered: March 1 of each even–numbered year; $66.
50. Nurse–midwife: March 1 of each even–numbered year; $70.
51. Nursing home administrator: July 1 of each even–numbered year; $120.
52. Occupational therapist: November 1 of each odd–numbered year; $59.
53. Occupational therapy assistant: November 1 of each odd–numbered year; $62.
54. Optometrist: January 1 of each even–numbered year; $65.
54m. Perfusionist: November 1 of each odd–numbered year; $56.
55. Pharmacist: June 1 of each even–numbered year; $97.
56. Pharmacy: June 1 of each even–numbered year; $56.
57. Physical therapist: November 1 of each odd–numbered year; $62.
57m. Physical therapist assistant: November 1 of each odd–numbered year; $44.

NOTE: Subd. 57m. is created eff. 4–1–04 by 2001 Wis. Act 70.

58. Physician: November 1 of each odd–numbered year; $106.
59. Physician assistant: November 1 of each odd–numbered year; $72.
60. Podiatrist: November 1 of each odd–numbered year; $150.
61. Private detective: September 1 of each even–numbered year; $101.
62. Private detective agency: September 1 of each even–numbered year; $53.
63. Private practice school psychologist: October 1 of each odd–numbered year; $103.
63g. Private security person: September 1 of each even–numbered year; $53.
63m. Professional counselor: July 1 of each odd–numbered year; $76.
63t. Professional fund–raiser: September 1 of each even–numbered year; $93.
63u. Professional geologist: August 1 of each even–numbered year; $59.
63v. Professional geology, hydrology or soil science firm, partnership or corporation: August 1 of each even–numbered year; $53.
63w. Professional hydrologist: August 1 of each even–numbered year; $53.
63x. Professional soil scientist: August 1 of each even–numbered year; $53.
64. Psychologist: October 1 of each odd–numbered year; $157.
65. Real estate broker: January 1 of each odd–numbered year; $128.
66. Real estate business entity: January 1 of each odd–numbered year; $56.
67. Real estate salesperson: January 1 of each odd–numbered year; $83.
67m. Registered interior designer: August 1 of each even–numbered year; $56.
67q. Registered massage therapist or bodyworker: March 1 of each odd–numbered year; $53.

NOTE: Subd. 67q. is repealed eff. 3–1-03 by 2001 Wis. Act 74.

67v. Registered music, art or dance therapist: October 1 of each odd–numbered year; $53.
67x. Registered music, art, or dance therapist with psychotherapy license: October 1 of each odd–numbered year; $53.
68. Respiratory care practitioner: November 1 of each odd–numbered year; $65.
68d. Social worker: July 1 of each odd–numbered year; $63.
68h. Social worker, advanced practice: July 1 of each odd–numbered year; $70.
68p. Social worker, independent: July 1 of each odd–numbered year; $58.
68t. Social worker, independent clinical: July 1 of each odd–numbered year; $73.
68v. Speech–language pathologist: February 1 of each odd–numbered year; $63.
69. Time–share salesperson: January 1 of each odd–numbered year; $119.
70. Veterinarian: January 1 of each even–numbered year; $105
71. Veterinary technician: January 1 of each even–numbered year; $58.

(b) The renewal fee for an apprentice, journeyman, student or temporary credential is $10. The renewal dates specified in par.(a) do not apply to apprentice, journeyman, student or temporary credentials.

(c) Except as provided in sub.(3), renewal applications shall include the applicable renewal fee specified in pars.(a) and (b).

(d) If an applicant for credential renewal requests that the department process an application on an expedited basis, the

applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

(3) LATE RENEWAL. (a) Except as provided in rules promulgated under par. (b), if the department does not receive an application to renew a credential before its renewal date, the holder of the credential may restore the credential by payment of the applicable renewal fee specified in sub. (2) (a) and by payment of a late renewal fee of $25.

(b) The department or the interested examining board or affiliated credentialing board, as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines is necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must he completed in order to obtain an initial credential from the department, the examining board or the affiliated credentialing board.

(4) DENIAL OF CREDENTIAL RENEWAL. (a) *Generally.* If the department or the interested examining board or affiliated credentialing board, as appropriate, determines that an applicant for renewal has failed to comply with sub. (2) (c) or (3) or with any other applicable requirement for renewal established under chs. 440 to 480 or that the denial of an application for renewal of a credential is necessary to protect the public health, safety or welfare, the department, examining board or affiliated credentialing board may summarily deny the application for renewal by mailing to the holder of the credential a notice of denial that includes a statement of the facts or conduct that warrant the denial and a notice that the holder may, within 30 days after the date on which the notice of denial is mailed, file a written request with the department to have the denial reviewed at a hearing before the department, if the department issued the credential, or before the examining board or affiliated credentialing board that issued the credential.

(b) ***Applicability.*** This subsection does not apply to a denial of a credential renewal under s. 440.12 or 440.13 (2) (b).

History: 1991 a. 39 ss. 3305,3313; 1991 a. 78, **160,** 167,269,278,315; 1993 a. 3, 16, 102, 105, 107, 443, 463, 465; 1993 a. 490 ss. 228 to 230, 274, 275; 1995 a. 27, 233. 321. 322. 461: 1997 a. 27. 75. **81.** 96. 156. 191. 237. 261. 300: 1999 a. 9. 32: 2001 a. **16,** 70, 74, 80, 89

440.11 Change of name or address. (1) An applicant for or recipient of a credential who changes his or her name or moves from the last address provided to the department shall notify the department of his or her new name or address within 30 days of the change in writing or in accordance with other notification procedures approved by the department.

(2) The department or any examining board, affiliated credentialing board or board in the department may serve any process, notice or demand on the holder of any credential by mailing it to the last–known address of the holder as indicated in the records of the department, examining board, affiliated credentialing board or board.

(3) Any person who fails to comply with sub. (1) shall be subject to a forfeiture of $50.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

440.12 Credential denial, nonrenewal and revocation based on tax delinquency. Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential if the department of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes, as defined in s. 73.0301 (1) (c).

History: 1997 a. 237.

Cross reference: *See* also ch. RL 9, Wis. adm. *code.*

440.13 Delinquency in support payments; failure to comply with subpoena or warrant. (1) In this section:

(b) "Memorandum of understanding" means a memorandum of understanding entered into by the department of regulation and licensing and the department of workforce development under s. 49.857.

(c) "Support" has the meaning given in s. 49.857 (1) (g).

(2) Notwithstanding any other provision of chs. 440 to 480 relating to issuance of an initial credential or credential renewal, as provided in the memorandum of understanding:

(a) With respect to a credential granted by the department, the department shall restrict, limit or suspend a credential or deny an application for an initial credential or for reinstatement of an inactive license under s. 452.12 (6) (e) if the credential holder or applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(b) With respect to credential renewal, the department shall deny an application for renewal if the applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(c) With respect to a credential granted by a credentialing board, a credentialing board shall restrict, limit or suspend a credential held by a person or deny an application for an initial credential when directed to do so by the department.

History: 1997 a. 191,237.

440.14 Nondisclosure of certain personal information.

(1) In this section: (a) "List" means information compiled or maintained by the department or a credentialing board that contains the personal identifiers of 10 or more individuals.

(b) "Personal identifier" means a name, social security number, telephone number, street address, post–office box number or 9–digit extended zip code.

(2) If a form that the department or a credentialing board requires an individual to complete in order to apply for a credential or credential renewal or to obtain a product or service from the department or the credentialing board requires the individual to provide any of the individual's personal identifiers, the form shall include a place for the individual to declare that the individual's personal identifiers obtained by the department or the credentialing board from the information on the form may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(3) If the department or a credentialing board requires an individual to provide, by telephone or other electronic means, any of the individual's personal identifiers in order to apply for a credential or credential renewal or to obtain a product or service from the department or a credentialing board, the department or the credentialing board shall ask the individual at the time that the individual provides the information if the individual wants to declare that the individual's personal identifiers obtained by telephone or other electronic means may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(4) The department or a credentialing board shall provide to an individual upon request a form that includes a place for the individual to declare that the individual's personal identifiers obtained by the department or credentialing board may not be disclosed on any list that the department or credentialing board furnishes to another person.

(5) (a) The department or a credentialing board may not disclose on any list that it furnishes to another person a personal identifier of any individual who has made a declaration under sub. (2), (3) or (4).

(b) Paragraph (a) does not apply to a list that the department or a credentialing board furnishes to another state agency, a law enforcement agency or a federal governmental agency. In addition, par. (a) does not apply to a list that the department or the board of nursing furnishes to the coordinated licensure information system under s. 441.50 (7). A state agency that receives a list from the department or a credentialing board containing a personal identifier of any individual who has made a declaration under sub. (2), (3) or (4) may not disclose the personal

identifier to any person other than a state agency, a law enforcement agency or a federal governmental agency.

History: 1999 a. **88;** 2001 a. 66.

440.142 Reporting potential causes of public health emergency. (1) A pharmacist or pharmacy shall report to the department of health and family services all of the following:

(a) An unusual increase in the number of prescriptions dispensed or nonprescription drug products sold for the treatment of medical conditions specified by the department of health and family services by rule under s. 252.02 (7).

(b) An unusual increase in the number of prescriptions dispensed that are antibiotic drugs.

(c) The dispensing of a prescription for treatment of a disease that is relatively uncommon or may be associated with bioterrorism, as defined in s. 166.02(lr).

(2) (a) Except as provided in par.(b), a pharmacist or pharmacy may not report personally identifying information concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (b), or (c).

(b) Upon request by the department of health and family services, a pharmacist or pharmacy shall report to that department personally identifying information other than a social security number concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (b), or (c).

History: 2001 a. **109.**

440.20 Disciplinary proceedings. (1) Any person may file a complaint before the department or any examining board, affiliated credentialing board or board in the department and request the department, examining board, affiliated credentialing board or board to commence disciplinary proceedings against any holder of a credential.

(3) The burden of proof in disciplinary proceedings before the department or any examining board, affiliated credentialing board or board in the department is a preponderance of the evidence.

(4) In addition to any grounds for discipline specified in chs. 440 to 480, the department or appropriate examining board, affiliated credentialing board or board in the department may reprimand the holder of a credential or deny, limit, suspend or revoke the credential of any person who intentionally violates s. 252.14 (2) or intentionally discloses the results of a blood test in violation of s. 252.15 (5) (a) or (5m).

History: 1977 c. 418; 1979 c. 34: 1985 a. 29: 1989 a. 31,201:, 1991 a. 39: 1993 a. 16, 27, 102, 107, 490.

The constitutionality of sub.(3) is upheld. Gandhi v. Medical Examining Board, 168 Wis. 2d 299.483 N.W.2d 295 (Ct. App. 1992).

A hearing is not required for a complaint filed under this section. 68 Atty. Gen. 30.

The "preponderance of the evidence" burden of proof under sub.(3) does not violate the due process rights of a licensee. 75 Atty. Gen. 76.

440.205 Administrative warnings. If the department or a board, examining board or affiliated credentialing board in the department determines during an investigation that there is evidence of misconduct by a credential holder, the department, board, examining board or affiliated credentialing board may close the investigation by issuing an administrative warning to the credential holder. The department or a board, examining board or affiliated credentialing board may issue an administrative warning under this section only if the department or board, examining board or affiliated credentialing board determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the issuance of an administrative warning adequately protects the public by putting the credential holder on notice that any subsequent violation may result in disciplinary action. If an administrative warning is issued, the credential holder may obtain a review of the administrative warning through a personal appearance before the department, board, examining board or affiliated credentialing board that issued the administrative warning. Administrative warnings do not constitute an adjudication of guilt or the imposition of discipline and may not be used as evidence that the credential holder is guilty of the alleged misconduct. However, if a subsequent allegation of misconduct by the credential holder is received by the department or a board, examining board or affiliated credentialing board in the department, the matter relating to the issuance of the administrative warning may be reopened and disciplinary proceedings may be commenced on the matter, or the administrative warning may be used in any subsequent disciplinary proceeding as evidence that the credential holder had actual knowledge that the misconduct that was the basis for the administrative warning was contrary to law. The record that an administrative warning was issued shall be a public record. The contents of the administrative warning shall be private and confidential. The department shall promulgate rules establishing uniform procedures for the issuance and use of administrative warnings.

History: 1997 a. 139.

Cross referenee: See also ch. RL 8, Wis. adm. code.

440.21 Enforcement of laws requiring credential.

(1) The department may conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 480.

(2) If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.

(3) In lieu of holding a public hearing, if the department has reason to believe that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may petition the circuit court for a temporary restraining order or an injunction as provided in ch. 813.

(4) (a) Any person who violates a special order issued under sub.(2) may be required to forfeit not more than $10,000 for each offense. Each day of continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover a forfeiture under this paragraph.

(b) Any person who violates a temporary restraining order or an injunction issued by a court upon a petition under sub.(3) may be fined not less than $25 nor more than $5,000 or imprisoned for not more than one year in the county jail or both.

History: 1991 a. 39; 1993 a. 102.

Cross reference: See also ch. RL 3, Wis. adm. code.

440.22 Assessment of costs. (1) In this section, "costs of the proceeding" means the compensation and reasonable expenses of hearing examiners and of prosecuting attorneys for the department, examining board or affiliated credentialing board, a reasonable disbursement for the service of process or other papers, amounts actually paid out for certified copies of records in any public office, postage, telephoning, adverse examinations and depositions and copies, expert witness fees, witness fees and expenses, compensation and reasonable expenses of experts and investigators, and compensation and expenses of a reporter for recording and transcribing testimony.

(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department. Interest shall accrue on costs assessed under this subsection at a rate of 12% per year beginning on the date that payment of the costs are due as ordered by the department, examining board, affiliated credentialing board or board. Upon the request of the department of regulation and licensing, the department of justice may commence an action to recover costs assessed under this subsection and any accrued interest.

(3) In addition to any other discipline imposed, if the department, examining board, affiliated credentialing board or board assesses costs of the proceeding to the holder of the credential under sub.(2), the department, examining board, affiliated credentialing board or board may not restore, renew or otherwise issue any credential to the holder until the holder has made payment to the department under sub.(2) in the full amount assessed, together with any accrued interest.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

The collection of costs assessed under this section may not be pursued in an independent action for a money judgment. The costs may be collected only as a

condition of reinstatement of the disciplined practitioner's credentials. State v. Dunn, 213 Wis. 2d 363, 570 N.W.2d 614 (Ct. App. 1997).

440.23 Cancellation of credential; reinstatement.

(1) If the holder of a credential pays a fee required under s. 440.05 (1) or (6), 440.08, 444.03, 444.05, 444.11 or 459.46 (2) (b) by check or debit or credit card and the check is not paid by the financial institution upon which the check *is* drawn or *if* the demand for payment under the debit or credit card transaction is not paid by the financial institution upon which demand is made, the department may cancel the credential on or after the 60th day after the department receives the notice from the financial institution, subject to sub.(2).

(2) At least 20 days before canceling a credential, the department shall mail a notice to the holder of the credential that informs the holder that the check or demand for payment under the debit or credit card transaction was not paid by the financial institution and that the holder's credential may be canceled on the date determined under sub.(1) unless the holder does all of the following before that date:

(a) Pays the fee for which the unpaid check or demand for payment under the credit or debit card transaction was issued.

(b) If the fee paid under par.(a) is for renewal and the credential has expired, pays the applicable penalty for late renewal specified in s. 440.08 (3).

(c) Pays the charge for an unpaid draft established by the depository selection board under s. 20.905 (2).

(3) Nothing in sub.(1) or (2) prohibits the department from extending the date for cancellation to allow the holder additional time to comply with sub.(2) (a) to (c).

(4) A cancellation of a credential under this section completely terminates the credential and all rights, privileges and authority previously conferred by the credential.

(5) The department may reinstate a credential that has been canceled under this section only if the previous holder complies with sub.(2) (a) to (c) and pays a $30 reinstatement fee.

History: 1989 a. 31; 1991 a. 39, 189, 269, 278, 315; 1993 a. 16; 1995 a. 27; 1999 a. 9.

440.25 Judicial review. The department may seek judicial review under ch. 227 of any final disciplinary decision of the medical examining board or affiliated credentialing board attached to the medical examining board. The department shall be represented in such review proceedings by an attorney within the department. Upon request of the medical examining board or the interested affiliated credentialing board, the attorney general may represent the board. If the attorney general declines to represent the board, the board may retain special counsel which shall be paid for out of the appropriation under s. 20.165 (1) (g).

History: 1985 a. 340; 1993 a. 107.

CHAPTER 452

REAL ESTATE PRACTICE

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Cross–reference: See definitions in s. 440.01.
Cross Reference: See also chs. RL 11, 12, 15, 16, 17.18, 22, 23, 24, 25, and 26, Wis. adm. code.

452.01 Definitions. In this chapter:

(1e) "Adverse fact" means any of the following:

(a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

1. Significantly and adversely affecting the value of the property.

2. Significantly reducing the structural integrity of improvements to real estate.

3. Presenting a significant health risk to occupants of the property.

(b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations under a contract or agreement made concerning the transaction.

(1m) "Agency agreement'' means a written agreement between a broker and a client under s. 452.135 (1).

(1s) "Board" means real estate board.

(2) "Broker" means any person not excluded by sub. (3), who does any of the following:

(a) For another, and for commission, money or other thing of value, negotiates or offers or attempts to negotiate a sale, exchange, purchase or rental of an interest or estate in real estate.

(b) Is engaged wholly or in part in the business of selling real estate to the extent that a pattern of real estate sales is established, whether or not such real estate is owned by such person. Five sales in one year or 10 sales in 5 years is presumptive evidence of a pattern of sales.

(d) For another and for commission, money or other thing of value, negotiates or offers or attempts to negotiate a sale, exchange, purchase or rental of any business, its goodwill, inventory, fixtures or an interest therein.

(e) Is engaged wholly or in part in the business of selling business opportunities or goodwill of an existing business or is engaged wholly or in part in the business of buying and selling, exchanging or renting of any business, its goodwill, inventory, fixtures or an interest therein.

(f) For another, and for commission, money or other thing of value, negotiates or offers or attempts to negotiate a sale, exchange or purchase of a time share.

(g) Is engaged wholly or in part in the business of selling time shares to the extent that a pattern of sales is established, whether or not the time shares are owned by such person.

(h) For another, and for a commission, money or other thing of value, promotes the sale. exchange, purchase, option, rental or leasing of real estate or business opportunities. This paragraph does not apply to a person who only publishes or disseminates verbatim information provided by another person.

(3) "Broker" does not include any of the following:

(a) Receivers, trustees, personal representatives, guardians, or other persons appointed by or acting under the judgment or order of any court.

(b) Public officers while performing their official duties.

(c) Any bank, trust company, savings bank, savings and loan association, insurance company, or any land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law.

(d) Employees of persons enumerated in pars. (a) to (c) and (f) when engaged in the specific performance of their duties as such employees.

(din) Any employee of an attorney under par. (h) if all of the following are true:

1. The employee's activities are directly supportive of the attorney's provision of legal services to the attorney's client.

2. The employee's activities are activities that the attorney may perform under par. (h).

3. The employee is under the direction and supervision of the attorney.

(e) Any custodian, janitor, employee or agent of the owner or manager of a residential building who exhibits a residential unit therein to prospective tenants, accepts applications for leases and furnishes such prospective tenants with information relative to the rental of such unit, terms and conditions of leases required by the owner or manager, and similar information.

(f) Any credit union which negotiates loans secured by real estate mortgages or any licensee under ch. 138 which negotiates loans secured by real estate mortgages or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan, secured or to be secured by mortgage or other transfer of or encumbrance on real estate.

(g) A person registered as a mortgage banker under s. 224.72 who does not engage in activities described under sub. (2).

(h) Attorneys licensed to practice in this state while acting within the scope of their attorney's license.

(3e) "Brokerage service" means any service described under sub. (2) (a) to (h) provided by a broker to another person.

(3j) "Business entity" means any organization or enterprise, other than a sole proprietorship, which is operated for profit or that is nonprofit and nongovernmental, including an association, busi-

ness trust, corporation, joint venture, limited liability company, limited liability partnership, partnership or syndicate.

(3k) "Business representative" means a director, manager, member, officer, owner or partner of a business entity.

(3m) "Client" means a party to a transaction who has an agency agreement with a broker for brokerage services.

(3s) "Customer" means a party to a transaction who is provided brokerage services by a broker but who is not a client.

(4) "Disciplinary proceeding" means a proceeding against one or more licensees or registrants in which the board may revoke, suspend or limit a license or registration, reprimand a licensee or registrant: issue a private letter of warning to a licensee or registrant, or assess a forfeiture or require education or training under **s.** 452.14 (4m).

(4d) "Employ", when used in reference to a broker employing another broker, a salesperson or a time–share salesperson, includes engaging the services of another broker, a salesperson or a time–share salesperson who provides services to the broker as an independent contractor.

(4h) "Employee", when used in reference to an employee of a broker, includes another broker, a salesperson or a time–share salesperson who provides services to the broker as an independent contractor.

(4p) "Employer", when used in reference to a broker who is the employer of another broker, a salesperson or a time–share salesperson, includes a broker who engages the services of another broker, a salesperson or a time–share salesperson who provides services to the broker as an independent contractor.

(4t) "Employment", when used in reference to a broker's employment of another broker, a salesperson or a time–share salesperson, includes the state of providing services to the broker by the other broker, the salesperson or the time–share salesperson as an independent contractor.

(5) "Licensee" means any person licensed or registered under this chapter, other than an inactive licensee registered under **s.** 452.12 (6).

(5g) "Material adverse fact" means **an** adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects or would affect the party's decision about the temis of such a contract or agreement.

(5m) "Negotiate" means to act as an interniediary between the parties to a transaction, including doing any of the following:

(a) Facilitating or participating in the parties' discussion of the terms of a contract or agreement concerning a transaction.

(b) Completing, when requested by a party, appropriate department–approved forms or other writings to document the party's proposal consistent with the party's intent.

(c) Presenting to a party the proposals of other parties to the transaction and informing the party receiving a proposal of the advantages and disadvantages of the proposal.

(d) Providing advice to the client regarding those matters within the scope of the knowledge, skills and training required for licensing as a broker or salesperson under this chapter.

(5r) "Party" means a person seeking to sell, exchange, buy or rent an interest in real estate, a business or a business opportunity. "Party" includes a person who seeks to grant or accept an option to buy, sell or rent **an** interest in real estate, a business or a business opportunity.

(6) "Real estate practice" means engaging in conduct which requires a license under this chapter.

(7) "Salesperson" means any person other than a broker who is employed by a broker to perfonn any act authorized by this chapter to be performed by a broker.

(8) "Time share" has the meaning given in **s.** 707.02 (24).

(9) "Time–share salesperson" means a person, other than a person licensed under s. 452.09, who is employed by a licensed broker to sell or offer or attempt to negotiate an initial sale or purchase of a time share but who may not perform any other acts authorized by this chapter to be performed by a broker or salesperson.

(10) "Transaction" means the sale, exchange, purchase or rental of, or the granting or acceptance of an option to sell, exchange, purchase or rent, an interest in real estate. a business or a business opportunity.

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359.399: 1987 a. 403 s. 256; 1989 a. 341: 1991 a. 221: 1993 a. 127: 1995 a. 27.400 1997 a. 263: 2001 a. 102.

A foreign corporation that entered into a brokerage contract to **sell** a radio station without being licensed in this state could not sue for its commission. The licensing requirement is not an unlawful burden on interstate commerce. Chapman Company, Inc. **v.** Service Broadcasting Corporation, 52 Wis. 2d 32, 187 N.W.2d 794 (1971).

Units of interest in a limited partnership are personalty and not real estate. and no real estate broker's license is required for their sale. 60 Atty. Gen. 254.

452.025 Time–share salespersons. (1) (a) A person desiring to act as a time–share salesperson shall submit to the department an application for a certificate of registration.

(b) The application for registration as a time–share salesperson shall be in the form prescribed by the department and shall include all of the following:

1. The name and address of the applicant.

2. The prior occupations of the applicant.

3. Certification from the licensed broker employing the applicant that the applicant is competent to act as a time–share salesperson.

4. Any other information which the department reasonably requires to enable it to determine the competency of the person to transact business as a time–share salesperson in a manner which safeguards the interests of the public.

(c) Each application for registration as a time–share salesperson shall be accompanied by an initial fee specified in **s.** 440.05 (1) or the applicable renewal fee specified under **s.** 440.08 (2) (a), whichever is appropriate.

(2) A person shall not engage in the business or occupation of. or advertise or hold himself or herself out as, a time–share salesperson unless the person is registered under this section or licensed under **s.** 452.09.

(3) (a) A time–share salesperson registered under this section may act as a time–share salesperson only when employed by a licensed broker.

(b) 1. Except as provided in subd. 2., a time-share salesperson registered under this section shall not draft or complete a purchase agreement, offer to purchase, or other contract or document related to the sale of a time share.

2. **A** time–share salesperson registered under this section may coniplete a form purchase agreement or offer to purchase, if the form purchase agreement or offer to purchase has been approved by the department and includes only the following:

a. The name, address and telephone number of the purchaser.

b. The name of the time–share project.

c. Identification and price of the time share being purchased and the amount of the downpayment and where it will be held.

d. Financing alternatives.

e. Disclosures under subch. III of ch. 422 and the federal consumer credit protection act, 15 USC 1601 to 1693r.

f. The date of closing.

g. The signature of the time–share salesperson and the name of the employing broker.

h. The date of execution.

i. Information required under **s.** 707.46 to be included in a contract for the purchase of a time share.

(4) A time–share salesperson registered under this section may apply at any time to transfer employment to another licensed broker by submitting to the department an application in the form

prescribed by the department and the transfer fee specified in s. 440.05 (7).

(5) (a) The renewal date for certificates of registration granted by the department under this section is specified under s. 440.08 (2) (a).

(b) An application to renew a certificate of registration granted under this section shall be submitted with the applicable renewal fee specified under s. 440.08 (2) (a) on or before the applicable renewal date specified under s. 440.08 (2) (a).

History: 1987 a. 399; 1989 a. 31; 1991 a. 39.

452.03 Brokers and salespersons licensed. No person may engage in or follow the business or occupation of, or advertise or hold himself or herself out as, or act temporarily or otherwise as a broker or salesperson without a license. Licenses shall be granted only to persons who are competent to transact such businesses in a manner which safeguards the interests of the public, and only after satisfactory proof of the person's competence has been presented to the department.

History: 1981 c. 94,391; 1989 a. 307.

Under s. 452.03 an agreement to pay a real estate brokerage commission to a person not licensed as a broker is void at its inception. Using a licensed broker who provides no actual services as a conduit for a fee to an unlicensed person does not create a co-brokerage arrangement authorized by s. 452.19. Badger III Ltd. v. Howard, Needles, Tammen & Bergendoff, 196 Wis. 2d 891,539 N.W.2d 904 (Ct. App. 1995).

Officers of a corporation or partners of a partnership can act for the corporation or partnership in the rental of real estate owned by the entity without being licensed as real estate brokers. 60 Atty. Gen. 1 (1971).

Actions of a tenants union on behalf of its members may require a real estate broker's license. 60 Atty. Gen. 118 (1971).

The permitted limits of nonlicensed independent contractor agents are discussed. 70 Atty. Gen. 23.

452.04 Duties of board. In addition to the other duties and responsibilities of the board under this chapter, the board shall:

(1) Advise the secretary on matters relating to real estate practice. The board may conduct public hearings on matters relating to the approval of forms used in real estate practice.

(2) Advise the secretary on rule making relating to licensees and relating to the board as provided by s. 452.07.

History: 1981 c. 94.

452.05 Duties and powers of department. (1) In addition to the other duties and responsibilities of the department under this chapter, the department shall:

(a) Grant and issue licenses to brokers and salespersons and registrations to time-share salespersons.

(b) Approve forms for use in real estate practice

(c) After consultation with the council on real estate curriculum and examinations and subject to the procedure under s. 452.07, promulgate rules establishing criteria for the approval of educational programs and training sessions under s. 452.09 (2) and approve such programs and sessions in accordance with the established criteria.

(d) After consultation with the council on real estate curriculum and examinations, the board, brokers and salespersons licensed under this chapter and interested members of the public, establish criteria for the approval of continuing educational programs and courses in real estate related subjects required for renewal under s. 452.12 *(5)* (c) 1.

(e) After consultation with the council on real estate curriculum and examinations, prepare, develop and grade examinations under s. 452.12 (5) (c) 2.

(g) Approve continuing educational programs and courses in accordance with the criteria established under par. (d). In order to be approved, a continuing educational program or course must require brokers and salespersons to pass an examination on the information presented at the program or course in order to successfully complete and receive continuing education credit for the program or course under s. 452.12 *(5)* (c) 1.

(1m) (a) In this subsection:

1. "Certified local register of historic property" means a register of historic property that is part of a historic preservation ordinance enacted by a city, village, town or county if the ordinance is certified by the state historical society under s. 44.44.

2. "Commercial real property" means real property that is classified as commercial under s. 70.32 (2) (a) 2.

3. "Historic building" means a building that fulfills at least one of the following requirements:

a. Is listed on a certified local register of historic property, if that fact is specified in a statement recorded in the office of the register of deeds for the county in which the commercial real estate is located.

b. Is included in a district that is listed on a certified local register of historic property, if that fact is specified in a statement recorded in the office of the register of deeds for the county in which the commercial real estate is located, and has been determined by the city, village, town or county to contribute to the historic significance of the district.

(b) In preparing the form for the offer to purchase commercial real property under sub. (1) (b), the department shall include a statement that the seller represents to the buyer that the seller has no notice or knowledge that the commercial real property is a historic building.

(2) The department may prepare letters and bulletins and conduct clinics disseminating information to its licensees.

History: 1981 c. 94.391: 1985 a. 305 ss. 1t. 7: 1987 a. 399; 1989 a. 307,341; 1991 a. 39; 1993 a. 141; 1995 a. 27: 1997 a. 27.

A corporation cannot he licensed as real estate salesperson. 71 Atty. Gen. 38.

452.06 Councils and committees. (1) The secretary shall create a council on forms under s. 15.04 (1) (c) which shall meet on a regular basis, be chaired by a member of the board and report to the board and the secretary. Any proposed change in a form relating to real estate practice shall be referred to the council on forms for review before the fomi is approved.

(2) The council on real estate curriculum and examinations shall do all of the following:

(a) Advise the secretary on the promulgation of rules under s. 452.05 (1) (c) and on establishing continuing education requirements under s. 452.05 (1) (d).

(b) Periodically. but not less than annually, review subjects covered on examinations for licensure under this chapter and the qualifications for instructors of and performance evaluations for educational and continuing educational programs, training sessions and courses approved under this chapter.

(3) If the secretary creates any councils or committees under s. 15.04 (1) (c) to provide advice to the department or board on matters relating to real estate practice other than the council under sub. (1), such councils or committees shall be chaired by a member of the board, if available, and shall report to the board and the secretary.

(4) The secretary shall provide staff and other support required for the operation of councils and committees created under this section or under s. 15.04 (1) (c) to provide advice to the department or board, as appropriate, on matters relating to real estate practice.

History: 1981 c. 94; 1989 a. 341; 1991 a. 39.

452.07 Rules; review of rules. (1) The department shall promulgate rules for the guidance of the real estate profession and define professional conduct and unethical practice.

(1m) The department shall promulgate rules that specify the supervisory duties of brokers under s. 452.12 (3).

(2) Before submitting any proposed rules relating to real estate practice to the legislative council staff under s. 227.15, the department shall submit the proposed rules to the board for comment. The board shall have 30 days to submit comments on the proposed rules to the secretary.

(3) When promulgating emergency rules under **s.** 227.24, the department shall provide a copy of the rules to the board prior to publication of the rules in the official state newspaper.

(4) The chairperson of the board, or his or her designee from the board, may cochair with the secretary, or the secretary's designee, any public hearing held by the department on proposed rules relating to licensees or the board.

(5) The department shall submit to the board a copy of the report required under **s.** 227.19 (2) on any proposed final rules relating to licensees or the board. The board may prepare a dissenting report stating its recommendations on the proposed final rules. Any dissenting report shall be prepared within 10 days from the date of receipt of the department's report, be attached to the department's report and be sent to the presiding officer of each house of the legislature and distributed under **s.** 227.19 (2). The department shall cause a statement to appear in the Wisconsin administrative register to the effect that a dissenting report of the board has been submitted to the presiding officer of each house of the legislature.

(6) The department shall provide staff to assist the board in the review of administrative rules and preparation of comments or dissenting reports.

(7) The board may petition the department under **s.** 227.12 for the adoption, amendment or repeal of rules relating to licensees *or* the board. This subsection does not limit the rights of other persons to petition the department under **s.** 227.12.

History: 1981 c. **94:** 1985a. 182 s. 57; 1987 **a.** 403 **s.** ***256;*** 2001 **a.** 16.

Cross Reference: See also chs. RL 11, 12, **15.** 16. 17, 18, 22, 23, 24, 25, and **26,** Wis. adm. code.

452.08 Board receipt of proposed legislation. The secretary shall submit to the board in writing any legislation proposed by the department relating to licensees or the board prior to introduction in the legislature.

History: 1981 c. 94.

452.09 Application for license, contents. (1) FORM OF APPLICATION. Any person desiring to act as a broker or salesperson shall submit to the department an application for a license. The application shall be in such form as the department prescribes and shall include the following:

(a) The kind of license desired.

(b) The name and address of the applicant; if the applicant is a business entity, the name and address of each business representative.

(c) The place or places, including the town, village or city, street number and county, where the business is to be conducted, and the manner in which the place of business is designated.

(d) The business or occupation engaged in by the applicant, or if a business entity, by each business representative, for a period of at least 2 years immediately preceding the date of the application.

(e) Any other information which the department may reasonably require to enable it to determine the competency of each applicant, including each business representative of the business entity, to transact the business of a broker or salesperson in a manner which safeguards the interests of the public.

(2) EDUCATIONAL REQUIREMENTS FOR APPLICANTS FOR LICENSES. (a) Each applicant for a salesperson's license shall submit to the department evidence satisfactory to the department of successful completion of educational programs approved for this purpose under **s.** 452.05 (1) (c). The departmcnt may waive the requirement under this paragraph upon proof that the applicant has received 10 academic credits in real estate or real estate related law courses from an accredited institution of higher education.

(c) Except as provided in par. (d), each applicant for a broker's license shall do all of the following:

1. Satisfy or obtain a waiver of the requirement under par. (a) or submit proof of licensure as a salesperson under this chapter.

2. Submit to the department evidence satisfactory to the department of successful completion of educational programs in business management approved for this purpose under s. 452.05 (1) (c). No educational programs applied to satisfy the requirement under subd. 1. may be applied to satisfy the requirement under this subdivision.

(d) The department may waive the requirements under par. (c) upon proof that the applicant has received 20 academic credits in real estate or real estate related law courses from an accredited institution of higher education or that the applicant is licensed to practice law in this state.

(3) COMPETENCY OF APPLICANT. (a) In determining competency, the department shall require proof that the applicant for a broker's or salesperson's license has a fair knowledge of the English language, a fair understanding of the general purposes and general legal effect of deeds, mortgages, land contracts of sale, leases, bills of sale, chattel mortgages, conditional sales contracts, the provisions of the bulk sales law and a general and fair understanding of the obligations between principal and agent, as well as of this chapter. An applicant receiving a failing grade, as established by rules of the department, on any examination given under this section shall be denied a license, but any applicant may review his or her examination results in a manner established by rules of the department.

(b) The department shall determine competency under par. (a) by means of only an oral examination for any applicant who is unable to write because of a physical handicap.

(c) Examinations shall reliably measure an applicant's ability to competently engage in real estate practice.

(d) The department may not grant a broker's license to an applicant who does not hold a salesperson's license unless the applicant passes the salesperson's examination and the broker's examination.

(e) **An** applicant is not eligible for examination unless the applicant has satisfied the applicable requirements under sub. (2).

(5) APPRENTICESHIPS. Any person who is a resident of this state and 18 years of age or over may, upon application filed in accordance with sub. (1), be indentured to a licensed resident broker in accordance with rules promulgated by the department. These rules shall be promulgated so as to protect the public and may limit the real estate sales and brokerage activity of the apprentice. The department may require a preliminary examination covering general knowledge and prescribe the character and extent of his or her work during apprenticeship. The department may issue a temporary salesperson's permit to the individual for a period not to exceed one year upon payment of the fee under **s.** 440.05 (6). The temporary permit is not renewable.

History: 1981 **c.** 94,391: 1983 a. 273; 1985 a 305; 1989 a. 341; 1995 a. 400; 1997 **a.** 27.

Cross Reference: See also chs. RL 12, 22, 23, and **25,** Wis. adm. code.

452.10 Applications, verification, fees, exceptions. (1) An application shall be verified by the applicant. If made by a business entity it shall be verified by a business representative.

(2) (a) Each new application for a broker's or salesperson's license shall be for the remainder of the biennial license period.

(b) Unless an application is withdrawn in writing before the department has made any investigation, no part of the fee shall be returned.

(3) The fees for examinations and licenses granted or renewed under this chapter are specified under **ss.** 440.05 and 440.08.

(4) (a) Any licensed salesperson or broker may transfer to the employment of a licensed broker by first paying the transfer fee specified in **s.** 440.05 (7) and filing a transfer form with the department.

(b) No salesperson, time–share salesperson or broker may be employed by a broker whose license has been suspended or revoked during the period of suspension or revocation. The salesperson, time–share salesperson or broker may apply for transfer

to some other licensed broker by complying with this chapter, provided the salesperson. time–share salesperson or broker is not a party to the activities causing the suspension or revocation of the license of the broker.

(6) In the case of applications for renewals of licenses the department may dispense with such matters contained in s. 452.09 (1) as it deems unnecessary in view of prior applications.

History: 1981 c. 94,314,391; 1983a. 27,273; 1985a. 305; 1987a. 264,399; 1989 a. 307; 1991 a. 39; 1995 a. 400.

Cross Reference: See also ch. RL 12 and 23, Wis. adm. code.

The real estate examining board cannot prescribe the name to be used on an application **for** a real estate broker's license. 66 **Atty.** Gen. 21.

452.11 Nonresident applicants and licensees. (1) A nonresident may become a broker, salesperson or time–share salesperson by conforniing to all the provisions of this chapter.

(3) Every nonresident applicant, and every resident licensee who becomes a nonresident, shall file with the department an irrevocable consent that actions may be commenced against the applicant or licensee in the proper court of any county of the state in which a cause of action arises or in which the plaintiff resides, by the service of any process or pleading authorized by the laws of this state on the department or any duly authorized employee. The consent shall stipulate and agree that such service is valid and binding as due service upon the applicant or licensee in all courts in this state. The consent shall be duly acknowledged and, if made by a corporation, shall be authenticated by the corporate seal.

(4) Any process or pleading under this section shall be served in duplicate upon the department or its duly authorized employee. One copy shall be filed with the department and the other immediatcly forwarded by certified mail to the nonresident licensee against whom the process or pleading is directed at the last address provided to the department by the nonresident licensee. No default in any such proceeding or action may be taken unless it appears by affidavit of the secretary or any duly authorized employee that a copy of the process or pleading was mailed to the nonresident licensee as required in this subsection. No judgment by default may be taken in any action or proceeding within 20 days after the date of mailing the process or pleading to the nonresident licensee.

History: 1981 c. 94; 1983 a. 27; 1987 a. 399; 1991 **a.** 207.

Cross Referenee: See also ch. RL 12, **Wis.** adm. code.

452.12 Licenses. (1) EXPIRATION. A license granted by the department entitles the holder to act as a broker or salesperson, as the case may be, until the applicable renewal date specified under s. 440.08 (2) (a).

(2) BUSINESS ENTITIES. (a) A license may be issued to a business entity if the business entity has at least one business representative licensed as a broker. The license issued to the business entity entitles each business representative of the business entity who is a licensed broker to act as a broker on behalf of the business entity.

(c) Application for a business entity license shall be made on fonns prescribed by the department, listing the names and addresses of all business representatives, and shall be accompanied by the fee specified in s. 440.05 (1). If there is a change in any of the business representatives, the change shall be reported to the department, on the same form, within 30 days after the effective date of the change.

(3) BROKER'S LIABILITY FOR ACTS OF EMPLOYEES. Each broker shall supervise, and is responsible for the acts **of,** any broker, salesperson. or time–share salesperson employed by the broker.

(4) REGISTER OF BROKERS AND SALESPERSONS. The department shall maintain the register required by s. 440.035 (4). The names of all brokers and salespersons whose licenses have been revoked at any time within 2 years prior to the issuance thereof shall be included in the register. The register shall be available for purchase at cost.

(5) RENEWAL. (a) Renewal applications for all licenses shall be submitted with the applicable renewal fee specified under s. 440.08 (2) (a) on or before the applicable renewal date specified under s. 440.08 (2) (a).

(b) If an application for renewal is not filed with the department on or before the renewal date, the applicant may not engage in any of the activities covered by the license until the license is renewed or a new license is issued.

(c) 1. At the time of renewal, each broker or salesperson shall submit proof of attendance at and successful completion of continuing education programs or courses approved under s. 452.05 (1) (g), except as provided in subd. 2.

2. Not later than June 30 of each even–numbered year, the department shall conduct an examination on those subjects required for continuing education under s. 452.05 (J) (d). Any broker or salesperson who passes the examination under this subdivision is not required to comply with subd. 1.

(6) INACTIVE LICENSEES. (a) Any licensee, except a time–share salesperson registered under s. 452.025, may apply for registration as an inactive licensee on or before the license renewal date. This paragraph does not apply after October 31, 1995.

(b) Unless an applicant's license has been revoked or suspended under s. 452.14 (3), the department may register the applicant under par. (a) as an inactive licensee upon payment of a $15 fee.

(c) Inactive licensees may not engage in real estate practice.

(d) If an inactive licensee files an application for reinstatement before January 1, 1996, the department shall reinstate the inactive licensee's original license in accordance with the requirements for late renewal under s. 440.08 (3).

(e) Except as provided in ss. 440.03 (11mj (b), 440.12 and 440.13 (2) (a), the department shall reinstate an inactive licensee's original license as follows:

1. If a person has registered as an inactive licensee before November 1, 1990, the department shall reinstate the person's original license if that person applies to the department for reinstatement of his or her original license, pays the fees specified under s. 440.05 (1) (a) and (b), passes an examination under s. 452.09 (3) and completes the education requirements established by the department under par. (f).

2. If a person has registered as an inactive licensee on or after November 1, 1990, the department shall reinstate the person's original license if that person applies to the department for reinstatement of his or her original license, pays the renewal fee specified under s. 440.08 (2) (a) for the original license and completes 12 hours of continuing education as established by the department under par. (f). A person who is eligible for reinstatement of his or her original license under this subdivision shall complete the requirements for reinstatement under this subdivision before January 1 1996, or within 5 years after the date on which the person registered as an inactive licensee, whichever is later.

3. If a person who is eligible for reinstatement of his or her original license under subd. 2. does not complete the requirements for reinstatement within the time specified under subd. 2., the department shall reinstate the original license of that person if hc or she meets the requirements specified under subd. 1.

(f) The department shall promulgate rules establishing the education requirements that applicants for reinstatement of original licenses under par. (e) must satisfy.

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 264,399; 1989 a. 307. 341; 1991 a. 39; 1995 a. 27,400; 1997 a. 27, 191,237: 2001 a. 16.

Cross Reference: See also chs. RL 17, 23, and 25, **Wis.** adm. code.

452.13 Trust accounts. (I) DEFINITIONS. In this section:

(a) "Client funds" means all downpaynients, earnest money deposits or other money related to a conveyance of real estate that is received by a broker, salesperson or time–share salesperson on behalf of the broker's, salesperson's or time–share salesperson's principal or any other person. ''Client funds" does not include promissory notes.

(b) "Depository institution" means a bank, savings bank, savings and loan association or credit union that is authorized by federal or state law to do business in this state and that is insured by the federal deposit insurance corporation or by the national credit union share insurance fund.

(2) INTEREST–BEARING COMMON TRUST ACCOUNT. (a) A broker who holds client funds shall establish an interest–bearing common trust account in a depository institution. The interest–bearing common trust account shall earn interest at a rate not less than that applicable to individual accounts of the same type, size and duration and for which withdrawals or transfers can be made without delay, subject to any notice period that the depository institution is required to observe by law or regulation.

(b) Any broker who maintains an interest–bearing common trust account shall do all of the following:

1. Register with the department of regulation and licensing the name and address of the depository institution and the number of the interest–bearing common trust account.

2. Notify the department of regulation and licensing when any of the information required under subd. 1. is changed.

3. Furnish the department of regulation and licensing with a letter authorizing the department of regulation and licensing and the department of administration to examine and audit the interest–bearing common trust account whenever the department of regulation and licensing or the department of administration considers it necessary.

(bm) The department of regulation and licensing shall forward to the department of administration the information and documents furnished under par. (b).

(c) A broker shall deposit all client funds in the interest–bearing common trust account.

(d) The department of administration is the beneficial owner of the interest accruing to the interest–bearing common trust account, minus any service charges or fees.

(e) For each interest–bearing common trust account, the broker shall direct the depository institution to do all of the following:

1. Annually, before February 1, remit to the department of administration the total interest or dividends, minus service charges or fees, earned on the average daily balance in the interest–bearing common trust account during the 12 months ending on the previous December 31. A depository institution is not required to remit any amount if the total interest or dividends for that period is less than $10 before any deduction for service charges or fees.

2. When the interest remittance is sent, furnish to the department of administration and to the broker maintaining the interest–bearing common trust account a statement that includes the name of the broker for whose account the remittance is made, the rate of interest applied, the amount of service charges or fees deducted, if any, and the account balance for the period that the statement covers.

(f) A depository institution:

1. May not assess a service charge or fee that is due on an interest–bearing common trust account against any broker or, except as provided in subd. 3., against any other account, regardless of whether the same broker maintains the other account.

2. May not assess a service charge or fee for an interest–bearing common trust account against the department of administration.

3. May deduct a service charge or fee from the interest earned by an interest–bearing common trust account, and if a balance remains, may deduct the remaining charge or fee from the interest earned on any other interest–bearing common trust account maintained in that depository institution, before remitting interest to the department of administration.

4. May not deduct a service charge or fee from the principal of an interest–bearing common trust account.

(3) DEPOSIT PROVISIONS. A broker who deposits client funds in an interest–bearing common trust account in compliance with this section may not be held liable to the owner or beneficial owner of the client funds for damages due to compliance with this section. A broker, salesperson or time–share salesperson who deposits client funds in an interest–bearing common trust account in compliance with this section is not required to disclose alternative depository arrangements that could be made by the parties or to disclose that a deposit will be made under this section.

(4) TRUST ACCOUNT OPTIONAL. This section does not require a broker to hold client funds or require a person to transfer client funds to a broker.

(5) RULES. In constiltation with the department of regulation and licensing, the department of administration shall promulgate rules necessary to administer this section.

History: 1981 c. 91,391; 1985 a. 305; 1987 a 399; 1989 a. 307; 1991 a. 221; 1993 a. 33.

Cross Reference: See also chs. Adm 14 and RL 18, Wis. adm. code.

Security deposits by a tenant usually create a debtor–creditor relationship. A broker retaining a deposit should deposit it in his or her trust account. 60 Atty. Gen. 1.

The Federal National Mortgage Association is exempt from the requirements of this section, but private mortgage hankers or mortgage brokers licensed as real estate brokers under ch. 452, and servicing mortgages for FNMA must deposit loan, insurance and tax escrow moneys in authorized trust account in a bank located in Wisconsin. subject to audit by the board. 60 Atty. Gen. 514.

452.133 Duties of brokers. (1) DUTIES TO ALL PARTIES TO A TRANSACTION. In providing brokerage services to a party to a transaction, a broker shall do all of the following:

(a) Provide brokerage services to all parties to the transaction honestly, fairly and in good faith.

(b) Diligently exercise reasonable skill and care in providing brokerage services to all parties.

(c) Disclose to each party all material adverse facts that the broker knows and that the party does not know or cannot discover through reasonably vigilant observation, unless the disclosure of a material adverse fact is prohibited by law.

(d) Keep confidential any infomiation given to the broker in confidence, or any infomiation obtained by the broker that he or she knows a reasonable party would want to be kept confidential, unless the infomiation must be disclosed under par. (c) or s. 452.23 or is otherwise required by law to be disclosed or the party whose interests may be adversely affected by the disclosure specifically authorizes the disclosure of particular confidential information. A broker shall continue to keep the information confidential after the transaction is complete and after the broker is no longer providing brokerage services to the party.

(e) Provide accurate information about market conditions that affect a transaction, to any party who requests the information, within a reasonable time of the party's request, unless disclosure of the information is prohibited by law.

(f) Account for all property coming into the possession of a broker that belongs to any party within a reasonable time of receiving the property.

(g) When negotiating on behalf of a party, present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

(2) DUTIES TO A CLIENT. In addition to his or her duties under sub. (I), a broker providing brokerage services to his or her client shall do all of the following:

(a) Loyally represent the client's interests by placing the client's interests ahead of the interests of any other party, unless loyalty to a client violates the broker's duties tinder sub. (I) or s. 452.137 (2).

(b) Disclose to the client all infomiation known by the broker that is material to the transaction and that is not known by the client or discoverable by the client through reasonably vigilant observation, except for confidential information under sub. (1) (d) and other information the disclosure of which is prohibited by law.

(c) Fulfill any obligation required by the agency agreement, and any order of the client that is within the scope of the agency agreement, that are not inconsistent with another duty that the broker has under this chapter or any other law.

(3) PROHIBITED CONDUCT. In providing brokerage services, a broker may not do any of the following:

(a) Accept any fee or compensation related to the transaction from any person other than the broker's client, unless the broker has the written consent of all parties to the transaction.

(b) Act in a transaction on the broker's own behalf, on behalf of the broker's immediate family, or on behalf of any organization or business entity in which the broker has an interest, unless the broker has the written consent of all parties to the transaction.

(c) Except as provided in **s.** 452.19, refer, recommend or suggest to a party to the transaction the services of an individual or entity from which the broker may receive compensation for a referral or in which the broker has an interest, unless the broker has disclosed the fact that he or she may receive compensation or has disclosed his or her interest in the individual or entity providing the services.

History: 1993 a. **127;** 1995 a. 400.
Cross Reference: See also ch. RL 24, Wis. adm. code.
The **New** Real Estate Agency Law: Redefining the Role of Real Estate Brokers. Smith and Staff. Wis. Law. Oct. 1994.

452.135 Confirmation and disclosure of relationship. (1) No broker may provide brokerage services without an agency agreement that authorizes the broker to provide those brokerage services. The agency agreement shall contain a statement of the terms and conditions of the brokerage services that the broker will provide, including **a** statement required under **s.** 452.138, if applicable.

(2) No broker may provide brokerage services to a party to a transaction unless the broker has provided *to* the party a written agency disclosure form containing all of the following:

(a) A statement of which party is the broker's client or, if the broker is providing brokerage services to more than one client under **s.** 452.137, a statement of which parties are the broker's clients.

(b) A statement of the broker's duties to his or her client under **s.** 452.133 (2).

(c) A statement of the broker's duties to a party under **s.** 452.133 (1).

(d) A statement regarding confidentiality that shall be in the following form:

NOTICE TO CLIENTS AND CUSTOMERS

A BROKER IS REQUIRED TO MAINTAIN THE CONFIDENTIALITY OF ALL INFORMATION GIVEN TO THE BROKER IN CONFIDENCE AND OF ALL INFORMATION OBTAINED BY THE BROKER THAT HE OR SHE KNOWS A REASONABLE PARTY WOULD WANT TO BE KEPT CONFIDENTIAL, UNLESS THE INFORMATION IS REQUIRED TO BE DISCLOSED BY LAW. THE FOLLOWING INFORMATION IS REQUIRED TO BE DISCLOSED BY LAW:

1. MATERIAL ADVERSE FACTS, AS DEFINED IN SECTION 452.01 (5g) OF THE WISCONSIN STATUTES.

2. ANY FACTS KNOWN BY THE BROKER THAT CONTRADICT ANY INFORMATION INCLUDED IN **A** WRITTEN INSPECTION REPORT ON THE PROPERTY OR REAL ESTATE THAT IS THE SUBJECT OF THE TRANSACTION.

TO ENSURE THAT THE BROKER IS AWARE OF WHAT SPECIFIC INFORMATION YOU CONSIDER CONFIDENTIAL, YOU MAY LIST THAT INFORMATION IN THE SPACE BELOW THAT IS MARKED "CONFIDENTIAL INFORMATION'. AT A LATER TIME, YOU MAY ALSO PROVIDE THE BROKER WITH OTHER WRITTEN NOTIFICATION OF WHAT INFORMATION YOU CONSIDER TO BE CONFIDENTIAL.

CONFIDENTIAL INFORMATION:

. . . . . .

. . . . . .

(e) Any additional information that the broker determines is necessary to clarify the broker's relationship to his or her client or customer.

History: 1993 **a.** 127.

452.137 Brokers providing services to more than one client in a transaction. (1) No broker may provide brokerage services to more than one client in a transaction without an agency agreement under s. 452.135 (1) with each client and a written consent to multiple representation. The consent to multiple representation shall contain a statement of the broker's duties under **s.** 452.133 (1) to a party to the transaction who is not a client, a statement of the broker's duties to the client under s. 452.133 (2), and a statement that the clients understand the broker's duties and consent to the broker providing brokerage services to more than one client. The consent to multiple representation may contain additional disclosures by the broker or additional agreements between the broker and the clients that do not violate any duty of a broker under this chapter.

(2) A broker who represents more than one client in a transaction owes the duties specified in **s.** 452.133 (2) to each client but may not place the interests of any client ahead of the interests of another client in the transaction.

(3) If a broker is providing brokerage services to more than one client in a transaction, no client may be considered to know any information that the broker knows unless the broker informs the client of that information or the client has other actual knowledge of that information.

History: 1993 **a.** 127: 1997 a. ***263.***

452.138 Brokers providing services in more than one transaction. A broker may provide brokerage services simultaneously to more than one party in different transactions unless the broker agrees with a client that the broker is to provide brokerage services only to that client. If the broker and a client agree that the broker is to provide brokerage services only to that client, the agency agreement under **s.** 452.135 (1) shall contain a statement of that agreement.

History: 1993 a. 127.
Cross Reference: See also ch. RL 24, Wis. adm. code.

452.139 Changes in common law duties and liabilities of brokers and parties. (1) FIDUCIARY DUTIES OF BROKER. The duties of a broker specified in this chapter or in rules promulgated under this chapter shall supersede any fiduciary duties of a broker to a party based on common law principles of agency to the extent that those common law fiduciary duties are inconsistent with the duties specified in this chapter or in rules promulgated under this chapter.

(2) MISREPRESENTATION BY BROKER. (a) A client is not liable for a misrepresentation made by a broker in connection with the broker providing brokerage services, unless the client knows or should have known of the misrepresentation or the broker is repeating a misrepresentation made to him or her by the client.

(b) A broker who is providing brokerage services to a client and who retains another broker to provide brokerage services to that client is not liable for a misrepresentation made by the other broker, unless the broker knew or should have known of the other broker's misrepresentation or the other broker is repeating a misrepresentation made to him or her by the broker.

(c) Nothing in this subsection limits the liability of a broker under s. 452.12 (3) for misrepresentations made by an employee who is a broker. Nothing in this subsection limits the liability of a client for a misrepresentation that the client makes in connection with brokerage services.

History: 1993 a. **127;** 2001 a. **16.**
Cross Referenee: See also ch. RL **24, Wis.** adm. code.

452.14 Investigation and discipline of licensees. (1) The department shall, upon motion of the board or upon its

own determination, conduct investigations and, as appropriate, may hold hearings and make findings, if the department receives credible information that a broker, salesperson or time–share salesperson has violated this chapter or any rule promulgated under this chapter.

(2) The department shall present the findings of any investigation of a licensee or registrant to the board for its consideration. The department shall upon motion of the board, and may, upon its own determination, commence disciplinary proceedings on any matter under investigation concerning a licensee or registrant. No investigation of a licensee or registrant may be closed without motion of the board.

(3) Disciplinary proceedings shall be conducted by the board according to rules adopted under **s.** 440.03 (1). The board may revoke, suspend or limit any broker's, salesperson's or time–share salesperson's license or registration, or reprimand the holder of the license or registration, if it finds that the holder of the license or registration has:

(a) Made a material misstatement in the application for a license or registration, or in any information furnished to the board or department;

(b) Made any substantial misrepresentation with reference to a transaction injurious to a seller or purchaser in which the broker, salesperson or time–share salesperson acts as agent;

(c) Made any false promises of a character such as to influence, persuade or induce the seller or purchaser to his or her injury or damage;

(d) Pursued a continued and flagrant course of misrepresentation or made false promises through agents or salespersons or advertising;

(f) Accepted from any person except the broker's, salesperson's or time–share salesperson's employer, if the broker, salesperson or time–share salesperson is employed as a salesperson or time–share salesperson by a broker, a commission or valuable consideration as a salesperson or time–share salesperson for the performance of any act specified in this chapter or as compensation for referring a person to another broker, salesperson or time–share salesperson or to any other person in connection with a real estate transaction;

(g) Represented or attempted to represent a broker other than the employer, without the express knowledge and consent of the employer;

(h) Failed, within a reasonable time, to account for or remit any moneys coming into the broker's. salesperson's or time–share salesperson's possession which belong to another person;

(i) Demonstrated incompetency to act as a broker, salesperson or time–share salesperson in a manner which safeguards the interests of the public;

(j) Paid or offered to pay a commission or valuable consideration to any person for acts or services in violation of this chapter;

(jm) Intentionally encouraged or discouraged any person from purchasing or renting real estate in a particular area on the basis of race. If the board finds that any broker, salesperson or time–share salesperson has violated this paragraph, the board shall, in addition to any temporary penalty imposed under this subsection, apply the penalty provided in **s.** 452.17 (4):

(k) Been guilty of any other conduct, whether of the same or a different character from that specified herein, which constitutes improper, fraudulent or dishonest dealing:

(L) Violated any provision of this chapter;

(m) Failed to use forms approved under **s.** 452.05 (1) (b); or

(n) Treated any person unequally solely because of sex, race, color, handicap, national origin, ancestry, marital status or lawful source of income.

(4) If a broker is a business entity it shall be sufficient cause for reprimand or for the limitation, suspension or revocation of a broker's license that any business representative of the business entity, or anyone who has a financial interest in or is in any way connccted with the operation of a brokerage business, has been guilty of any act or omission which would be cause for refusing a broker's license to such person as an individual.

(4m) In addition to or in lieu of a reprimand, the issuance of a private letter of warning or a revocation, limitation or suspension of a license or certificate of registration under sub. (3), the board may do any of the following:

(a) Assess against a person who is licensed or registered under this chapter a forfeiture of not more than $1,000 for each violation enumerated under sub. (3).

(b) Require a licensee to successfully complete education or training, in addition to any education or training required for licensure or registration or for renewal of a license or certificate under this chapter, as a condition of continued licensure or registration or reinstatement of a license or certificate.

(5) The department may seek judicial review under ch. 227 of any final decision of the board. The department shall be represented in such review proceedings by an attorney within the department. Upon request of the board, the attorney general may represent the board. If the attorney general does not represent the board, the board may retain special counsel which shall be paid for out of the appropriation under **s.** 20.165 (1) (g).

History: 1981 c. 94,391; 1983 a. 27 s. 2202 (44); 1983 a. 354; 1985 a. 305; 1987 a. 399: 1989 a. 307.341.359: 1991 a. 32, 163; 1993 a. 127; 1995 a. 400.

Cross Reference: See also chs. RL 15, 16, and 24, Wis. adm. code.

Real estate brokers may engage in guaranteed sales plans if there is full disclosure and the broker does not engage in fraud, misrepresentation, or improper dealing. 61 Atty. Gen. 3.

Provisions in Executive Order 67 (1973), with respect to duty of real estate brokers *to* advise prospective purchasers of floodplain zoning status of property, do not constitute *a* new standard but suggest a course of action that the real estate examining board might take. The action to be taken would depend on the facts in each case. 63 Any. Gen. 236.

Neither s. 440.20, 452.10 (2), 1977 stats., nor the rules of the department of regulation and licensing require the board to hold a hearing when a citizen files a verified complaint with the hoard requesting institution of disciplinary proceedings against a licensee. 68 Atty. Gen. 30.

452.15 Ineligibility. No license or certificate of registration may be issued under this chapter to any person whose license or certificate under this chapter has been revoked until the expiration of a period determined in each case by the board or, in the case of revocation under **s.** 452.17 (4) (a) 2., a period determined in each case by the board of not less than **5** years from the date the revocation became finally effective.

History: 1981 c. 94; 1983 a. 354; 1989 a. 341.

452.17 Penalties. (1) Any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as a broker or salesperson in this state without a license under this chapter shall be prosecuted by the district attorney in the county where the violation occurs or by the attorney general and may be fined not more than $1,000 or imprisoned not more than 6 months or both.

(2) Any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as, a time–share salesperson in this state without being registered with the department shall be prosecuted by the district attorney in the county where the violation occurs and may be fined not less than $25 nor more than $200 or imprisoned not less than 10 days nor more than 6 months or both.

(3) Any person who otherwise violates any provision of this chapter may be fined not more than $1,000 or imprisoned for not more than 6 months or both.

(4) (a) If the board finds that any broker, salesperson or time–share salesperson has violated **s.** 452.14 **(3)** (jm), the board:

1. Shall, for the first offense, suspend the license or registration of the broker, salesperson or time–share salesperson for not less than 90 days.

2. Shall, for the 2nd offense, revoke the license or registration of the broker, salesperson or time–share salesperson.

(b) This penalty may be imposed in addition to any penalty imposed under this chapter or s. 66.1011 or 106.50.

History: 1981 c. 94; 1983 a. 354; 1987 a. 399; 1989 a. 95,307.341; 1995 a. 27; 1999 a. 82; 1999 a. 150 s. 672.

452.18 Court review. Except as provided in s. 73.0301 (2) (b) 1. a. and 2., orders of the board and department shall be subject *to* review as provided in ch. 227.

History: 1981 e. 94; 1997 a. 237.

452.19 Fee–splitting. No licensed broker may pay a fee or a commission or any part thereof for performing any act specified in this chapter or as compensation for a referral or as a finder's fee to any person who is not licensed or registered under this chapter or who is not regularly and lawfully engaged in the real estate brokerage business in another state, a territory or possession of the United States or a foreign country.

History: 1981 c. 94; 1983 a. 464: 1985 a. 128; 1989 a. 307.

Under s. 452.03 an agreement to pay a real estate brokerage commission to a person not licensed as a broker is void at its inception. Using a licensed broker who provides no actual services as a conduit for a fee to an unlicensed person does not create a co-brokerage arrangement authorized by s. 452.19. Badger III Ltd. v. Howard, Needles, Tammen & Bergendoff, 196 Wis. 2d 891, 539 N.W.2d 904 (Ct. App. 1995).

452.20 Limitation on actions for commissions. No person engaged in the business or acting in the capacity of a broker, salesperson or time–share salesperson within this state may bring or maintain an action in the courts of this state for the collection of a commission or compensation for the performance of any act mentioned in this chapter without alleging and proving that he or she was a duly licensed broker, salesperson or registered time–share salesperson at the time the alleged cause of action arose.

History: 1981 e. 94; 1987 a. 399; 1989 a. 56.

A foreign corporation which contracts to sell a radio station without being licensed in this state cannot sue for its commission. The licensing requirement is *not* an unlawful burden on interstate commerce. Chapman Co. v. Service Broadcasting Corp. 52 Wis. 2d 32, 187 N.W.2d 794.

The prohibition against paying a commission to an unlicensed person acting as a broker is absolute and not conditioned on the innocence or lack of sophistication of the other contracting parties. Because a contract for a commission with a person not licensed as a broker is void from its inception. estoppel is not available to avoid the effect of the statute. Greenlee v. Rainbow Auction/Realty Co. 202 Wis. 2d 654, 553 N.W.2d 257 (Ct. App. 1996).

This section not applicable since broker as owners' agent was not attempting to negotiate the lease when conferring with his alleged principal in Wisconsin and therefore was not acting in the capacity of a broker in Wisconsin. Negotiation of lease occurred when broker met and conferred with prospective lessee either in Illinois or Tennessee. Paulson v. Shapiro, 490 F.2d 1.

452.21 Compensation presumed. In any prosecution for violation of this chapter, proof that a person acted as a broker, agent, salesperson or time–share salesperson is prima facie proof that compensation therefor was received or promised.

History: 1981 c. 94: 1987 a. 399.

452.22 Certifications as evidence. (1) Copies of all documents, orders, resolutions and certificates made, executed or granted by the department or board, and of all papers filed with the department when certified by the secretary or his or her designee, under the official seal, shall be received in evidence in all cases the same as the originals.

(2) The certificate of the secretary or his or her designee to the effect that a specified individual or business entity is not or was not on a specified date the holder of a broker's, salesperson's or time–share salesperson's license or registration, or that a specified license or registration was not in effect on a date specified, or as to the issuance, limitation, suspension or revocation of any license or registration or the reprimand of any holder thereof, the filing or withdrawal of any application or its existence or nonexistence, is prima facie evidence of the facts therein stated for all purposes in any action or proceedings.

History: 1981 c. 94: 1987 a. 399; 1995 a. 400.

452.23 Disclosures, investigations and inspections by brokers and salespersons. (1) A broker or salesperson may not disclose to any person in connection with the sale, exchange, purchase or rental of real property information, the disclosure of which constitutes unlawful discrimination in housing under s. 106.50 or unlawful discrimination based on handicap under 42 USC 3604,3605,3606 or 3617.

(2) A broker or salesperson is not required to disclose any of the following to any person in connection with the sale, exchange, purchase or rental of real property:

(a) That the property was the site of a specific act or occurrence, if the act or occurrence had no effect on the physical condition of the property or any structures located on the property.

(b) Except as provided in sub. (3), information relating to the physical condition of the property or any other information relating to the real estate transaction, if a written report that discloses the information has been prepared by a qualified 3rd party and provided to the person. In this paragraph, "qualified 3rd party" means a federal, state or local governmental agency, or any person whom the broker, salesperson or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the 3rd parry in order to prepare the written report.

(c) The location of any adult family home, as defined in s. 50.01 (I), community–based residential facility, as defined in s. 50.01 (1g), or nursing home, as defined in s. 50.01 (3), in relation to the location of the property.

(d) Except as provided in s. 452.24, any information related to the fact that a particular person is required to register as a sex offender under s. 301.45 or any information about the sex offender registry under s. 301.45.

(3) A broker or salesperson shall disclose to the parties to a real estate transaction any facts known by the broker or salesperson that contradict any information included in a written report described under sub. (2) (b).

(4) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a broker or salesperson shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson under this chapter.

History: 1989 a. 341; 1995 a. 27; 1999 a. 82, 89.

An independent inspection by a qualified third party operates to relieve a broker from liability for disclosures related to the physical condition of the property. Conell v. Coldwell Banker. 181 Wis. 2d 894,512 N.W.2d 239 (Ct. App. 1994).

Sub. (2) fb) relieves a broker from the obligation to disclose information disclosed in a 3rd party report. Sub. (2) (b) does not apply *to* a separate affirmative act of negligence and does not preclude a broker's liability for a breach of other duties. Johnson v. Neuville. 226 Wis. 2d 365,595 N.W.2d 100 (Ct. App. 1999).

452.24 Disclosure duty; immunity for providing notice about the sex offender registry. (1) If, in connection with the sale, exchange, purchase or rental of real property, a licensee receives a request from a person to whom the licensee is providing brokerage services in connection with the sale, exchange, purchase or rental for information related to whether a particular person is required to register as a sex offender under s. 301.45 or any other information about the sex offender registry under s. 301.45, the licensee has a duty to disclose such information, if the licensee has actual knowledge of the information.

(2) Notwithstanding sub. (1), the broker or salesperson is immune from liability for any act or omission related to the disclosure of information under sub. (1) if the broker or salesperson in a timely manner provides to the person requesting the information written notice that the person may obtain information about the sex offender registry and persons registered with the registry by contacting the department of corrections. The notice shall include the appropriate telephone number and Internet site of the department of corrections.

History: 1999 a. 89.

CHAPTER 703

CONDOMINIUMS

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703.01 Condominium ownership act. This chapter shall be known as the "Condominium Ownership Act".

History: 1977 c. 407.

State and federal regulation of condominiums. Minahan, 58 MLR 55.

Condominium conversion and tenant rights–Wisconsin statutes section 703.08: What kind of protection does it really provide. Wynn, 63 MLR 73 (1979).

Transferring Declarant Rights and Obligations Under the Wisconsin Condominium Ownership Act. Ishikawa. Wis. Law. Feb. 1992.

703.02 Definitions. In this chapter, unless the context requires otherwise:

(1b) "Addendum" means a condominium instrument that modifies a recorded condominium plat.

(1d) "Allocated interests" means the undivided percentage interest in the common elements, the liability for common expenses and the number of votes at meetings of the association appurtenant to each unit.

(1h) "Amendment" means a condominium instrument that modifies a recorded condominium declaration.

(1m) "Association" means all of a condominium's unit owners acting as a group, either through a nonstock, nonprofit corporation or an unincorporated association, in accordance with its bylaws and declaration.

(2) "Common elements" mean all of a condominium except its units.

(3) "Common expenses and common surpluses" mean the expenses and surpluses of an association.

(4) "Condominium" means property subject to a condominium declaration established under this chapter.

(5) "Condominium instruments" mean the declaration, plats and plans of a condominium together with any attached exhibits or schedules.

(6) "Conversion condominium" means a structure which. before the recording of a condominium declaration, was wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of the purchasers.

(6m) "Correction instrument" means an instrument drafted by a licensed land surveyor that complies with the requirements of s. 59.43 (2m) and that, upon recording, corrects an error in a condominium plat. "Correction instrument" does not include an instrument of conveyance.

(7) "Declarant" means any owner who subjects his or her property to a condominium declaration established under this chapter.

(8) "Declaration" means the instrument by which a property becomes subject to this chapter, and that declaration as amended from time to time.

(9) "Expandable condominium" means a condominium to which additional property or units or both may be added in accordance with the provisions of a declaration and this chapter.

(10) "Limited common elements" mean those common elements identified in a declaration or on a condominium plat as reserved for the exclusive use of one or more but less than all of the unit owners.

(11) "Majority" or "majority of unit owners" mean the condominium unit owners with more than 50% of the votes assigned to the units in the condominium declaration.

(12) "Mortgagee" means the holder of any recorded mortgage encumbering one or more units or a land contract vendor.

(13) "Person" means an individual, corporation, partnership, association, trustee or other legal entity.

(14) "Property" means unimproved land, land together with improvements on it or improvements without the underlying land. Property may consist of noncontiguous parcels or improvements.

(149) "Removal instrument" means an instrument that complies with the requirements of s. 59.43 (2m) and that removes property from the provisions of this chapter upon recording. "Removal instrument" does not include an instrument of conveyance.

(14m) "Small residential condominium" means a condominium with no more than 4 units, all of which are restricted to residential uses.

(15) "Unit" means a part of a condominium intended for any type of independent use, including one or more cubicles of air at one or more levels of space or one or more rooms or enclosed spaces located on one or more floors, or parts thereof, in a building. A unit may include 2 or more noncontiguous areas.

(16) "Unit number" means the number identifying a unit in a declaration.

(17) "Unit owner" means a person, combination of persons, partnership or corporation who holds legal title to a condominium unit or has equitable ownership as a land contract vendee.

History: 1977 c. 407; 1985 a. 188; 1997 a. 333: 1999 a. 85.

The definition of "unit" under sub. **(15)** encompasses a property on which there is no constructed unit. Aluminium Industries v. Camelot Trails, 194 Wis. 2d 575.535 N.W.2d 74 (Ct. App. 1995).

Small lock boxes were not "intended for any type of independent use" within the meaning of "unit" sub.(15). Because there are no valid units. there were no valid condominium units, the conveyance of riparian rights to docks attempted to be transferred as common elements were not valid. ABKA Limited Partnership v. DNR, 2002 WI 106,___ Wis. 2d ___, ___ N.W.2d ___.

703.03 Application of chapter. This chapter applies only to property, a sole owner or all of the owners of which submit the property to the provisions of this chapter by duly executing and recording a declaration as provided in this chapter.

History: 1977 c. 407.

703.04 Status of the units. **A** unit, together with its undivided interest in the common elements, for all purposes constitutes real property.

History: 1977 c. 407.

703.05 Ownership of units. **A** unit owner is entitled to the exclusive ownership and possession of his or her unit.

History: 1977 c. 407.

703.06 Alterations prohibited. Except as otherwise provided in this chapter, no unit owner may do any alteration which would jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament.

History: 1977 c. 407.

703.07 Establishment of condominium. (1) A condominium may only be created by recording condominium instruments with the register of deeds of the county where the property is located. **A** condominium declaration and plat shall be presented together to the register of deeds for recording.

(2) **A** condominium instrument, and all amendments, addenda and certifications of a condominium instrument, shall be recorded in every county in which any portion of the condominium is located, and shall be indexed in the name of the declarant and the name of the condominium. Subsequent instruments affecting the title to a unit which is physically located entirely within a single county shall be recorded only in that county, notwithstanding the fact that the common elements are not physically located entirely within that county. Subsequent amendments and addenda shall be indexed under the name of the condominium.

(3) All instruments affecting title to units shall be recorded and taxed as in other real property transactions.

History: 1977 c. 407; 1997 a. 333.

703.08 Notice prior to conversion of residential property to condominium. (1) Residential real property may not be converted to a condominium unless the owner of the residential real property gives 120 days' prior written notice of the conversion to each of the tenants of the building or buildings scheduled for conversion. **A** tenant has the exclusive option to purchase the unit for a period of 60 days following the date of delivery of the notice.

(2) A tenant may not be required to vacate the properly during the period of the notice required under sub. (1) except for:

(a) Violation of a covenant in the lease; or

(b) Nonpayment of rent.

History: 1977 c. 407.

Condominium conversion and tenant rights–Wisconsin statutes section 703.08: What kind of protection does it really provide. Wynn, 63 MLR 73 (1979).

703.09 Declaration. (1) A condominium declaration shall contain:

(a) The name and address of the condominium and the name shall include the word "condominium" or be followed by the words "a condominium".

(b) **A** description of the land on which the condominium is, or is to be, located, together with a statement of the owner's intent to subject the property to the condominium declaration established under this chapter.

(c) A general description of each unit, including its perimeters, location and any other data sufficient to identify it with reasonable certainty.

(d) **A** general description of the common elements together with a designation of those portions of the common elements that are limited common elements and the unit to which the use of each is restricted. Fixtures designed to serve a single unit, located contiguous to the unit's boundaries, are deemed limited common elements appertaining to that unit exclusively and need not be shown or designated as limited common elements in the condominium instruments.

(e) The percentage interests appurtenant to each unit.

(f) The number of votes at meetings of the association of unit owners appurtenant to each unit.

(g) Statement of the purposes for which the building and each of the units are intended and restricted as to use.

(h) The name of the person to receive service of process in the cases provided in this chapter, together with the address of that person and the method by which the association may designate a successor to the person.

(i) Provision as to the percentage of votes by the unit owners which shall be detenninative of whether to rebuild, repair, restore or sell the property in the event of damage or destruction of all or part of the property.

(j) Any further details in connection with the property which the person executing the declaration deems desirable to set forth consistent with this chapter, except those provisions which are required to be included in the bylaws.

(k) **A** condominium declaration shall be signed by the owners of the property in the same manner as required in conveyances of real property.

(2) Except as provided in **s.** 703.26, a condominium declaration may be amended with the written consent of at least two–thirds of the unit owners or a greater percentage if provided in the declaration. An amendment becomes effective when it is recorded in the same manner as the declaration. **A** unit owner's written consent is not effective unless it is approved by the mortgagee of the unit, if any.

(3) (a) If an amendment to a condominium declaration has the effect of reducing the value of any unit owner's interest in any common element, including any limited common element, and increases the value of the declarant's or any other unit owner's interest in the common element or limited common element, then the declarant or other unit owner shall compensate the unit owner the value of whose interest is reduced in the amount of the reduction in value, either in cash or by other consideration acceptable to the unit owner.

(b) **A** unit owner may waive the right to obtain compensation under par. (a) in writing.

(c) Paragraph (a) does not apply to an expanding condominium under s. 703.26.

History: 1977 c. 407; 1985 a. 188,332.

An amendment of a condominium declaration that changed **a** common area to a limited common area but did not change the owners' percentage interests in the common areas did not require unanimous approval of all owners and was valid. Any reduction in value due to the change from common area was recoverable under s. 703.09 (3) (a) by the owners whose condominium value decreased due *to* the change. Newport Condominium Association v. Concord–Wisconsin, 205 Wis. 2d 577, 556 N.W.2d 775 (Ct. App. 1996).

703.095 Modification and correction of recorded condominium instruments, amendments and addenda. **A** recorded condominium instrument, amendment or addendum may only be modified by recording an amendment, addendum or correction instrument, or by removal from the provisions of this chapter under **s.** 703.28 (1). The register of deeds may not record a correction instrument if it does not refer to the instrument being

corrected and may not record amendments and addenda unless they are nuinhered consecutively and bear the name of the condominium as it appears in the declaration.

History: 1997 a. 333.

703.10 Bylaws. (1) BYLAWS TO GOVERN ADMINISTRATION. The administration of every condominium shall be governed by bylaws. Every unit owner shall comply strictly with the bylaws and with the rules adopted under the bylaws, as the bylaws or rules are amended from time to time, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to the unit. Failure to comply with any of the bylaws, rules, covenants, conditions or restrictions is grounds for action to recover sums due, for damages or injunctive relief or both maintainable by the association or, in a proper case, by an aggrieved unit owner.

(2) REQUIRED PARTICULARS. The bylaws shall express at least the following particulars:

(a) The fonn of administration, indicating whether the association shall be incorporated or unincorporated, and whether, and to what extent, the duties of the association may be delegated to a board of directors, manager or otherwise, and specifying the powers, manner of selection and removal of them.

(b) The mailing address of the association.

(c) The method of calling the unit owners to assemble; the attendance necessary to constitute a quorum at any meeting of the association; the manner of notifying the unit owners of any proposed meeting; who presides at the meetings of the association, who keeps the minute hook for recording the resolutions of the association and who counts votes at meetings of the association.

(d) The election by the unit owners of a board of directors of whom not more than one is a nonunit owner, the number of persons constituting the same and that the terms of at least one–third of the directors shall expire annually, the powers and duties of the board, the compensation, if any, of the directors, the method of removal from office of directors and whether or not the board may engage the services of a manager or managing agent.

(e) The manner of assessing against and collecting from unit owners their respective shares of the common expenses.

(f) The manner of borrowing money and acquiring and conveying property.

(2m) LIMITATION ON ENFORCEMENT OF CERTAIN PROVISIONS. No bylaw or rule adopted under a bylaw and no covenant, condition or restriction set forth in a declaration or deed to a unit may be applied to discriminate against an individual in a manner described in s. 106.50.

(3) PERMISSIBLE ADDITIONAL PROVISIONS. The bylaws also may contain any other provision regarding the management and operation of the condominium, including any restriction on or requirement respecting the use and maintenance of the units and the common elements.

(4) PROHIBITING VOTING BY CERTAIN UNIT OWNERS. The bylaws may contain a provision prohibiting any unit owner from voting at a meeting of the association if the association has recorded a statement of condominium lien on the person's unit and the amount necessary to release the lien has not been paid at the time of the meeting.

(5) AMENDMENT. The bylaws may be amended by the affirmative vote of unit owners having 67% or more of the votes. Each particular set forth in sub. (2) shall be expressed in the bylaws as amended.

(6) TITLE TO CONDOMINIUM UNITS UNAFFECTED BY BYLAWS. Title to a condominium unit is not rendered unmarketable or otherwise affected by any provision of the bylaws or by reason of any failure of the bylaws to comply with the provisions of this chapter.

History: 1977 c. 407; 1987 a. 262; 1991 a. 295: 1995 a. 27; 1999 a. 82.

703.11 Condominium plat. (1) TO BE FILED FOR RECORD. When any condominium instruments are recorded, the declarant shall file for record a condoniinium plat in a separate plat book maintained for condominium plats.

(2) REQUIRED PARTICULARS. A condominiutn plat may consist of one or more sheets and shall contain at least the following particulars:

(a) The name of the condominium and county in which the property is located on each sheet of the plat. The name of the condominium must be unique in the county in which the condominium is located. If there is more than one sheet, each sheet shall be consecutively numbered and show the relation of that sheet number to the total number of sheets.

(am) A blank space at least 2.5 inches by 2.5 inches in size on the first sheet for recording use by the register of deeds.

(b) A survey of the property described in the declaration complying with minimum standards for property surveys adopted by the examining board of architects, landscape architects, professional engineers, designers and land surveyors and showing the location of any unit or building located or to be located on the property.

(c) Diagrammatic floor plans of each building located or to be located on the property which show the approximate dimensions, floor area and location of each unit in it. Common elements shall be shown graphically to the extent feasible.

(d) All survey maps and floor plans submitted for filing shall be legibly prepared with a binding margin of 1.5 inches on the left side and a one–inch margin on all other sides on durable white paper 14 inches in length and 22 inches in width with nonfading black image or reproduced with photographic silver haloid image on double matt polyester film of not less than 4 millimeter thickness and 14 inches long by 22 inches wide. The maps and plans shall be drawn to a convenient scale.

(3) DESIGNATION OF UNITS. Every unit shall be designated on the condominium plat by the unit number. Unit numbers may not contain more than 8 numerals and must be unique throughout the condominium.

(4) SURVEYOR'S CERTIFICATE. A condominium plat is sufficient for the purposes of this chapter if there is attached to or included in it a certificate of a licensed land surveyor authorized to practice that profession in this state that the plat is a correct representation of the condominium described and the identification and location of each unit and the common elements can he determined from the plat.

History: 1977 c. 407: 1983 a. 497: 1993 a. 463,465,491; 1997 a. 300,333.
Cross Reference: See also ch. Trans 233, Wis. adm. code.

703.115 Local review of condominium instruments. (1) A county may adopt an ordinance to require the review of condominium instruments before recording by persons employed by the county of recording or by a city, village or town that is located in whole or in part in the county of recording if the ordinance does all of the following:

(a) Requires the review to be completed within 10 working days after submission of the condominium instrument and provides that, if the review is not completed within this period, the condominium instrument is approved for recording.

(b) Provides that a condominium instrument may be rejected only if it fails to comply with the applicable requirements of **ss.** 703.095, 703.11 (2) (a), (c) and (d) and (3), 703.275 *(5)* and 703.28 (1m) or if the surveyor's certificate under **s.** 703.11 (4) **is** not attached to or included in the condominium plat.

(c) If the person performing the review approves the condominium instrument, requires the person to certify approval in writing, accompanied by his or her signature and title.

(2) An ordinance adopted under this section may authorize the county to charge a fee that reflects the actual cost of performing the review.

History: 1997 a. 333.

703.12 Description of units. A description in any deed or other instrument affecting title to any unit which makes reference

to the letter or number or other appropriate designation on the condominium plat together with a reference to the condominium instruments shall be a good and sufficient description for all purposes.

History: 1977 c. 407.

The requirements of ch. 236 may not be used to legally describe condominium units. 75 Atty. Gen. 94.

703.13 Percentage interests. (1) UNDIVIDED PERCENTAGE INTEREST IN COMMON ELEMENTS. Every unit owner owns an undivided percentage interest in the common elements equal to that set forth in the declaration. Except as specifically provided in this chapter, all common elements shall remain undivided. Except as provided in this chapter, no unit owner, nor any other person, may bring a suit for partition of the common elements and any covenant or provision in any declaration, bylaws or other instrument to the contrary is void.

(2) RIGHTS TO COMMON SURPLUSES. Common surpluses shall be disbursed as provided under s. 703.16 (1).

(3) LIABILITY FORCOMMON EXPENSES. Except for the specially assessed common expenses, the amount of all common expenses shall be assessed as provided under s. 703.16 (2).

(4) CHANGE IN PERCENTAGE INTEREST. The percentage interests shall have a permanent character and, except as specifically provided by this chapter, may not be changed without the written consent of all of the unit owners and their mortgagees. Any change shall be evidenced by an amendment to the declaration and recorded among the appropriate land records. The pcrcentagc interests may not be separated from the unit to which they appertain. Any instrument, matter, circumstance, action, occurrence or proceeding in any manner affecting a unit also shall affect, in like manner, the percentage interests appurtenant to the unit.

(5) ALTERATIONS WITHIN UNITS. (a) **A** unit owner inay make any improvements or alterations within his or her unit that do not impair the structural integrity or lessen the support of any portion of the condominium. A unit owner may not change the exterior appearance of a unit or of any other portion of the condominium without permission of the board of directors of the association.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitation specified therein, a unit owner acquiring an adjoining or adjoining part of an adjoining unit, inay remove all or any part of any intervening partition or create doorways or other apertures therein, even if the partition may in whole or in part be a common element, if those acts do not impair the structural integrity or lessen the support of any portion of the condominium. The creation of doorways or other apertures is not deemed an alteration of boundaries.

(6) RELOCATION OF BOUNDARIES. (a) If any condominium instruments expressly permit a relocation of boundaries between adjoining units, those boundaries may be relocated in accordance with this section and any restrictions and limitations which the condominium instruments inay specify.

(b) If any unit owners of adjoining units whose mutual boundaries may be relocated desire to relocate those boundaries, the principal officer of the unit owners association, upon written application from those unit owners and after 30 days' written notice to all other unit owners, shall prepare and execute appropriate instruments.

(c) An amendment to a declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof The amendment shall contain words of conveyance between those unit owners, and when recorded shall also be indexed in the name of the grantor and grantee. If the adjoining unit owners have specified in their written application the reallocation between their units of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation.

(d) If the adjoining unit owners have specified in their written application a reasonable reallocation, as determined by the board of directors, of the number of votes in the association or liabilities for future common expenses not specially assessed, appertaining to their units, an amendment to the condominium instruments shall reflect those reallocations.

(e) Plats and plans showing the altered boundaries and the dimensions thereof between adjoining units, and their identifying numbers or letters, shall be prepared. The plats and plans shall be certified as to their accuracy in compliance with this subsection by a civil engineer, architect or licensed land surveyor authorized to practice his or her profession in the state.

(f) After appropriate instruments have been prepared and executed, they shall be delivered promptly to the adjoining unit owners upon payment by them of all reasonable charges for the preparation thereof. Those instruments are effective when the adjoining unit owners have executed them and they *are* recorded in the name of the grantor and grantee. The recordation thereof is conclusive evidence that the relocation of boundaries did not violate the condominium instruments.

(7) SEPARATION OF UNITS. (a) If any condominium instruments expressly permit the separation of a unit into 2 or more units, a separation shall be made in accordance with this section and any restrictions and limitations which the condominium instruments may specify.

(b) The principal officer of the association, upon written application of a person proposing the separation of a unit (separator) and after 30 days' written notice to all other unit owners shall promptly prepare and execute appropriate instruments under this subsection. An amendment to the condominium instruments shall assign a new identifying number to each new unit created by the separation of a unit, shall allocate to those units, on a reasonable basis acceptable to the separator and the executive board all of the undivided interest in the common element and rights to use the limited common elements and the votes in the association formerly appertaining to the separated unit. The amendment shall reflect a proportionate allocation to the new units of the liability for common expenses and rights to common surpluses formerly appertaining to the subdivided unit.

(c) Plats and plans showing the boundaries and dimensions separating the new units together with their other boundaries and their new identifying numbers or letters shall be prepared. The plats and plans shall be certified as to their accuracy and compliance with this subsection by a civil engineer, architect or licensed land surveyor authorized to practice his or her profession in the state.

(d) After appropriate instruments have been prepared and executed, they shall be delivered promptly to the separator upon payment by him or her of all reasonable cost for their preparation. Those instruments are effective when the separator has executed them and they are recorded. The recording of the instruments is conclusive evidence that the separation did not violate any restrictions or limitation specified by the condominium instruments and that any reallocations made under this subsection were reasonable.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403.

An amendment of a condominium declaration that changed a common area to a limited common area hut did not change the owners' percentage interests in the common areas did not *require* unanimous approval *of* all owners and was valid. Any reduction in value due to the change from common area was recoverable under s. 703.09 (3) (a) by the owners whose condominium value decreased due to the change. Newport Condominium Association v. Concord–Wisconsin, 205 Wis. 2d 570, 556 N.W.2d 775 (Ct. App. 1996).

703.14 Use of common elements. (1) The common elements inay be used only for the purposes for which they were intended and, except as provided in the condominium instruments or bylaws, the common elements are subject to mutual rights of support, access. use and enjoyment by all unit owners. However, any portion of the common elements designated as limited common elements may be used only by the unit owner of the unit *to* which their use is limited in the condominium instruments and bylaws.

(2) The declaration or bylaws may allow any unit owner of a unit to which the use of any limited common element is restricted to grant by deed, subject to the rights of any existing mortgagee, the use of the limited common element to any other unit owner. Thereafter, the grantor has no further right to use the limited common element.

History: 1971 c. 407.

703.15 Association of unit owners. (1) LEGAL ENTITY. The affairs of every condotninium shall be governed by an association which, even if unincorporated, is constituted a legal entity for all purposes.

(2) ORGANIZATION OF ASSOCIATION. (a) *Establishment.* Every declarant shall establish an association to govern the condominium not later than the date of the first conveyance of a unit to a purchaser. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association. After it is organized, the membership of the association shall at all times consist exclusively of all of the unit owners.

(b) *Power and responsibility prior to establishment.* Until an association is established, a declarant has the power and responsibility to act in all instances where this chapter, any other provision of the law, or the declaration require action by the association or its officers.

(c) *Declarant control.* 1. Except as provided in par. (d), a declarant may authorize the declarant or persons designated by him or her to appoint and remove the officers of the association or to exercise the powers and responsibilities otherwise assigned by the declaration or this chapter to the association or its officers. A declaration may not authorize any declarant control of the association for a period exceeding the earlier of any of the following:

a. Ten years in the case of an expandable condominium.

b. Three years in the case of any other condominium.

c. Thirty days after the conveyance of 75% of the common element interest to purchasers.

2. The period of declarant control begins on the date that the first condominium unit is conveyed by a declarant to any person other than the declarant. If there is any other unit owner other than a declarant, a declaration may not be amended to increase the scope or the period of the declarant control.

(d) *Meeting to elect directors.* Prior to the conveyance of 25% of the common element interest to purchasers, an association shall hold a meeting and the unit owners other than the declarant shall elect at least 25% of the directors of the executive board. Prior to the conveyance of 50% of the common element interest to purchasers, an association shall hold a meeting and the unit owners other than the declarant shall elect at least 33 113% of the directors of the executive board.

(e) *Calculation of percentage.* The calculation of the percentage of common element interest conveyed to purchasers under pars. (c) and (d) shall be based on the percentage of undivided interest appertaining to each unit which has been conveyed assuming that all the units to bc completed are included in the condominium.

(f) *Elections ajter expiration ojdeclarant control.* Not later than 45 days after the expiration of any period of declarant control, an association shall hold a meeting and the unit owners shall elect an executive board of at least 3 directors and officers of the association. The directors and officers shall take office upon election.

(3) POWERS OF THE ASSOCIATION. (a) *Powers.* An association has the power to:

1. Adopt budgets for revenues, expenditures and reserves and levy and collect assessments for common expenses from unit owners;

2. Employ and dismiss employees and agents;

3. Sue on behalf of all unit owners; and

4. Exercise any other power conferred by the condominium instruments or bylaws.

(b) *Conditional powers.* Subject to any restrictions and limitations specified by the declaration, an association may:

1. Make contracts and incur liabilities.

2. Regulate and impose charges for the use of common elements.

3. Cause additional improvements to be made as a part of the common elements.

4. Acquire, hold, encumber and convey any right, title or interest in or to real property.

5. Grant easements through or over the common elements.

6. Receive any income derived from payments, fees or charges for the use, rental or operation of the common elements.

7. Grant or withhold approval of any action by a unit owner or other person which would change the exterior appearance of the unit or of any other portion of the condominiurn.

(4) ROSTER OF UNIT OWNERS; MEETINGS OF ASSOCIATION. (a) An association shall tnaintain a current roster of names and addresses of every unit owner to which notice of meetings of the association shall be sent.

(b) Every unit owner shall furnish the association with his or her name and current mailing address. No unit owner may vote at meetings of the association until this information is furnished.

(c) No regular or special meeting of the association may be held except on at least 10 days' written notice delivered or mailed to every unit owner at the address shown on the roster or unless waivers are duly executed by all unit owners.

(d) 1. At meetings of the association every unit owner is entitled to cast the number of votes appurtenant to his or her unit. Unit owners may vote by proxy, but, the proxy is effective only for a maximum period of 180 days following its issuance, unless granted to a mortgagee or lessee. If only one of multiple owners of a unit is present at a meeting of the association, the owner is entitled to cast the votes allocated to that unit.

2. If more than one of the multiple owners is present, the votes allocated to that unit may be cast proportionally among the owners unless the condominium instruments expressly provide otherwise, but unanimous agreement is conclusively presumed if any one of them purports to cast the votes allocated to that unit without protest being made promptly by any of the others to the person presiding over the meeting or until any one of the multiple owners files a statement with the secretary of the association stating that thereafter the vote must be cast proportionally.

(e) Unless otherwise provided in this chapter, and subject to provisions in the bylaws requiring a different majority, decisions of an association shall be made on a majority of votes of the unit owners present and voting.

(5) UNIT OWNER'S INTEREST IN ASSOCIATION'S PROPERTY. No unit owner may have any right, title or interest in any property owned by the association other than as holder of a percentage interest in common elements appurtenant to its unit.

History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225.

703.155 Master associations. (1) DEFINITION. In this section, "master association" means a profit or nonprofit corporation or unincorporated association which exercises the powers under s. 703.15 (3) on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums.

(2) DELEGATION. If a declaration provides that any of the powers described in s. 703.15 (3) are to be exercised by or tnay be delegated to a master association, all provisions of this chapter applicable to an association apply to the master association, except as modified by this section or the declaration.

(3) POWERS LIMITED. Unless a master association is the only association for a condominium under s. 703.15 (1), it may exercise the powers set forth in s. 703.15 (3) only to the extent expressly permitted in the declarations that are associated with the master association or expressly described in the delegations of power from those condominiums to the master association.

(4) LIABILITY LIMITED. If a declaration provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to the exercise of those powers following delegation.

(5) UNIT OWNERS; RIGHTS AND RESPONSIBILITIES. The rights and responsibilities of unit owners with respect to the association set forth in **s.** 703.15 apply, in the conduct of the affairs of a master association, only to those persons under sub. (6) who elect the executive board of a master association, whether or not those persons are unit owners.

(6) MASTER ASSOCIATION; ELECTION OF EXECUTIVE BOARD. Notwithstanding **s.** 703.15 (2) (f) and whether or not a master association is also an association described in **s.** 703.15 (1), the instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or delegated to the master association shall provide that the executive board of the master association shall be elected after the period of declarant control in any of the following ways:

(a) All unit owners of all condominiums subject to the master association may elect all members of the executive board.

(b) All members of the executive boards of all condominiums subject to the master association may elect all members of the executive board.

(c) All unit owners of each condominium subject to the master association may elect specified members of the executive board.

(d) All members of the executive board of each condominium subject to the master association may elect specified members of the executive board.

History: 1985 a. 188.

703.16 **Common expenses and common surpluses.** (1) DISPOSITION OF COMMON SURPLUSES. All common surpluses of the association shall be credited to the unit owners' assessments for common expenses in proportion to their percentage interests in the common elements or as otherwise provided in the declaration or shall be used for any other purpose as-the association decides.

(2) FUNDS FOR PAYMENT OF COMMOA' EXPENSES OBTAINED BY ASSESSMENTS. Funds for the payment of common expenses and for the creation of reserves for the payment of future common expenses shall be obtained by assessments against the unit owners in proportion to their percentage interests in the common elements or as otherwise provided in the declaration.

(3) LIABILITY FOR ASSESSMENTS. A unit owner shall be liable for all assessments, or installments thereof, coming due while owning a unit. In a voluntary grant, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his or her share of the common expenses up to the time of the voluntary grant for which a statement of condominium lien is recorded, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee for such assessments. Liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the unit for which the assessments are made.

(4) ASSESSMENTS CONSTJTUTE LIEN. All assessments, until paid, together with interest on them and actual costs of collection, constitute a lien on the units on which they are assessed, if a statement of lien is filed within 2 years after the date the assessment becomes due. The lien is effective against a unit at the time the assessment became due regardless of when within the 2–year period it is filed. A statement of condominium lien is filed in the land records of the clerk of circuit court of the county where the unit is located, stating the description of the unit, the name of the record owner, the amount due and the period for which the assessment was due. The clerk of circuit court shall index the statement of condominium lien under the name of the record owner in the judgment and lien docket. The statement of condominium lien shall be signed and verified by an officer or agent of the association as specified in the bylaws and then may be filed. On full payment of the assessment for which the lien is claimed, the unit owner shall be entitled to a satisfaction of the lien that may be filed with the clerk of circuit court.

(5) STATEMENT Any grantee of a unit is entitled to a statement from the association or the executive board, setting forth the amount of unpaid assessments against the grantor and the grantee is not liable for, nor shall the unit conveyed be subject to a lien which is not filed under sub. (4) for, any unpaid assessment against the grantor in excess of the amount set forth in the statement. If an association or a board of directors does not provide such a statement within 10 business days after the grantee's request, they are barred from claiming under any lien which is not filed under sub. (4) prior to the request for the statement against the grantee.

(6) PRIORITY OF LIEN. All sums assessed by an association but unpaid for the share of the common expenses chargeable to any unit constitutes a lien on the unit and on the undivided interest in the common elements appurtenant thereto prior to all other liens except:

(a) Liens of general and special taxes.

(b) All sums unpaid on a first mortgage recorded prior to the making of the assessment.

(c) Mechanic's liens filed prior to the making of the assessment.

(d) All sums unpaid on any mortgage loan made under **s.** 45.80, 1989 stats.

(e) A lien under **s.** 292.31 (8) (i) or 292.8 1.

(7) INTEREST ON UNPAID ASSESSMENT. Any assessment, or installment thereof, not paid when due shall bear interest, at the option of the association, from the date when due until paid at a rate not exceeding the highest rate permitted by law as stated in the bylaws.

(8) ENFORCEMENT OF LIEN. A lien may be enforced and foreclosed by an association or any other person specified in the bylaws, in the same manner, and subject to the same requirements, as a foreclosure of mortgages on real property in this state. An association may recover costs and actual attorney fees. An association may, unless prohibited by the declaration, bid on the unit at foreclosure sale and acquire, hold, lease, mortgage and convey the unit. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. Suit for any deficiency following foreclosure may be maintained in the same proceeding. No action may be brought to foreclose the lien unless brought within 3 years following the recording of the statement of condominium lien. No action may bc brought to foreclose the lien except after 10 days' prior written notice to the unit owner given by registered mail, return receipt requested, to the address of the unit owner shown on the books of the association.

(9) FORM OF STATEMENT OF CONDOMINIUM LIEN. **A** statement of condominium lien is sufficient for the purposes of this chapter if it contains the following information and is substantially in the following form:

Statement of Condominium Lien

This is to certify that ..... owner(s) of unit No. ..... in ..... Condominium (is) (are) indebted to the association in the amount of $..... as of ....., ... (year) for (his) (her) (its) (their) proportionate share of common expenses of the Condo-

minium for the period from (date) to (date), plus interest thereon at the rate of ...%. costs of collection, and actual attorney fees.

Association
By: .....
Officer's title (or agent)
Address
Phone number

I hereby affirm under penaltics of perjury that the information contained in the foregoing Statement of Condominium Lien is true and correct to the best of my knowledge, information, and belief.

Officer (or agent)

History: 1977 c. 407; 1991 a. 39; 1993 a. 453: 1995 a. 224,227; 1997 a. 27,250; 1999 a. 185.

A condominium land contract recorded before the making of an assessment lien has priority asa first mortgage under sub. (6) (b). Towne Realty, Inc. v. Edwards, 156 Wis. 2d 344, 456 N.W.2d 651 (Ct. App. 1990).

The definition of "unit" under sub. (1 5) encompasses a property on which there is no constructed unit. Aluminium Industries v. Camelot Trails, 194 Wis. 2d 575. 535 N.W.2d 74 (Ct. App. 1995).

In a foreclosure action under sub. (8) based on a failure to pay condominium fees, s. 846.10 (1) could not be applied sensibly lo require a statement of installments lo become due because monthly assessments were in varying amounts. The 12–month redemption period under s. 846.10 (2) is applicable to such foreclosures. Geneva National Community Association, lnc. v. Friedman, 228 Wis. 2d 572, 598 N.W.2d 600 (Ct. App. 1999).

703.17 Insurance. **(1)** An association shall obtain insurance for the property against loss or damage by fire and such other hazards for not less than full replacement value of the property insured and a liability policy covering all claims commonly insured against. Insurance coverage shall be written on the property in the name of the association as trustee for each of the unit owners in the percentages established in the declaration. Premiums shall be common expenses. Provisions for such insurance shall be without prejudice to the right of each unit owner to insure his or her own unit for personal benefit.

(2) insurance proceeds shall first be disbursed by the trustees for the repair or restoration of the damaged common elements, and the unit owners and mortgagees shall not be entitled to receive payment of any portion of the insurance proceeds unless the association has determined not to rebuild, or the court has ordered partition of the condominium property, or there is a surplus of insurance proceeds after the common elements have been completely repaired or restored,

History: 1977 c. 407; 1985 a. 332.

703.18 Repair or reconstruction. **(1)** A declaration shall provide for the repair or reconstruction of the common elements in the event of damage to all or part of the common elements of the condominium.

(2) (a) Unless otherwise provided in the declaration, in the event of damage to or destruction of common elements of a condominium, the association shall promptly undertake to repair or reconstruct it to a condition compatible with the remainder of the condominium. All cost of the repair or reconstruction in excess of available insurance proceeds shall be a common expense.

(b) However, if a condominium is damaged to an extent more than the available insurance proceeds, the condominium shall be subject to an action for partition upon obtaining the written consent of the unit owners having 75% or more of the votes. In the case of partition, the net proceeds of sale together with any net proceeds of insurance shall be considered as one fund and shall be divided among all unit owners in proportion to their percentage interests in the common elements, and shall be distributed in accordance with the priority of interests in each unit.

History: 1977 c. 407.

703.19 Eminent domain. **(1)** DEFINITION. In this section, "taking under the power of eminent domain" includes any sale in settlement of any pending or threatened condemnation proceeding.

(2) ALLOCATION OF AWARD; PROVISIONS IN DECLARATION OR BYLAWS. A declaration or bylaws may provide for an allocation of any award for a taking under the power of eminent domain of all or part of the condominium. A declaration or bylaws also may provide for:

(a) Reapportionment or other change of the percentage interests appurtenant to each unit remaining after any taking; and

(b) Rebuilding, relocation or restoration of any improvements so taken in whole or in part.

(3) ALLOCATION OF AWARD; IN ABSENCE OF PROVISIONS IN DECLARATION OR BYLAWS. Unless otherwise provided for in a declaration or bylaws, any damages for a taking of all or part of a condominium shall be awarded as follows:

(a) Every unit owner is entitled to the entire award for the taking of all or part of their respective unit and for consequential damages to their unit.

(b) Any award for the taking of limited common elements shall be allocated to the unit owners of the units to which the use of those limited common elements is restricted in proportion to their respective percentage interests in the common elements.

(c) In the event no reconstruction is undertaken, any award for the taking of common elements shall be allocated to all unit owners in proportion to their respective percentage interests in the common elements.

(4) RECONSTRUCTION FOLLOWING TAKING. Following the taking of all or a part of the common elements, an association shall promptly undertake to restore the improvements of the common elements to an architectural whole compatible with the existing structure. Any costs of such restoration in excess of the condemnation award shall be a common expense. However, if the taking under the power of eminent domain is to the extent where the remaining condominium portion has been diminished to the extent that reconstruction or restoration is not practical, a condominium shall be subject to an action for partition upon obtaining the written consent of the unit owners having 75% or more of the vote. In the case of partition, the net proceeds of sale, together with any net proceeds of the award for taking, shall be considered as one fund and shall be divided among all unit owners in proportion to their percentage interest in the common elements and shall be distributed in accordance with the priority of interests in each unit.

(5) ADJUSTMENT OF PERCENTAGE INTERESTS FOLLOWING TAKING; EFFECT OF TAKING ON VOTES APPURTENANT TO UNIT. Following the taking of all or a part of any unit, the percentage interests appurtenant to the unit shall be adjusted in proportion as provided in the condominium instruments or bylaws. The association promptly shall prepare and record an amendment to the declaration reflecting the new percentage interests appurtenant to the unit. Subject to sub. (7), following the taking of part of a unit, the votes appurtenant to that unit shall be appurtenant to the remainder of that unit, and following the taking of all of a unit, the right to vote appurtenant to the unit shall terminate.

(6) PRIORITY IN DISTRIBUTION OF DAMAGES FOR EACH UNIT. All damages for each unit shall be distributed in accordance with the priority of interests at law or in equity in each respective unit.

(7) TAKING NOT TO INCLUDE PERCENTAGE INTERESTS OR VOTES. A taking of all or part of a unit may not include any of the percentage interests or votes appurtenant to the unit.

(8) PRESERVATION OF THE RIGHT OF APPEAL. The owner of each unit taken shall have the individual right of appeal of the necessity of taking and of the condemnation award made for the taking. An association shall have the right of appeal of the necessity of taking of the common elements and the right of appeal of the condemnation award made for the taking of the common elements. An appeal by an association shall be binding upon the individual unit owners for the necessity of taking or the condemnation award made for the taking of the common elements. The unit owners having an interest in the ownership of limited common elements may individually or as a group appeal the necessity of taking or

the condemnation award made for the taking of the limited common elements.

History: 1977 c. 407.

703.20 Books of receipts and expenditures. (1) RECORD KEEPING; AVAILABILITY FOR EXAMINATION. An association shall keep detailed, accurate records using standard bookkeeping procedures of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours.

(2) DISCLOSURE INFORMATION. Within 10 days after a request by a seller other than the declarant, an association shall furnish the information necessary for the seller to comply with s. 703.33. The seller shall pay the association the actual costs of furnishing the information.

History: 1977 c. 407: 1985 a. 188.

703.21 Separate taxation. (1) Every unit and its percentage of undivided interest in the common elements shall be deemed to be a parcel and shall be subject to separate assessments and taxation by each assessing unit and special district for all types of taxes authorized by law including, but not limited to, special levies based on the value of property and special assessments. Neither the building, the property nor any of the common elements shall be deemed to be a parcel separate from the unit.

(2) The rights: duties and obligations of unit owners under this chapter shall inure to and be binding upon grantees under tax deeds and persons acquiring title by foreclosure of tax liens and their successors in interest.

History: 1977 c. 407; 1979 c. 110.

703.22 Mechanics' and materialmen's liens. (1) Subsequent to recording a declaration under this chapter and while the property remains subject to this chapter, any and all liens will exist only against individual units and the percentage of undivided interest in the common elements appurtenant to such unit, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

(2) Any mechanics' lien or materialmen's lien arising as a result of repairs to or improvements of a unit by a unit owner shall be a lien only against the unit.

(3) Any mechanics' or materialmen's lien arising as a result of repairs to or improvements of the common elements, if authorized in writing by the association, shall be paid by the association as a common expense and until paid shall be a lien against each unit in proportion to its percentage interest in the common elements. On payment of the proportionate amount by any unit owner to the lienor or on the filing of a written undertaking in the manner specified by s. 779.08, the unit owner shall be entitled to a release of his or her unit from the lien and the association shall not be entitled to assess his or her unit for payment of the remaining amount due for the repairs or improvements.

History: 1977 c. 407: 1979 c. 32 s. 92 (9).

Because the statute is silent as to the amount each unit should pay when a blanket lien is filed. application of the equitable principal that the lien should be applied proportionately against each unit was appropriate. Torke/Wirth/Pujara v. Lakeshore Towers, 192 Wis. 2d 481,531 N.W.2d 419 (Ct. **App.** 1995).

703.23 Resident agent; exemption of unit owners from liability. (1) APPOINTMENT OF RESIDENT AGENT; CHANGE IN NAME OR ADDRESS. When any property is submitted to a condominium declaration, the declarant shall appoint a resident agent for the condominium who shall be a citizen and actual resident of the state or corporation duly registered or qualified to do business in the state. The declarant shall file the name and address of the resident agent with the department of financial institutions. The name or address of the resident agent may be changed by the association or other proper authority of the condominium in the same manner and to the same extent that names and addresses of registered agents may be changed by corporations. If the association is incorporated, the registered agent for the association shall be the registered agent for the condominium.

(2) INDEX OF NAMES AND ADDRESS OF RESIDENT AGENTS. The department of financial institutions shall keep an index of the names and addresses of resident agents and shall make the information available to the public on request.

(3) SUITS BROUGHT BY SERVICE ON RESIDENT AGENT. Suit may be brought by service on the resident agent in actions against an association, or which arise through any cause relating to the common elements.

(4) EXEMPTION OF UNIT OWNERS FROM LIABILITY FOR CERTAIN CLAIMS. Except in proportion to his or her percentage interest in the common elements, no unit owner personally is liable for damages as a result of injuries arising in connection with the common elements solely by virtue of his or her ownership of a percentage interest in the common elements, or for liabilities incurred by the association.

History: 1977 c. 407; 1995 a. 27.

703.24 Remedies for violation by unit owner. If any unit owner fails to comply with this chapter, the declaration or bylaws, the unit owner may be sued for damages caused by the failure or for injunctive relief, or both, by the association or by any other unit owner.

History: 1977 c. 407.

703.25 Tort and contract liability. (1) An action for tort alleging a wrong done by any agent or employee of a dcclarant or of an association, or in connection with the condition of any portion of a condominium which a declarant or an association has the responsibility to maintain, shall be brought against the declarant or the association, as the case may be. No unit owner shall be precluded from bringing such an action by virtue of its ownership of an undivided interest in the common elements or by reason of its membership in the association or its status as an officer.

(2) An action arising from a contract made by or on behalf of an association shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved under the declaration. No unit owner shall be precluded from bringing such an action by reason of its membership in the association or its status as an officer.

(3) A judgment for money against an association shall be a lien against any property owned by the association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established under the declaration in an amount not exceeding the market value of the unit, but not against any other property of any unit owner.

History: 1977 c. 407.

Sections 703.25 **(3)** and 840.10 (1) permit the filing of a lis pendens in an action for a money judgment against a condominium association as a judgment will he a lien against each condominium unit although their owners are not defendants in the action. Interlaken Service Corporation v. Interlaken Condominium Association. 222 Wis. 2d 299,588 N.W.2d 262 (Ct. App. 1998).

703.255 Noncompletion of units. (1) A declarant who does not complete any unit described in the declaration within 5 years after recording the declaration under s. 703.07 shall do one of the following:

(a) Amend the declaration to remove the description of the uncompleted units and, notwithstanding the unit owner consent requirements of ss. 703.09 (2) and 703.13 (4), revise the percentage interests appurtenant to each unit and the number of votes appurtenant to each unit to adjust for the units removed.

(b) Secure a written agreement from at least 75% of the unit owners, not including the declarant, which permits the declarant to complete the uncompleted units within **5** years after the date of the written agreement and shall either complete the units within that time period or amend the declaration as provided in par. (a).

(2) Subsection (1) does not apply to expanding condominiums under s. 703.26.

(3) Subsection (1) does not eliminate any liability of a declarant under s. 703.24 or 703.25.

History: 1985 a. 188.

703.26 Expanding condominiums. (1) DECLARANT MAY RESERVE RIGHT TO EXPAND. A declarant may reserve the right to expand a condominium by subjecting additional property to the condominium declaration in such a manner that as each additional property is subjected to the condominium declaration, the percentage of undivided interests in the common elements of the preceding and new property shall be reallocated between the unit owners on the basis of the aggregate undivided interest in the common elements appertaining to the property.

(2) CONDITIONS TO WHICH RESERVATION SUBJECT. A reservation of the right to expand a condominium is subject to the conditions provided in this subsection.

(a) A declaration establishing a condominium shall describe each parcel of property which may be added to the condominium.

(b) A declaration establishing a condominium shall show the maximum number of units which may be added. and the percentage interests in the common elements, the liabilities for common expenses and the rights to common surpluses, and the number of votes appurtenant to each unit following the addition of property to the condominium, if added. The percentage interests in the common elements, the liabilities for common expenses and the rights to common surpluses, and the number of votes that each unit owner will have may be shown by reference to a formula or other appropriate method of determining them following each expansion of the condominium.

(c) A condominium plat for an original condominium shall include, in general terms, the outlines of the land, buildings, and common elements of new property that may be added to the condominium.

(d) In a declaration establishing a condominium, a right to expand the condominium may be reserved in the declaration for a period not exceeding 10 years from the date of recording of the declaration.

(3) RECORDATION OF AMENDMENTS TO DECLARATION AND PLAT. (a) If the conditions of sub. (2) are complied with, property may be added to a condominium if the declarant records an amendment to the declaration, showing the new percentage interests of the unit owners, and the votes which each unit owner may cast in the condominium as expanded, and records an addendum to the condominium plat that includes the detail and information concerning the new property as required in the original condominium plat.

(b) On recording of an amendment of a declaration and an addendum to a plat, each unit owner, by operation of law, has the percentage interests in the common elements, liabilities in the common expenses, rights to common surpluses, and shall have the number of votes, set forth in the amendment to the declaration. Following any expansion, the interest of any mortgagee shall attach, by operation of law, to the new percentage interests in the common elements appurtenant to the unit on which it is a lien.

History: 1977 c. 407; **1997 a.** 333.

Substantial compliance with formal requirements as permitted by s. 703.30 (2) is limited to the condominium status of the property and title of the unit owners. It does not apply to a project's status as an expanding condominium under this section. Rock Lake Estates Unit Owners Association v. Lake Mills, 195 Wis. 2d 34X. 536 N.W.2d 415 (Ct. App. 1995).

703.27 Zoning and building regulations. (1) A zoning or other land use ordinance or regulations may not prohibit the condominium form of ownership or impose any requirements upon a condominium which it would not impose upon a physically identical development under a different form of ownership. No provision of a state or local building code may be applied differently to a building in a condominium than it would be applied to a building of similar structure or occupancy under a different form of ownership unless the different application is expressly permitted in that provision. No subdivision ordinance may apply to any condominium unless the ordinance is, by its express terms, applicable to condominiums.

(2) No county, city or other jurisdiction may enact any law, ordinance or regulation which would impose a burden or restriction on a condominium that is not imposed on all other property of similar character not subjected to a condominium declaration.

History: 1977 c. 407.

703.275 Merger or consolidation of condominiums. (1) AGREEMENT; LEGAL EFFECT. Any 2 or more condominiums, by agreement of the unit owners as provided in this section, may be merged or consolidated into a single condominium. Unless the agreement otherwise provides, the condominium resulting from a merger or consolidation is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of the preexisting associations. The resultant condominium must bear the name of one of the preexisting condominiums.

(2) REALLOCATION OF INTERESTS. The merger or consolidation agreement shall provide for the reallocation of the allocated interests among the units of the resultant condominium. The agreement may not change the ratio that exists before the merger or consolidation between the allocated interests of any unit and the allocated interests of any other unit in the same preexisting condominium. The agreement shall state one of the following:

(a) The reallocations or the formulas upon which they are based.

(b) The percentage of the total of allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums.

(3) AGREEMENT; OTHER PROVISIONS. The merger or consolidation agreement may contain any provisions consistent with this chapter in addition to those specified in sub. (2).

(4) VOTES. The merger or consolidation agreement is effective if the agreement is approved by the unit owners of units to which at least 75% of the votes in each preexisting association are allocated. If the declaration of a preexisting association specifies that a percentage greater than 75% of the votes in that association is required to approve a merger or consolidation agreement, the greater percentage applies to the vote of that association. A declaration of a preexisting association may specify a smaller percentage and the smaller percentage applies to the vote of that association only if all of the units in the preexisting condominium are restricted exclusively to nonresidential uses.

(5) RECORDING. Both a restatement of the declaration of the resultant condominium that includes the merger agreement and an addendum to the condominium plat of the resultant condominium shall be recorded as provided in s. 703.07. The register of deeds shall reference the document number, volume and page of the plat of the resultant condominium on the plat of the preexisting condominium and shall note that the preexisting condominium has been merged.

History: 1985 a. **188;** 1997 a. 333.

703.28 Removal from provisions of this chapter. (1) All of the unit owners may remove all or any part of the property from the provisions of this chapter by a removal instrument, duly recorded, provided that the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property.

(2) (a) If the merger of 2 or more condominiums under s. 703.275 would result in the creation of a new plat for the resultant condominium, the property of the preexisting condominiums shall first be removed from the provisions of this chapter by recording a removal instrument.

(b) Before a certified survey map, condominium plat, subdivision plat or other plat may be recorded and filed for the same property, the condominium shall first be removed from the provisions of this chapter by recording a removal instrument.

(2) Upon removal of any property from this chapter, the property shall be deemed to be owned in common by the unit owners. The undivided interest in the property owned in common which appertains to each unit owner shall be the percentage of undivided interest previously owned by the owner in the common elements.

History: 1977 c. 407; 1997 a. 333; 1999 a. 96.

703.29 Removal no bar to subsequent resubmission. The removal provided for in s. 703.28 shall in no way bar the subsequent resubmission of the property to this chapter.

History: 1977 c. 407.

703.30 Rules of construction. (1) CERTAIN RULES OF LAW NOT APPLICABLE. Neither the rule of law known as the rule against perpetuities nor the rule of law known as the rule restricting unreasonable restraints on alienation may be applied to defeat or invalidate any provision of this chapter or of any condominium instruments, bylaws or other instrument made pursuant to this chapter.

(2) SUBSTANTIAL CONFORMITY OF CONDOMINIUM INSTRUMENTS AND BYLAWS SUFFICIENT. The provisions of any condominium instruments and bylaws filed under this chapter shall be liberally construed to facilitate the creation and operation of the condominium. So long as the condominium instruments and bylaws substantially conform with the requirements of this chapter, no variance from the requirements shall affect the condominium status of the property in question nor the title of any unit owner *to* his or her unit, votes and percentage interests in the common elements and in common expenses and common surpluses.

(3) PROVISIONS OF CONDOMINIUM INSTRUMENTS AND BYLAWS SEVERABLE. All provisions of condominium instruments and bylaws are severable and the invalidity of one provision does not affect the validity of any other provision.

(4) CONFLICTS IN PROVISIONS. If there is any conflict between any provisions of a declaration and provisions of a condominiurn plat or any provisions of the bylaws, the provisions of the declaration shall control. If there is any conflict between any provisions of any condominium instruments and any provisions of any bylaws, the provisions of the condominium instruments shall control. If there is any conflict between any provisions of any condominium instruments or any provisions of any bylaws and any provisions of this chapter, the provisions of this chapter shall control.

(5) INSTRUMENTS CONSTRUED TOGETHER. Condominium instruments shall be construed together and are determined to incorporate one another to the extent that any requirement of this chapter applying to one instrument is satisfied if the deficiency can be corrected by reference to any of the others.

History: 1977 c. 407.

The application of this section is limited to the condominium status of the property and title of the unit owners. It does not apply to a project's status as an expanding condominium under s. 703.26. Rock Lake Estates Unit Owners Association v. Lake **Mills,** 195 Wis. 2d 348.536 N.W.2d **415** (Ct. App. 1995).

703.31 Personal application. (1) All unit owners, tenants of the owners, employees of owners and tenants or any other persons that in any manner use property or any part thereof subject to this chapter shall be subject to this chapter and to the declaration and bylaws of the association adopted under this chapter.

(2) All agreements, decisions and determinations lawfully made by an association in accordance with the voting percentages established in this chapter, declaration or bylaws, shall be deemed to be binding on all unit owners.

History: 1971c. 407.

703.32 Easements and encroachments. (1) PRESUMPTION AS TO EXISTING PHYSICAL BOUNDARIES. Any existing physical boundaries of any unit or common elements constructed or reconstructed in substantial conformity with the condominium plat shall be conclusively presumed to be its boundaries, regardless of the shifting, settlement or lateral movement of any building and regardless of minor variations between the physical boundaries as described in the declaration or shown on the condominium plat and the existing physical boundaries of any such unit or common element. This presumption applies only to encroachments within the condominium.

(2) ENCROACHMENT AS RESULT OF AUTHORIZED CONSTRUCTION, RECONSTRUCTION OR REPAIR. If any portion of any common element encroaches on any unit or if any portion of a unit encroaches on any common element, as a result of the duly authorized construction, reconstruction or repair of **a** building, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the building stands.

(3) EASEMENTS INCLUDED IN GRANT OF UNIT. A grant or other disposition of a condominium unit shall include and grant and be subject to any easement arising under the provisions of this section without specific *or* particular reference to the easement.

(4) ASSOCIATION'S RIGHT OF ENTRY TO MAKE REPAIRS. An association shall have an irrevocable right and an easement to enter units to make repairs to common elements when the repairs reasonably appear necessary for public safety or to prevent damage to other portions of the condominium. Except in cases involving manifest danger to public safety or property, an association shall make a reasonable effort to give notice to the owner of any unit to be entered for the purpose of such repairs. No entry by an association for the purposes specified in this subsection may be considered a trespass.

History: 1977 c. 407.

703.33 Disclosure requirements. (1) MATERIAL TO BE FURNISHED BY SELLER TO PURCHASER BEFORE CLOSING. Not later than 15 days prior to the closing of the sale of a unit to a member of the public, the seller shall furnish to the purchaser the following:

(a) **A** copy of the proposed or existing declaration, bylaws and any rules or regulations, together with an index of the contents.

(b) A copy of the proposed or existing articles of incorporation of the association, if it is or is to be incorporated.

(c) A copy of any proposed or existing management contract, employment contract or other contract affecting the use, maintenance or access of all or part of the condominium to which it is anticipated the unit owners or the association will be a party following closing.

(d) A copy of the projected annual operating budget for the condominium including reasonable details concerning the estimated monthly payments by the purchaser for assessments, and monthly charges for the use, rental or lease of any facilities not part of the condominium.

(e) A copy of any lease to which it is anticipated the unit owncrs or the association will be a party following closing.

(f) A description of any contemplated expansion of the condominium with a general description of each stage of expansion and the maximum number of units that can be added to the condominium.

(g) A copy of the floor plan of the unit together with the information that is necessary to show the location of the common elements and other facilities to be used by the unit owners and indicating which facilities will be part of the condominium and which facilities will be owned by others.

(2) DISCLOSURE FORM. The materials required in sub. (1) shall be delivered to a prospective purchaser with cover sheet, index and tables of contents as prescribed in this section. A cover sheet and index shall precede all other materials required in sub. (1). **A** table of contents shall precede the section to which it applies.

(a) ***Cover sheet.*** A cover sheet shall be of the same approximate size and shape as the majority of the disclosure materials required in sub. (1) and shall bear the title "Disclosure Materials" and shall contain the name and location of the condominium, the name and business address of the declarant, and the name and

business address of the declarant's agent or, if the seller is not the declarant, the name and address of the seller. Following this information, but separate from it, there shall appear on the front of the cover sheet 3 statements in boldface type, or capital letters no smaller than the largest type on the page, in the following wording:

1. THESE ARE THE LEGAL DOCUMENTS COVERING YOUR RIGHTS AND RESPONSIBILITIES AS A CONDOMINIUM OWNER. IF YOU DO NOT UNDERSTAND ANY PROVISIONS CONTAINED IN THEM, YOU SHOULD OBTAIN PROFESSIONAL ADVICE.

2. THESE DISCLOSURE MATERIALS GIVEN TO YOU AS REQUIRED BY LAW MAY BE RELIED UPON AS CORRECT AND BINDING. ORAL STATEMENTS MAY NOT BE LEGALLY BINDING.

3. YOU MAY AT ANY TIME WITHIN 5 BUSINESS DAYS FOLLOWING RECEIPT OF THESE DOCUMENTS, OR FOLLOWING NOTICE OF ANY MATERIAL CHANGES IN THESE DOCUMENTS, CANCEL IN WRITING THE CONTRACT OF SALE AND RECEIVE A FULL REFUND OF ANY DEPOSITS MADE.

(b) *Index.* Following the inaterial required in par. (a), there shall appear an index of the disclosure materials. An index may begin on the cover sheet, if space permits, and be continued on the first and subsequent pages immediately following the cover sheet or may begin on the first page immediately following the cover sheet and continue on subsequent pages. An index shall be in substantially the following form:

The disclosure materials the seller is required by law to provide to each prospective condominium purchaser contains the following documents and exhibits:

1. *Declaration.* The declaration establishes and describes the condominium, the units and the common areas. The declaration begins on page .....

2. *Bylaws.* The bylaws contain rules which govern the condominium and effect the rights and responsibilities of unit owners. The bylaws begin on page .....

3. *Articles ofincorporation.* The operation of a condominium is governed by the association, of which each unit owner is a member. Powers, duties. and operation of an association are specified in its articles of incorporation. The articles of incorporation begin on page .....

4. *Management or employment contracts.* Certain services are provided to the condominium through contracts with individuals or private firms. These contracts begin on page .....

5. *Annual operating budget.* The association incurs expenses for the operation of the condominium which are assessed to the unit owners. The operating budget is an estimate of those charges which are in addition to mortgage and utility payments. The budget begins on page .....

6. *Leases.* Units in this condominium are sold subject to one or more leases of property or facilities which are not a part of the condominium, These leases begin on page .....

7. *Expansion plans.* The declarant has reserved the right to expand the condominium in the future. A description of the plans for expansion and its effect on unit owners begins on page .....

8. *Floor plan and map.* The seller has provided a floor plan of the unit being offered for sale and a map of the condominium which shows the location of the unit you are considering and all facilities and common areas which are part of the condominium The floor plan and map begin on page .....

(c) *Tables ofcontents and page numbers.* In addition to an index required by par. (b), there shall be provided tables of contents for the declaration, bylaws and articles of incorporation which shall identify each section of these documents and provide a page number for each section. Each section of disclosure material required in sub. (1) shall, on the first page of that material, identify contents of that section but, with an exception of the declaration, bylaws and articles of incorporation, shall not be required to have a table of contents. Each page of disclosure materials shall contain a page number sufficient to identify it within the body of disclosure materials. Page numbers for the declaration, bylaws and articles of incorporation required in par. (b) shall be the first page of the table of contents for that section. All other page numbers required in the index shall refer to the first page of that section on which the title appears.

(cm) *Statements; building code violations.* Except with respect to a conversion condominium with 4 or fewer units, in addition to the other information required by this section, the declarant of a conversion condominium shall provide to each purchaser all of the following:

1. A statement by the declarant, based on a report prepared by an independent architect or engineer, describing the present condition of those structural components and mechanical and electrical installations that are material to the use and enjoyment of the building.

2. A statement by the declarant of the expected useful life of each item reported on in subd. 1. or a statement that no representations are made in that regard.

3. A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

(d) *Additions or exclusions.* All materials required by this section shall be delivered to a prospective purchaser with disclosure materials required under sub. (1) except that articles of incorporation, leases and expansion plans of the index need not be included if they clearly do not apply.

(3) CHANGE IN MATERIAL FOLLOWING DELIVERY TO PURCHASER. Any material furnished under sub. (1) may not be changed or amended following delivery to a purchaser, if the change or amendment would affect materially the rights of the purchaser, without first obtaining approval of the purchaser. A copy of amendments shall be delivered promptly to the purchaser.

(4) PURCHASER'S RIGHT TO RESCIND CONTRACT OF SALE. Any purchaser may at any time within 5 business days following receipt of all information required under sub. (1) and within 5 business days following receipt of all information required under sub. (3), rescind in writing a contract of sale without stating any reason and without any liability on his or her part, and the purchaser is entitled to the return of any deposits made in account of the contract.

(5) UNTRUE STATEMENT OR OMISSION OF MATERIAL FACT. Any seller who in disclosing information required under subs. (1) and (2) makes any untrue statement of material fact or omits to state a material fact necessary in order to make statements made not misleading shall be liable to any person purchasing a unit from him or her. However, no action may be maintained to enforce any liability created under this section unless brought within one year after facts constituting a cause of action are or should have been discovered.

(6) WAIVER OF PURCHASERS RIGHT. Rights of purchasers under this section may not be waived in the contract of sale and any attempt to waiver is void. However, if the purchaser proceeds to closing, the purchaser's right under this section to rescind is terminated.

(7) SALE OF UNIT FOR NONRESIDENTIAL PURPOSES. Requirements of this section do not apply to a sale of any unit which is primarily intended to be occupied and used for nonresidential purposes.

(8) LOCATION OF CONDOMINIUM IMMATERIAL. Requirements of this section shall apply to a sale of any unit offered for sale in this state without regard to the location of a condominium.

History: 1977 c. **407:** 1985 a. 188.

Tips for Representing Condominium Sellers. Hagopian. Wis. Law. May 1993.

703.34 Blanket mortgages and other blanket liens affecting a unit at time of first conveyance. As a condition to the first transfer of title to each unit:

(1) Every mortgage and other lien affecting such unit, including the undivided interest in the common areas and facilities appurtenant to such unit, shall be paid and satisfied of record;

(2) A unit being transferred and an undivided interest in the common areas and facilities appurtenant thereto shall be released by partial release duly recorded; or

(3) A mortgage or other lien shall provide for or be amended to provide for a release of the unit and the undivided interest in the common areas and facilities appurtenant thereto from the lien of a mortgage or other lien upon the payment of a sum certain.

History: 1977 c. 407.

703.35 Termination of contracts and leases. If entered into before the officers elected by the unit owners under s. 703.10 take office, any management contract, employment contract, lease of recreational or parking areas or facilities, any contract or lease to which a declarant or any person affiliated with the declarant is a party and any contract or lease which is not bona fide or which was not commercially reasonable to unit owners when entered into under the circumstances then prevailing, may be terminated by the association or its executive board at any time without penalty upon not less than 90 days' notice to the other party thereto. This section does not apply to any lease the termination of which would terminate the condominium.

History: 1977 c. 307.

703.36 Provisions requiring employment of declarant or vendor to effect sale. Any provision of a declaration or other instrument made pursuant to this chapter which requires the owner of a unit to engage or employ the declarant or any subsidiary or affiliate of the declarant for the purpose of effecting a sale or lease of any unit is void. Any provision of any contract for a sale of any unit which requires a purchaser to engage or employ the vendor or any subsidiary or affiliate of the vendor for the purpose of effecting a sale or lease of any unit is void. This section applies to declarations, instruments and contracts made prior to and after August 1, 1978.

History: 1977 c. 407.

703.365 *Small* residential condominiums. (1) APPLICABILITY. (a) The declaration for a small residential condominium may provide that any or all of subs. (2) to (8) or any parts of those subsections apply to the small residential condominium.

(b) If a declaration under par. (a) provides that any or all of subs. (2) to (8) or any parts of those subsections apply, then, except as provided in those subsections or parts of those subsections, this chapter applies to the small residential condominium in the same manner and to the same extent as to other condominiums.

(2) DECLARATION. (a) The declaration for a small residential condominium need not contain those provisions otherwise required under s. 703.09 (1) (e) to (g) and (i).

(b) The undivided percentage interest in a small residential condominium shall be allocated equally among the units.

(c) Each unit in a small residential condominium shall have one vote at meetings of the association.

(d) Commercial activity is permitted in a small residential condominium only to the extent that commercial activity is permitted in residences in a zoning ordinance adopted under s. 59.69.60.61, 61.35 or 62.23.

(e) All actions taken under this chapter which require a vote of units or unit owners must be approved by an affirmative vote or written consent of at least 75% of the unit votes of a small residential condominium, or a greater percentage if required by the declaration or this chapter.

(3) BYLAWS. (a) Notwithstanding s. 703.10 (2) (a), all aspects of the management, operation and duties of the association of a small residential condominium shall be delegated to the board of directors, which may retain a manager for the small residential condominium, and the bylaws shall so specify.

(b) Under s. 703.10 (2) (c), notice of meetings shall be given in a manner best calculated to assure that actual notice is received by the owners of all units of a small residential condominium, and the bylaws shall so specify.

(c) Section 703.10 (2) (d) does not apply to a small residential condominium. The board of directors shall be composed of one representative from each unit, chosen by and from among the unit owners of that unit.

(d) **All** actions taken by the board of directors of a small residential condominium under this chapter must be approved by an affirmative vote or written consent of at least 75% of the board.

(e) Section 703.10 (4) does not apply to a small residential condominium.

(4) CONDOMINIUM PLAT. (a) The survey under s. 703.11 (2) (b) shall be an as–built survey of the property described in the declaration, building and other improvements on the land which are part of the small residential condominium,

(b) The floor plans under s. 703.11 (2) (c) need only show the location and designation of each unit in the building and the limited common elements appurtenant to each unit of a small residential condominium. These plans may be supplementedby an agreement among all unit owners and mortgagees regarding the allocation of use and enjoyment of common elements which, in both its original and any amended form, shall be recorded.

(5) ASSOCIATION. (a) Under s. 703.15 (2), an association shall exist immediately upon establishment of a small residential condominium and the declarant shall have rights in the association only as an owner of a unit or units.

(b) Directors of a small residential condominium shall be chosen in accordance with sub. (3) (c). The board of directors shall meet at least quarterly.

(c) Unless included in the bylaws, s. 703.15 (4) (b) to (d) does not apply to a small residential condominium.

(6) EXPENSES: MAINTENANCE; OPERATION. (a) Paragraphs (b) to (e) apply to a small residential condominium if any of the following criteria is met:

1. **A** proposed expenditure or action for the repair, maintenance or upkeep of the property, or for the operation of the property, is not approved by the board of directors and any unit owner believes the expenditure or action is necessary for the safety and proper use of the property or of the owner's unit.

2. An expenditure or action is approved by the board of directors and any unit owner believes the expenditure or action is contrary to the safety and proper use of the property or the owner's unit.

(b) The unit owner or owners challenging a decision of the board of directors described under par. (a) 1. or 2. shall give written notice of the objection to all unit owners and mortgagees within 45 days after the decision but before any action is taken or expenditure is made. Upon receipt of this notice, the board of directors shall reconsider its decision and either affirm, reverse or modify the decision.

(c) The unit owner or owners may challenge the decision after reconsideration by the board of directors under par. (b) only in an arbitration proceeding under ch. 788. Acceptance of a conveyance of a small residential condominium which is subject to pars. (b) to (e) is deemed to constitute an agreement by the unit owner to submit challenges to decisions of the board of directors to arbitration.

(d) The board of directors, upon submission of the matter to arbitration as provided in par. (c), shall name a proposed arbitrator. The unit owner or owners may accept the proposed arbitrator or propose a different arbitrator. If there is no agreement on a single arbitrator, the 2 arbitrators shall select a 3rd person and the 3 shall serve as an arbitration panel chaired by the 3rd person. The expense of the arbitration shall be shared equally by the association and the unit owner or owners challenging the decision of the board of directors.

(e) The arbitration award by the arbitration panel under par. (d) shall permit or prohibit the decision and the decision shall not be implemented, if it is an affirmative action, until the award is final unless there is a bona fide emergency requiring it.

(7) EXPANDING CONDOMINIUMS. Section 703.26 does not apply to a small residential condominium.

(8) DISCLOSURE REQUIREMENTS. The disclosure required for a small residential condominium under s. 703.33 shall be limited to the disclosure required under s. 703.33 (1) (a) to (e), if applicable, and a copy of the condominium plat.

History: 1985 a. 188,332; 1995 a. 201.

703.37 Interpretation. For purposes of interpretation of this chapter, a condominium is not a subdivision as defined in ch. 236.

History: 1977 c. 407.

703.38 Applicability to existing condominiums. (1) Except as otherwise provided in this section, this chapter is applicable to all condominiums, whether established before or after August 1, 1978. However, with respect to condominiums existing on August 1, 1978, the declaration, bylaws or condominium plat need not be amended to comply with the requirements of this chapter.

(2) Section 703.10 *(5)* is not applicable to a condominium existing on August 1, 1978 if the existing declaration or bylaws provide otherwise.

(3) Section 703.15 (4) (c) and (d) 2. are not applicable to a condominium existing on August 1, 1978 if the existing declaration or bylaws provide otherwise.

(4) Section 703.18 is applicable only to those condominiums which are damaged or destroyed on or after August 1, 1978.

(5) Section 703.19 is applicable only to those eminent domain proceedings filed on or after August 1, 1978.

(6) Unless a declarant elects to conform to the requirements of s. 703.26, s. 703.26 is not applicable to those condominiums created prior to August 1, 1978 under circumstances where the declarant reserved the right to expand the condominium.

(7) Section 703.33 is applicable only to contracts executed after August 1, 1978.

(8) Section 703.35 is applicable only *to* leases or management and similar contracts executed after August 1, 1978.

(9) Unless the declaration is amended as provided under s. 703.09 (2), 1983 stats., to provide otherwise, a condominium created prior to April 22, 1986, is subject to s. 703.09 (2), 1983 stats., rather than s. 703.09 (2).

(10) Section 703.365 applies to condominiums created on or after April 22, 1986, and to condominiums created before April 22, 1986, that elect to be subject to s. 703.365.

(11) Section 703.255 applies to condominiums created after December 31, 1986.

History: 1977 c. 407; 1985 a. 188.

CHAPTER 704

LANDLORD AND TENANT

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Cross Reference: See also ch. ATCP 134, Wis. adm. code.

704.01 Definitions. In this chapter, unless the context indicates otherwise:

(1) "Lease" means an agreement, whether oral or written, for transfer of possession of real property, or both real and personal property, for a definite period of time. A lease is for a definite period of time if it has a fixed commencement date and a fixed expiration date or if the commencement and expiration can be ascertained by reference to some event, such as completion of a building. A lease is included within this chapter even though it may also be treated as a conveyance under ch. 706. An agreement for transfer of possession of only personal property is not a lease.

(2) "Periodic tenant" means a tenant who holds possession without a valid lease and pays rent on a periodic basis. It includes a tenant from day–to-day, week–to–week, month–to-month, year–to-year or other recurring interval of time, the period being determined by the intent of the parties under the circumstances, with the interval between rent–paying dates normally evidencing that intent.

(3) "Premises" mean the property covered by the lease, including not only the realty and fixtures, but also any personal property furnished with the realty.

(4) "Tenancy" includes a tenancy under a lease, a periodic tenancy or a tenancy at will.

(5) "Tenant at will" means any tenant holding with the permission of the tenant's landlord without a valid lease and under circumstances not involving periodic payment of rent; but a person holding possession of real property under a contract of purchase or an employment contract is not a tenant under this chapter.

History: 1983 a. 189; 1993 a. 486.

Landlords' liability for defective premises: caveat lessee, negligence. or strict liability? Love, 1975 WLR 19.

704.03 Requirement of writing for rental agreements and termination. (1) ORIGINAL AGREEMENT. A lease for more than a year. or a contract to make such a lease, is not enforceable unless it meets the requirements of s. 706.02 and in addition sets forth the amount of rent or other consideration, the time of commencement and expiration of the lease and a reasonably definite description of the premises, or unless a writing signed by the landlord and the tenant sets forth the amount of rent or other consideration, the duration of the lease and a reasonably definite description of the premises and the commencement date is established by entry of the tenant into possession under the writing. Sections 704.05 and 704.07 govern as to matters within the scope of such sections and not provided for in such written lease or contract.

(2) ENTRY UNDER UNENFORCEABLE LEASE. If a tenant enters into possession under a lease for more than one year which does not meet the requirements of sub. (1), and the tenant pays rent on a periodic basis, the tenant becomes a periodic tenant. If the premises in such case are used for residential purposes and the rent is payable monthly, the tenant becomes a month–to-month tenant; but if the use is agricultural or nonresidential, the tenant becomes a year–to–year tenant without regard to the rent–payment periods. Except for duration of the tenancy and matters within the scope of ss. 704.05 and 704.07. the tenancy is governed by the terms and conditions agreed upon. Notice as provided in s. 704.19 is necessary to terminate such a periodic tenancy.

(3) ASSIGNMENT. An assignment by the tenant of a leasehold interest which has an unexpired period of more than one year is not enforceable against the assignor unless the assignment is in writing reasonably identifying the lease and signed by the assignor; and any agreement to assume the obligations of the original lease which has an unexpired period of more than one year is not enforceable unless in writing signed by the assignee.

(4) TERMINATION OF WRITTEN LEASE PRIOR TO NORMAL EXPIRATION DATE. An agreement to terminate a tenancy more than one year prior to the expiration date specified in a valid written lease is not enforceable unless it is in writing signed by both parties. Any other agreement between the landlord and tenant to tenninate a lease prior to its normal expiration date, or to terminate a periodic tenancy or tenancy at will without the statutory notice required by s. 704.19 may be either oral or written. Nothing herein prevents surrender by operation of law.

(5) PROOF. In any case where a lease or agreement is not in writing signed by both parties but is enforceable under this section, the lease or agreement must be proved by clear and convincing evidence.

History: 1993 a. 486.

If there is no written lease, section 704.07 applies to the obligation to make repairs. For there to be a remedy for a a breach of a duty to repair other than that provided in s. 704.07, the obligation must be in a written lease signed by both parties. Halverson v. River Falls Youth Hockey Association, 226 Wis. 2d 105, 593 N.W.2d 895 (Ct. App. 1999).

704.05 Rights and duties of landlord and tenant in absence of written agreement *to* contrary. *(1)* WHEN SECTION APPLICABLE. So far as applicable, this section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision in writing signed by both the landlord and the tenant. This section applies to any tenancy.

(2) POSSESSION OF TENANT AND ACCESS BY LANDLORD. Until the expiration date specified in the lease, or the termination of a periodic tenancy or tenancy at will, and so long as the tenant is not in default, the tenant has the right to exclusive possession of the premises, except as hereafter provided. The landlord may upon advance notice and at reasonable times inspect the premises, make repairs and show the premises to prospective tenants or purchasers; and if the tenant is absent from the premises and the landlord reasonably believes that entry is necessary to preserve or protect

the premises, the landlord may enter without notice and with such force as appears necessary.

(3) USE OF PREMISES, ADDITIONS OR ALTERATIONS BY TENANT. The tenant can make no physical changes in the nature of the premises, including decorating, removing, altering or adding to the structures thereon, without prior consent of the landlord. The tenant cannot use the premises for any unlawful purpose nor in such manner as to interfere unreasonably with use by another occupant of the same building or group of buildings.

(4) TENANT'S FIXTURES. At the termination of the tenancy, the tenant may remove any fixtures installed by the tenant if the tenant either restores the premises to their condition prior to the installation or pays to the landlord the cost of such restoration. Where such fixtures were installed to replace similar fixtures which were part of the premises at the time of the commencement of the tenancy, and the original fixtures cannot be restored the tenant may remove fixtures installed by the tenant only if the tenant replaces them with fixtures at least comparable in condition and value to the original fixtures. The tenant's right to remove fixtures is not lost by an extension or renewal of a lease without reservation of such right to remove. This subsection applies to any fixtures added by the tenant for convenience as well as those added for purposes of trade, agriculture or business; hut this subsection does not govern the rights of parties other than the landlord and tenant.

(5) STORAGE OR DISPOSITION OF PERSONALTY LEFT BY TENANT. (a) *Procedure.* If a tenant removes from the premises and leaves personal property, the landlord may do all of the following:

1. Store the personalty, on or off the premises, with a lien on the personalty for the actual and reasonable cost of removal and storage or, if stored by the landlord, for the actual and reasonable value of storage. The landlord shall give written notice of the storage to the tenant within 10 days after the charges begin. The landlord shall give the notice either personally or by ordinary mail addressed to the tenant's last–known address and shall state the daily charges for storage. The landlord may not include the cost of damages to the premises or past or future rent due in the amount demanded for satisfaction of the lien. The landlord may not include rent charged for the premises in calculating the cost of storage. Medicine and medical equipment are not subject to the lien under this subdivision, and the landlord shall promptly return them to the tenant upon request.

2. Give the tenant notice, personally or by ordinary mail addressed to the tenant's last–known address, of the landlord's intent to dispose of the personal property by sale or other appropriate means if the property is not repossessed by the tenant. If the tenant fails to repossess the property within 30 days after the date of personal service or the date of the mailing of the notice, the landlord may dispose of the property by private or public sale or any other appropriate means. The landlord may deduct from the proceeds of sale any costs of sale and any storage charges if the landlord has first stored the personalty under subd. 1. If the proceeds minus the costs of sale and minus any storage charges are not claimed within 60 days after the date of the sale of the personalty, the landlord is not accountable to the tenant for any of the proceeds of the sale or the value of the property. The landlord shall send the proceeds of the sale minus the costs of the sale and minus any storage charges to the department of administration for deposit in the appropriation under **s.** 20.505 **(7)** (h).

3. Store the personalty without a lien and return it to the tenant.

(c) *Rights of third persons.* The landlord's lien and power to dispose as provided by this subsection apply to any property left on the premises by the tenant, whether owned by the tenant or by others. That lien has priority over any ownership or security interest, and the power to dispose under this subsection applies notwithstanding rights of others existing under any claim of ownership or security interest. The tenant or any secured party has the right to redeem the property at any time before the landlord has disposed of it or entered into a contract for its disposition by payment of the landlord's charges under par. (a) for removal, storage, disposition and arranging for the sale.

(d) *Other procedure.* The remedies of this subsection are not exclusive and shall not prevent the landlord from resorting to any other available judicial procedure.

History: 1993 **a.** 374,486; 2001 a. **16.**

Any act of the landlord that so interferes with the tenant's enjoyment or possession of the premises as to render them unfit for occupancy for the purposes for which ihey were leased is an eviction releasing the tenant from the obligation to pay rent. First Wisconsin Trust Co. v. L. Wiemann Co. 93 Wis. 2d 258,286 N.W.2d 360 (1980).

An allegation in **a** lessee's complaint that the premises were undamaged did not relieve the lessor of the burden to prove damages. Rivera v. Eisenberg, 95 Wis. 2d 384,290 N.W.2d 539 (Ct. **App.** 1980).

Landlords' liability for defective premises: caveat lessee, negligence, or strict liability? Love, 1975 WLR 19.

704.06 Water heater thermostat settings. A landlord of premises which are subject to a residential tenancy and served by a water heater serving only that premises shall set the thermostat of that water heater at no higher than 125 degrees Fahrenheit before any new tenant occupies that premises or at the minimum setting of that water heater if the minimum setting is higher than 125 degrees Fahrenheit.

History: 1987 **a.** 102.

704.07 Repairs; untenantability. (1) APPLICATION OF SECTION. This section applies to any nonresidential tenancy if there is no contrary provision in writing signed by both parties and to all residential tenancies. An agreement to waive the requirements of this section in a residential tenancy **is** void. Nothing in this section is intended to affect rights and duties arising under other provisions of the statutes.

(2) DUTY OF LANDLORD. (a) Except for repairs made necessary by the negligence of, or improper use of the premises by, the tenant, the landlord has a duty to do all of the following:

1. Keep in a reasonable state of repair portions of the premises over which the landlord maintains control.

2. Keep in a reasonable state of repair all equipment under the landlord's control necessary to supply services that the landlord has expressly or impliedly agreed to furnish to the tenant, such as heat, water, elevator, or air conditioning.

3. Make all necessary structural repairs.

4. Except for residential premises subject to a local housing code, and except as provided in sub. (3) (b), repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition.

5. For a residential tenancy, comply with any local housing code applicable to the premises.

(bj If the premises are part of a building, other parts of which are occupied by one or more other tenants, negligence or improper use by one tenant does not relieve the landlord from the landlord's duty as to the other tenants to make repairs as provided in par. (a).

(c) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act ***of*** the landlord, this subsection is inapplicable and either sub. (3) or (4) governs.

(3) DUTY OF TENANT. (a) If the premises are damaged by the negligence or improper use of the premises by the tenant, the tenant must repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the repair or redecoration, and in such case the tenant must reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proved otherwise by the tenant.

(bj Except for residential premises subject to a local housing code, the tenant is also under a duty to keep plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order if repair can be made at cost which is minor in relation to the rent.

(c) A tenant in a residential tenancy shall comply with a local housing code applicable to the premises.

(4) UNTENANTABILITY. If the premises become untenantable because of damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of sub. (2) materially affecting the health or safety of the tenant, the tenant may remove from the premises unless the landlord proceeds promptly to repair or rebuild or eliminate the health hazard or the substantial violation of sub. (2) materially affecting the health or safety of the tenant; or the tenant may remove if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on the tenant. If the tenant remains in possession, rent abates to the extent the tenant is deprived of the full normal use of the premises. This section does not authorize rent to be withheld in full, if the tenant remains in possession. If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenantable and the landlord must repay any rent paid in advance apportioned to the period after the premises become untenantable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant.

History: 1981 c. 286; 1993 a. 213,486,491: 2001 a. 103.

The remedy provided to the lessor by sub. (3) does not exclude diminution of market value as an alternative method of computing damages, and although the former is to be preferred where the property is easily repairable and the latter where the injury does not destroy the property, evidence of each method may be introduced by either party with the lesser amount awardable as the proper measure of damages. Laska v. Steinpreis, 69 Wis. 2d 307,231 N.W.2d 196 (1975).

A landlord must exercise ordinary care toward tenants and others on leased premises with permission. Pagelsdorf v. Safeco Insurance Co. of America, 91 Wis. 2d 734. 284 N.W.2d 55 (1979).

Sub. (3) (a) requires a tenant to pay for damage that the tenant negligently causes to a landlord's property regardless of whether the landlord or landlord's insurer initially pays for the damage. Bennett v. West Bend Mutual Insurance Co. 200 Wis. 2d 313,546 N.W.2d 204 (Ct. App. 1996).

If there is no written lease, sedion 701.07 applies to the obligation to make repairs. For there to be a remedy for a a breach of a duty to repair other than that provided in s. 704.07. the obligation must be in a written lease signed by both parties. Halverson v. River Falls Youth Hockey Association, 226 Wis. 2d 105,593 N.W.2d 895 (Ct. App. 1999).

Landlord and tenant law—the implied warranty of habitability in residential leases. 58 MLR 191.

Landlord no longer immune from tort liability for failure to exercise reasonable care in maintaining premises. 64 MLR 563 (1981).

704.09 Transferability; effect of assignment or transfer; remedies. (1) TRANSFERABILITY OF INTEREST OF TENANT OR LANDLORD. A tenant under a tenancy at will or any periodic tenancy less than year–to-year may not assign or sublease except with the agreement or consent of the landlord. The interest of any other tenant or the interest of any landlord may be transferred except as the lease expressly restricts power to transfer. A lease restriction on transfer is construed to apply only to voluntary transfer unless there is an express restriction on transfer by operation of law.

(2) EFFECT OF TRAKSFER OK LIABILITY OF TRANSFEROR. In the absence of an express release or a contrary provision in the lease, transfer or consent to transfer does not relieve the transferring party of any contractual obligations under the lease, except in the special situation governed by s. 704.15 (5).

(3) COVENANTS WHICH APPLY TO TRANSFEREE. All covenants and provisions in a lease which are not either expressly or by necessary implication personal to the original parties are enforceable by or against the successors in interest of any party to the lease. However, a successor in interest is liable in damages, or entitled to recover damages, only for a breach which occurs during the period when the successor holds his or her interest, unless the successor has by contract assumed greater liability; a personal representative may also recover damages for a breach for which the personal representative's decedent could have recovered.

(4) SAME PROCEDURAL REMEDIES. The remedies available between the original landlord and tenant are also available to or against any successor in interest to either party.

(5) CONSENT AS AFFECTING SUBSEQUENT TRANSFERS. If a lease restricts transfer, consent to a transfer or waiver of a breach of the restriction is not a consent or waiver as to any subsequent transfers.

History: 1971 c. 211 s. 126; 1993 a. 486.

704.11 Lien of landlord. Except as provided in ss. 704.05 (5), 704.90 and 779.43 or by express agreement of the parties, the landlord has no right to a lien on the property of the tenant; the common–law right of a landlord to distrain for rent is abolished.

History: 1979 c. 32 s. 92 (9); 1987 a. 23 s. 2.

704.13 Acts of tenant not to affect rights of landlord. No act of a tenant in acknowledging as landlord a person other than the tenant's original landlord or the latter's successors in interest can prejudice the right of the original landlord or the original landlord's successors to possession of the premises.

History: 1993 a. 486.

704.15 Requirement that landlord notify tenant of automatic renewal clause. A provision in a lease of residential property that the lease shall be automatically renewed or extended for a specified period unless the tenant or either party gives notice to the contrary prior to the end of the lease is not enforceable against the tenant unless the lessor, at least 15 days but not more than 30 days prior to the time specified for the giving of such notice to the lessor, gives to the tenant written notice in the same manner as specified in s. 704.21 calling the attention of the tenant to the existence of the provision in the lease for automatic renewal or extension.

History: 1993 a. 486.

704.17 Notice terminating tenancies for failure to pay rent or other breach by tenant. (1) MONTH–TO-MOXTH AND WEEK–TO–WEEK TENANCIES. (a) If a month–to–month tenant or a week–to-week tenant fails to pay rent when due, the tenant's tenancy is terminated if the landlord gives the tenant notice requiring the tenant to pay rent or vacate on or before a date at least 5 days after the giving of the notice and if the tenant fails to pay accordingly. A month–to-month tenancy is terminated if the landlord, while the tenant is in default in payment of rent, gives the tenant notice requiring the tenant to vacate on or before a date at least 14 days after the giving of the notice.

(b) If a month–to–month tenant commits waste or a material violation of s. 704.07 (3) or breaches any covenant or condition of the tenant's agreement, other than for payment of rent, the tenancy can be terminated if the landlord gives the tenant notice requiring the tenant to vacate on or before a date at least 14 days after the giving of the notice.

(c) A property owner may terminate the tenancy of a week–to–week or month–to-month tenant if the property owner receives written notice from a law enforcement agency of a city, town or village that a nuisance under s. 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant on the property owner's property and if the property owner gives the tenant written notice requiring the tenant to vacate on or before a date at least 5 days after the giving of the notice. The notice shall state the basis for its issuance and the right of the tenant to contest the termination of tenancy in an eviction action under ch. 799. If the tenant contests the termination of tenancy, the tenancy may not be tenninated without proof by the property owner by the greater preponderance of the credible evidence of the allegation in the notice from the law enforcement agency of a city, town or village that a nuisance under s. 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant.

(2) TENANCIES UNDER A LEASE FOR ONE YEAR OR LESS, AND YEAR–TO-YEAR TENANCIES. (a) If a tenant under a lease for a term of one year or less, or a year–to-year tenant, fails to pay any installment of rent when due, the tenant's tenancy is terminated if the landlord gives the tenant notice requiring the tenant to pay rent or vacate on or before a date at least 5 days after the giving of the notice and if the tenant fails to pay accordingly. If a tenant has

been given such a notice and has paid the rent on or before the specified date, or been permitted by the landlord to remain in possession contrary to such notice, and if within one year of any prior default in payment of rent for which notice was given the tenant fails to pay a subsequent installment of rent on time, the tenant's tenancy is terminated if the landlord, while the tenant is in default in payment of rent, gives the tenant notice to vacate on or before a date at least 14 days after the giving of the notice.

(b) If a tenant under a lease for a term of one year or less, or a year–to–year tenant, commits waste or a material violation of s. 704.07 (3) or breaches any covenant or condition of the tenant's lease, other than for payment of rent, the tenant's tenancy is terminated if the landlord gives the tenant a notice requiring the tenant to remedy the default or vacate the premises on or before a date at least 5 days after the giving of the notice, and if the tenant fails to comply with such notice. **A** tenant is deemed to be complying with the notice if promptly upon receipt of such notice the tenant takes reasonable steps to remedy the default and proceeds with reasonable diligence, or if damages are adequate protection for the landlord and the tenant makes a bona fide and reasonable offer to pay the landlord all damages for the tenant's breach. If within one year from the giving of any such notice, the tenant again commits waste or breaches the same or any other covenant or condition of the tenant's lease, other than for payment of rent, the tenant's tenancy is terminated if the landlord, prior to the tenant's remedying the waste or breach, gives the tenant notice to vacate on or before a date at least 14 days after the giving of the notice.

(c) **A** property owner may terminate the tenancy of a tenant who is under a lease for a term of one year *or* less *or* who is a year–to–year tenant if the property owner receives written notice from a law enforcement agency of a city, town or village that a nuisance under s. 823.113 (1) or (1m) **(b)** exists in that tenant's rental unit or was caused by that tenant on the property owner's property and if the property owner gives the tenant written notice requiring the tenant to vacate on or before a date at least 5 days after the giving of the notice. The notice shall state the basis for its issuance and the right of the tenant to contest the termination of tenancy in an eviction action under ch. 799. If the tenant contests the termination of tenancy, the tenancy may not be terminated without proof by the property owner by the greater preponderance of the credible evidence of the allegation in the notice from the law enforcement agency of a city, town or village that a nuisance under **s.** 823.113 **(1)** or (1m) (b) exists in that tenant's rental unit or was caused by that tenant.

(3) LEASE FOR MORE THAN ONE YEAR. (a) If a tenant under a lease for more than one year fails to pay rent when due, or commits waste, or breaches any other covenant or condition of the tenant's lease, the tenancy is terminated if the landlord gives the tenant notice requiring the tenant to pay the rent, repair the waste, or otherwise comply with the lease on or before a date at least 30 days after the giving of the notice, and if the tenant fails to comply with the notice. **A** tenant is deemed to be complying with the notice if promptly upon receipt of the notice the tenant takes reasonable steps to remedy the default and proceeds with reasonable diligence, or if damages are adequate protection for the landlord and the tenant makes a bona fide and reasonable offer to pay the landlord all damages for the tenant's breach; but in case of failure to pay rent, all rent due must be paid on or before the date specified in the notice.

(b) **A** property owner may terminate the tenancy of a tenant who is under a lease for a term of more than one year if the property owner receives written notice from a law enforcement agency of a city, town or village that a nuisance under s. 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant on the property owner's property and if the property owner gives the tenant written notice to vacate on or before a date at least **5** days after the giving of the notice. The notice shall state the basis for its issuance and the right of the tenant to contest the termination of tenancy in an eviction action under ch. 799. If the tenant contests the termination of tenancy, the tenancy may not be terminated without proof by the property owner by the greater preponderance of the credible evidence of the allegation in the notice from the law enforcement agency of a city, town or village that a nuisance under **s.** 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant.

(4) FORM OF NOTICE AND MANNER OF GIVING. Notice must be in writing and given as specified in s. 704.21. If so given, the tenant is not entitled to possession or occupancy of the premises after the date of temiination specified in the notice.

(5) CONTRARY PROVISION IN THE LEASE. Provisions in the lease or rental agreement for temiination contrary to this section are invalid except in leases for more than one year.

History: 1981 c. 286; 1993 a. 139,486; 1995 a. 267.

Only **a** limited number of defenses may be raised in an eviction action, including defenses **as** to the landlord's title to the premises and whether the eviction was in retaliation for the tenant's reporting housing violations, but not including violations of federal antitrust and state franchise **laws—as** well as public policy defenses. Clark Oil & Refining Corp. v. Leistikow, 69 Wis. 2d 226,130 N.W.2d 736 (1975).

Absent notice of termination, the violation of the terms of a lease that required landlord permission for long–term guests did not **result** in in the tenants losing their rights to possession of the property. Consequently the tenants' guests were on the premises with the legal possessor's permission and were not trespassers. Johnson v. Blackbum, 220 **Wis.** 2d 260,582 N.W.2d 488 (Ct. App. 1998).

704.19 Notice necessary to terminate periodic tenancies and tenancies at will. (1) SCOPE OF SECTION. The following types of tenancies, however created, are subject to this section:

(a) **A** periodic tenancy, whether a tenancy from year–to–year, from month–to–month, or for any other periodic basis according to which rent is regularly payable; and

(b) **A** tenancy at will.

(2) REQUIREMENT OF NOTICE. (a) **A** periodic tenancy or a tenancy at will can be temiinated by either the landlord or the tenant only by giving to the other party written notice complying with this section, unless any of the following conditions is met:

1. The parties have agreed expressly upon another method of termination and the parties' agreement **is** established by clear and convincing proof.

2. *Termination* has been effected by a surrender of the premises.

3. Subsection (6) applies.

(b) A periodic tenancy can be terminated by notice under this section only at the end of a rental period. In the case of a tenancy from year–to–year the end of the rental period is the end of the rental year even though rent is payable on a more frequent basis. Nothing in this section prevents termination of a tenancy for nonpayment of rent or breach of any other condition of the tenancy, as provided in s. 704.17.

(3) LENGTH OF NOTICE. At least 28 days' notice must be given except in the following cases: If rent is payable on a basis less than monthly, notice at least equal to the rent–paying period is sufficicnt; all agricultural tenancies from year–to–year require at least 90 days' notice.

(4) CONTENTS OF NOTICE. Notice must be *in* writing, formal or infomial, and substantially inform the other party to the landlord–tenant relation of the intent to terminate the tenancy and the date of termination. **A** notice is not invalid because of errors in the notice which do not mislead, including omission of the name of one of several landlords or tenants.

(5) EFFECT OF INACCURATE TERMINATION DATE IN NOTICE. If a notice provides that a periodic tenancy is to terminate on the first day of a succeeding rental period rather than the last day of a rental period, and the notice was given in sufficient time to terminate the tenancy at the end of the rental period, the notice **is** valid; if the notice was given by the tenant, the landlord may require the tenant to remove on the last day of the rental period, but if the notice was given by the landlord the tenant may remove on the last day specified in the notice. If a notice specified any other inaccurate termination date, because it does not allow the length of time required under sub. (3) or because it does not correspond to the end of a rental period in the case of a periodic tenancy, the notice is valid but not effective until the first date which could have been

properly specified in such notice subsequent to the date specified in the notice, but the party to whom the notice is given may elect to treat the date specified in the notice as the legally effective date. If a notice by a tenant fails to specify any termination date, the notice is valid but not effective until the first date which could have been properly specified in such notice as of the date the notice is given.

(6) TENANT MOVING OUT WITHOUT NOTICE. If any periodic tenant vacates the premises without notice to the landlord and fails to pay rent when due for any period, such tenancy is terminated as of the first date on which it would have terminated had the landlord been given proper notice on the day the landlord leams of the removal.

(7) WHEN NOTICE GIVEN. Notice is given on the day specified below, which is counted as the first day of the notice period:

(a) The day of giving or leaving under **s.** 704.21 (1) (a) and (2) (a) and (b).

(b) The day of leaving or affixing a copy or the date of mailing, whichever is later, under **s.** 704.21 (1) (b) and (c).

(c) The 2nd day after the day of mailing if the mail is addressed to a point within the state, and the 5th day after the day of mailing in all other cases, under **s.** 704.21 (1) (d) and (2) (c).

(d) The day of service under **s.** 704.21 (1) (e) and (2) (d).

(e) The day of actual receipt by the other party under **s.** 704.21 (5).

(8) EFFECT OF NOTICE. If a notice is given as required by this section, the tenant is not entitled to possession or occupancy of the premises after the date of termination as specified in the notice.

History: 1993 a. 486; 1995 a. 225; 2001 a. 103.

A landlord cannot evict a tenant solely because the tenant has reported building code violations. Dickhut v. Norton, 45 Wis. 2d 389, 173N.W.2d 297 (1970).

Retaliatory eviction as a defense. 54 MLR 239.

Landlords' liability for defective premises: caveat lessee, negligence, or strict liability? Love, 1975 WLR 19.

704.21 Manner of giving notice. (1) NOTICE **BY** LANDLORD. Notice by the landlord or a person in the landlord's behalf must be given under this chapter by one of the following methods:

(a) By giving a copy of the notice personally to the tenant or by leaving a copy at the tenant's usual place of abode in the presence of some competent member of the tenant's family at least 14 years of age, who is informed of the contents of the notice;

(b) By leaving a copy with any competent person apparently in charge of the rented premises or occupying the premises or a part thereof, and by mailing a copy by regular or other mail to the tenant's last–known address;

(c) If notice cannot be given under par. (a) or (b) with reasonable diligence, by affixing a copy of the notice in a conspicuous place on the rented premises where it can be conveniently read and by mailing a copy by regular or other mail to the tenant's last–known address;

(d) By mailing a copy of the notice by registered or certified mail to the tenant at the tenant's last–known address;

(e) By serving the tenant as prescribed in s. 801.11 for the service of a summons.

(2) NOTICE BY TENANT. Notice by the tenant or a person in the tenant's behalf must be given under this chapter by one of the following methods:

(a) By giving a copy of the notice personally to the landlord or to any person who has been receiving rent or managing the property as the landlord's agent, or by leaving a copy at the landlord's usual place of abode in the presence of some competent member of the landlord's family at least 14 years of age, who is informed of the contents of the notice;

(b) By giving a copy of the notice personally to a competent person apparently in charge of the landlord's regular place of business or the place where the rent is payable;

(c) By mailing a copy by registered or certified mail to the landlord at the landlord's last–known address or to the person who has been receiving rent or managing the property as the landlord's agent at that person's last–known address;

(d) By serving the landlord as prescribed in **s.** 801.11 for the service of a summons.

(3) CORPORATION OR PARTNERSHIP. If notice is to be given to a corporation notice may be given by any method provided in sub. (1) or (2) except that notice under sub. (1) (a) **or** (2) (a) may be given only to an officer, director, registered agent or managing agent, or left with an employee in the office of such officer or agent during regular business hours. If notice is to be given to a partnership, notice may be given by any method in sub. (1) or (2) except that notice under sub. (1) (a) or (2) (a) may be given only to a general partner or managing agent of the partnership, or left with an employee in the office of such partner or agent during regular business hours, or left at the usual place of abode of a general partner in the presence of some competent member of the general partner's family at least 14 years of age, who is informed of the contents of the notice.

(4) NOTICE TO ONE OF SEVERAL PARTIES. If there are 2 or more landlords or 2 or more cotenants of the same premises, notice given to one is deemed to be given to the others also.

(5) EFFECT OF ACTUAL RECEIPT OF NOTICE. If notice is not properly given by one of the methods specified in this section, but is actually received by the other party, the notice is deemed to be properly given: but the burden is upon the party alleging actual receipt to prove the fact by clear and convincing evidence.

History: Sup. Ct. Order, 67 Wis. 2d 585, 777 (1975); 1993 **a.** 486.

704.22 Service of process in residential tenancy on nonresident party. (1) A party to a residential tenancy in this state who is not a resident of this state shall designate an agent to accept service of process in this state for an action involving the tenancy. The agent shall be a resident of this state or a corporation authorized to do business in this state. If a party is a corporation, the agent is the corporation's registered agent.

(2) Designation of an agent under sub. (1) shall be in writing and filed with the department of financial institutions.

History: 1981 c. 300; 1995 a. 27.

704.23 Removal of tenant on termination of tenancy. If a tenant remains in possession without consent of the tenant's landlord after termination of the tenant's tenancy, the landlord may in every case proceed in any manner permitted by law to remove the tenant and recover damages for such holding over.

History: 1993 a. 486.

704.25 Effect of holding over after expiration of lease; removal of tenant. (1) REMOVAL AND RECOVERY OF DAMAGES. If a tenant holds over after expiration of a lease, the landlord may in every case proceed in any manner permitted by law to remove the tenant and recover damages for such holding over.

(2) CREATION OF PERIODIC TENANCY **BY** HOLDING OVER. (a) *Nonresidential leases for a year or longer.* If premises are leased for a year or longer primarily for other than private residential purposes, and the tenant holds over after expiration of the lease, the landlord may elect to hold the tenant on a year–to–year basis.

(b) *All other leases.* If premises are leased for less than a year for any use, or if leased for any period primarily for private residential purposes, and the tenant holds over after expiration of the lease, the landlord may elect to hold the tenant on a month–to–month basis; but if such lease provides for a weekly or daily rent, the landlord may hold the tenant only on the periodic basis on which rent is computed.

(c) *When election takes place.* Acceptance of rent for any period after expiration of a lease or other conduct manifesting the landlord's intent to allow the tenant to remain in possession after the expiration date constitutes an election by the landlord under this section unless the landlord has already commenced proceedings to remove the tenant.

(3) TERMS OF TENANCY CREATED BY HOLDING OVER. A periodic tenancy arising under this section is upon the same terms and con-

ditions as those of the original lease except that any right of the tenant to renew or extend the lease, or to purchase the premises, or any restriction on the power of the landlord to sell without first offering to sell the premises to the tenant, does not carry over to such **a** tenancy.

(4) EFFECT OF CONTRARY AGREEMENT. This section governs except as the parties agree otherwise either by the terms of the lease itself or by an agreement at any subsequent time.

(5) HOLDOVER BY ASSIGNEE OR SUBTENANT. If an assignee or subtenant holds over after the expiration of the lease, the landlord may either elect to:

(a) Hold the assignee or subtenant or, if he or she participated in the holding over, the original tenant as a periodic tenant under sub. *(2);* or

(b) Remove any person in possession and recover damages from the assignee or subtenant or, if the landlord has not been accepting rent directly from the assignee or subtenant, from the original tenant.

(6) NOTICE TERMINATING A TENANCY CREATED BY HOLDING OVER. Any tenancy created pursuant to this section is terminable under **s.** 704.19.

History: 1983 **a. 36.**

704.27 Damages for failure of tenant to vacate at end of lease or after notice. If a tenant remains in possession without consent of the tenant's landlord after expiration of a lease or termination of a tenancy by notice given by either the landlord or the tenant, or after termination by valid agreement of the parties, the landlord may recover from the tenant damages suffered by the landlord because of the failure of the tenant to vacate within the time required. In absence of proof of greater damages, the landlord may recover as minimum damages twice the rental value apportioned on a daily basis for the time the tenant remains in possession. **As** used in this section, rental value means the amount for which the premises might reasonably have been rented, but not less than the amount actually paid or payable by the tenant for the prior rental period, and includes the money equivalent of any obligations undertaken by the tenant as part of the rental agreement, such as payment of taxes, insurance and repairs.

History: 1993 **a.** 486.

This section requires a minimum award of double rent when greater damages have not been proved. Vincenti v. Stewart, 107 Wis. 2d 651,321 N.W.2d 340 (Ct. App. 1982).

"Rental value" includes only those obligations that the tenant **is** required *to* pay during a holdover period regardless of whether or not the teuant **uses** the premises. Univest Corp. v. General Split Corp. 148 Wis. 2d 29,435 N.W.2d 234 (1989).

704.29 Recovery of rent and damages by landlord; mitigation. (1) SCOPE OF SECTION. If a tenant unjustifiably removes from the premises prior to the effective date for termination of the tenant's tenancy and defaults in payment of rent, or if the tenant is removed for failure to pay rent or any other breach of a lease, the landlord can recover rent and damages except amounts which the landlord could mitigate in accordance with this section, unless the landlord has expressly agreed to accept a surrender of the premises and end the tenant's liability. Except as the context may indicate otherwise, this section applies to the liability of a tenant under a lease, a periodic tenant, or an assignee of either.

(2) MEASURE OF RECOVERY. (a) In this subsection, "reasonable efforts" mean those steps that the landlord would have taken to rent the premises if they had been vacated in due course, provided that those steps are in accordance with local rental practice for similar properties.

(b) In any claim against a tenant for rent and damages, or for either, the amount of recovery is reduced by the net rent obtainable by reasonable efforts to rerent the premises. In the absence of proof that greater net rent is obtainable by reasonable efforts to rerent the premises, the tenant is credited with rent actually received under a rerental agreement minus expenses incurred as a reasonable incident of acts under sub. (4), including a fair proportion of any cost of remodeling or other capital improvements. In any case the landlord can recover, in addition to rent and other elements of damage, all reasonable expenses of listing and advertising incurred in rerenting and attempting to rerent, except as taken into account in computing the net rent under the preceding sentence. If the landlord has used the premises as part of reasonable efforts to rerent, under sub. (4) (c), the tenant is credited with the reasonable value of the use of the premises, which is presumed to be equal to the rent recoverable from the defendant unless the landlord proves otherwise. If the landlord has other similar premises for rent and receives an offer from a prospective tenant not obtained by the defendant, it is reasonable for the landlord to rent the other premises for the landlord's own account in preference to those vacated by the defaulting tenant.

(3) BURDEN OF PROOF. The landlord must allege and prove that the landlord has made efforts to comply with this section. The tenant has the burden of proving that the efforts of the landlord were not reasonable, that the landlord's refusal of any offer to rent the premises or a part thereof was not reasonable, that any terms and conditions upon which the landlord has in fact rerented were not reasonable, and that any temporary use by the landlord was not part of reasonable efforts to mitigate in accordance with sub. (4) (c); the tenant also has the burden of proving the amount that could have been obtained by reasonable efforts to mitigate by rerenting.

(4) ACTS PRIVILEGED IN MITIGATION OF RENT OR DAMAGES. The following acts by the landlord do not defeat the landlord's right to recover rent and damages and do not constitute an acceptance of surrender of the premises:

(a) Entry, with or without notice, for the purpose of inspecting, preserving, repairing, remodeling and showing the premises;

(b) Rerenting the premises or **a** part thereof, with or without notice, with rent applied against the damages caused by the original tenant and in reduction of rent accruing under the original lease;

(c) Use of the premises by the landlord until such time as rercnting at a reasonable rent is practical, not to exceed one year, if the landlord gives prompt written notice to the tenant that the landlord is using the premises pursuant to this section and that the landlord will credit the tenant with the reasonable value of the use of the premises to the landlord for such a period;

(d) Any other act which is reasonably subject to interpretation as being in mitigation of rent or damages and which does not unequivocally demonstrate an intent to release the defaulting tenant.

History: 1993 **a.** 486; 1995 a. 85.

Acceptance of the surrender of premises terminated the lease and deprived the landlord of the right to seek future rent. First Wisconsin Trust Co. v. L. Wiemann Co. 93 Wis. 2d 258,286 N.W.2d 360 (1980).

A court's retention of jurisdiction to determine damages for rents not yet due is permitted. Mitigation expenses that may be recovered are limited to necessary expenses incurred and do not include compensation for time spent in mitigating damages. Kersten v. H.C. Prange Co. 186 Wis. 2d 49, 520 N.W.2d 99 (Ct. App. 1994).

A landlord has an obligation *to* rerent when a tenant breaches a lease. Specific performance is not a proper remedy. Chi–Mil. Corp. v. W. T. Grant Co. 422 F. **Supp.** 46 (1976).

A landlord may elect to accept the surrender of premises by a tenant, which terminates any further obligation of the tenant under the lease, but which also relieves the landlord from the obligation to apply payments from the new tenant to the former tenant's unpaid rental obligations CCS North Henry, LLC v Tully, 2001 WI App 8,240 Wis 2d 534, ___ N W 2d ___

704.31 Remedy on default in long terms; improvements. (1) If there is a default in the conditions in any lease or a breach of the covenants thereof and such lease provides for a term of 30 years or more and requires the tenant to erect or construct improvements or buildings upon the land demised at the tenant's own cost and exceeding in value the sum of $50,000, and such improvements have been made and the landlord desires to terminate the lease and recover possession of the property described therein freed from all liens, claims or demands of such lessee, the landlord may, in case of any breach or default, commence an action against the tenant and all persons claiming under the tenant to recover the possession of the premises leased and proceed in all respects as if the action was brought under the statute to foreclose a mortgage upon real estate, except that no sale of the premises shall be ordered.

(2) The judgment shall determine the breach or default complained of, fix the amount due the landlord at such time, and state the several amounts to become due within one year from the entry thereof, and provide that unless the amount adjudged to be due from the tenant, with interest thereon as provided in the lease or by law, shall be paid to the landlord within one year from the entry thereof and the tenant shall, within such period, fully comply with the judgment requiring the tenant *to* make good any default in the conditions of the lease, that the tenant and those claiming under the tenant shall be forever barred and foreclosed of any title or interest in the premises described in the lease and that in default of payment thereof within one year from the entry of the judgment the tenant shall be personally liable for the amount thereof. During the one–year period ensuing the date of the entry of the judgment the possession of the demised premises shall remain in the tenant and the tenant shall receive the rents, issues and profits thereof; but if the tenant fails to comply with the terms of the judgment and the same is not fully satisfied, and refuses to surrender the possession of the demised premises at the expiration of said year, the landlord shall be entitled to a writ of assistance or execution to be issued and executed as provided by law.

(3) This section does not apply to a lease to which a local professional baseball park district created under subch. III of ch. 229 or the Fox River Navigational System Authority is a party.

History: **1993** a. 486; 1995 a. 56: 2001 a. 16.

704.40 Remedies available when tenancy dependent upon life of another terminates. (1) Any person occupying premises as tenant of the owner of a life estate or any person owning an estate for the life of another, upon cessation of the measuring life, is liable to the owner of the reversion or remainder for the reasonable rental value of the premises for any period the occupant remains in possession after termination of the life estate. Rental value as used in this section has the same meaning as rental value defined in **s.** 704.27.

(2) The owner of the reversion or remainder can remove the occupant in any lawful manner including eviction proceedings under ch. 799 as follows:

(a) If the occupant has no lease for a term, upon terminating the occupant's tenancy by giving notice as provided in **s.** 704.19;

(b) If the occupant **is** in possession under a lease for a term, upon termination of the lease or one year after written notice to the occupant given in the manner provided by s. 704.21 whichever occurs first, except that a farm tenancy can be tenninated only at the end of a rental year.

(3) The occupant must promptly after written demand give information as to the nature *of* the occupant's possession. If the occupant fails to do so, the reversioner or remainderman may treat the occupant as a tenant from month–to–month.

History: **1979** *c.* **32** s. 92 (16); 1993 **a.** 486.

704.45 Retaliatory conduct in residential tenancies prohibited. (1) Except as provided in sub. (2), a landlord in a residential tenancy may not increase rent, decrease services, bring an action for possession of the premises, refuse to renew a lease or threaten any of the foregoing, if there is a preponderance of evidence that the action or inaction would not occur but for the landlord's retaliation against the tenant for doing any of the following:

(a) Making a good faith complaint about a defect in the premises to an elected public official or a local housing code enforcement agency.

(b) Complaining to the landlord about a violation of s. 704.07 or a local housing code applicable to the premises.

(c) Exercising a legal right relating to residential tenancies.

(2) Notwithstanding sub. (1), a landlord may bring an action for possession of the premises if the tenant has not paid rent other than a rent increase prohibited by sub. (I).

(3) This section does not apply to complaints made about defects in the premises caused by the negligence or improper use of the tenant who is affected by the action or inaction.

History: 1981 **c. 286.**

704.50 Disclosure duty; immunity for providing notice about the sex offender registry. (1) Except as provided in sub. (2), a landlord or his or her agent has no duty to disclose to any person in connection with the rental of real property any information related to the fact that a particular person is required to register as a sex offender under s. 301.45 or any information about the sex offender registry under **s.** 301.45.

(2) If, in connection with the rental of real property, a person requests of a landlord or his or her agent information related to whether a particular person is required to register as a sex offender under **s.** 301.45 or any other information about the sex offender registry under **s.** 301.45, the landlord or agent has a duty to disclose such information, if the landlord or agent has actual knowledge of the information.

(3) Notwithstanding sub. (2), the landlord or agent is immune from liability for any act or omission related to the disclosure of infonnation under sub. (2) if the landlord or agent in a timely manner provides to the person requesting the information written notice that the person may obtain infomation about the sex offender registry and persons registered with the registry by contacting the department of corrections. The notice shall include the appropriate telephone number and Internet site of the department of corrections.

History: **1999 a. 89.**

704.90 Self–service storage facilities. (1) DEFINITIONS. In this section:

(a) "Default" means the lessee fails to pay rent or other charges due under a rental agreement for a period of 7 consecutive days after the due date under the rental agreement.

(am) "Last–known address" means the address provided by a lessee to an operator in the most recent rental agreement between the lessee and the operator or the address provided by a lessee to an operator in a written notice of a change of address, whichever address is provided later.

(b) "Leased space" means space located within a self–service storage facility that a lessee is entitled to use for the storage of personal property on a self–service basis pursuant to a rental agreement and that is not rented or provided to the lessee in conjunction with property for residential use by the lessee.

(c) "Lessee" means a person entitled to the use of a leased space, to the exclusion of others, under a rental agreement, or the person's sublessee, successor or assign.

(d) "Operator" means the owner, lessor or sublessor of a self–service storage facility, an agent of any of them or any other person who is authorized by the owner, lessor or sublessor to manage the self–service storage facility or to receive rent from a lessee under a rental agreement.

(e) "Personal property" means movable property not affixed to land, including goods, wares, merchandise, motor vehicles, watercraft, household items and furnishings.

(f) "Rental agreement" means a lease or agreement between a lessee and an operator that establishes or modifies any provisions concerning the use of a leased space, including who is entitled to the use of the leased space.

(g) "Self–service storage facility" means real property containing leased spaces but does not include a warehouse or other facility if the operator of the warehouse or facility issues a warehouse receipt, bill of lading or other document of title for personal property stored in the leased spaces.

(2) USE OF LEASED SPACE. (a) An operator may not knowingly pcnnit a leased space to be used for residential purposes.

(b) A lessee may not use a leased space for residential purposes.

(2m) WRITTEN RENTAL AGREEMENT. Every rental agreement shall be in writing and shall contain a provision allowing the lessee to specify the name and last–known address of a person who, in addition to the lessee, the operator is required to notify under sub. (5) (b) 1.

(3) LIEN AND NOTICE IN RENTAL AGREEMENT. (a) An operator has a lien on all personal property stored in a leased space for rent and other charges related to the personal property, including expenses necessary to the preservation, removal, storage, preparation for sale and sale of the personal property. The lien attaches as of the first day the personal property is stored in the leased space and is superior to any other lien on or security interest in the personal property except for a statutory lien or a security interest that is perfected by filing prior to the first day the personal property is stored in the leased space, a security interest in a vehicle perfected under ch. 342 or a security interest in a boat perfected under ch. 30.

(b) A rental agreement shall state in boldface type that the operator has a lien on personal property stored in a leased space and that the operator may satisfy the lien by selling the personal property, as provided in this section, if the lessee defaults or fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement.

(4) CAKE AND CUSTODY. Except as provided in the rental agreement and in this section, a lessee has exclusive care, custody and control of personal property stored in the lessee's leased space.

(49) DEFAULT OR FAILURE TO PAY AFTER TERMINATION. A lessee who defaults or fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement is subject to the procedures and remedies in subs. (4r) to (9) and (12).

(4r) DENIAL OF ACCESS: REMOVAL AND STORAGE. (a) If a lessee defaults, an operator may deny the lessee access to the personal property until the lessee redeems the personal property under sub. (5) (a).

(b) After the termination, by expiration or otherwise, of a rental agreement for the use of a leased space by a lessee, an operator may remove personal property remaining in the leased space and store the personal property at another site within or outside the self–service storage facility or the operator may continue to store the personal property in the leased space, and the operator may deny the former lessee access to the personal property until the lessee redeems the personal property under sub. (5) (a). The operator may charge a reasonable rent for storage of the personal property, whether at another site or in the leased space. A former lessee who fails to pay the rent is subject to all procedures and remedies set forth in this section for default.

(5) REDEMPTION AND NOTICE OF OPPORTUNITY TO REDEEM. (a) **At** any time prior to sale under sub. (6), a lessee may redeem personal property by paying the operator any rent and other charges due. Upon receipt of such payment, the operator shall return the personal property, and thereafter the operator shall have no liability to any person with respect to such personal property.

(b) An operator may not sell personal property under sub. (6) unless the operator first delivers the following 2 notices:

1. A first notice sent by regular mail to the last–known address of the lessee and the person, if any, specified in the rental agreement under sub. (2m) containing all of the following:

a. Notification that the lessee is in default or has failed to pay rent for the storage of personal property abandoned after the termination of the rental agreement or both.

b. **A** brief and general description of the personal property subject to the lien that is reasonably adequate to permit the lessee to identify it, except that any container including, but not limited to, a trunk, valise or box that is locked, fastened, sealed or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

c. A notice of denial of access to the personal property if such denial is pennitted under the terms of the rental agreement or under sub. (4r).

d. The name, street addrcss and telephone number of the operator whom the lessee may contact to redeem the personal property by paying the rent and other charges due.

2. A 2nd notice sent by certified mail to the last–known address of the lessee containing all of the following:

a. **A** statement that the operator has a lien on personal property stored in a leased space.

ag. **A** brief and general description of the personal property subject to the lien that is reasonably adequate to permit the lessee to identify it, except that any container including, but not limited to, a trunk, valise or box that is locked, fastened, sealed or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

am. **A** notice of denial of access to the personal property if such denial is permitted under the terms of the rental agreement or under sub. (4r).

b. An itemized statement of the operator's claim for rent and other charges due as of the date of the notice and of additional rent and other charges that will become due prior to sale and the dates when they will become due.

c. **A** demand for payment of the rent and other charges due within a time period not sooner than 14 days after the date of the notice.

d. **A** statement that unless the rent and other charges are paid within the time period under subd. ***2.*** c., the personal property will be sold, a specification of the date, time and place of sale and a statement that if the property is sold the operator shall apply the proceeds of the sale first to satisfy the lien and shall report and deliver any balance to the state treasurer as provided under ch. 177.

e. The name, street address and telephone number of the operator whom the lessee may contact to redeem the personal property by paying the rent and other charges due.

(6) SALE, NOTICE OF SALE AND PROCEEDS OF SALE. (a) After the expiration of the time period given in the 2nd notice under sub. ***(5)*** (b) 2. c., an operator may sell personal property that was stored in a lessee's leased space to satisfy the lien under sub. (3) (a) in the manner set forth in pars. (b) and (c) if all of the following conditions are met:

2. The operator has complied with the notice requirements under sub. (5) (b).

3. The lessee has failed to redeem the personal property under sub. (5) (a) within the time period specified in the notice under sub. (5) (b) 2. c.

4. An advertisement of the sale is published once a week for 2 consecutive weeks in a newspaper of general circulation where the self–service storage facility is located.

5. The advertisement under subd. 4. contains all of the following:

a. A brief and general description of the personal property reasonably adequate to permit its identification, as provided in the notices under sub. (5) (b).

b. The address of the self–service storage facility, the number, if any, of the space where the personal property is located and the name of the lessee.

6. The sale takes place not sooner than 15 days after the first publication under subd. 4.

7. The sale is conducted in a commercially reasonable manner and conforms to the terms of the notices under sub. (5) (b).

8. The sale is held at the self–service storage facility or at the nearest suitable place to the place where the personal property is stored.

(b) The operator shall apply the proceeds of the sale first to satisfy the lien under sub. (3) (a). The operator shall report and

deliver any balance to the state treasurer as provided under ch. 177.

(c) **A** purchaser in good faith of personal property sold takes the personal property free and clear of any rights of any person against whom the lien under sub. (3) (a) was valid and any rights of any other lienholder, regardless of any noncompliance with the requirements of this section by any person.

(7) NOTICE: PRESUMPTION OF DELIVERY. Notice by mailing under sub. *(5)*(b) is presumed delivered if deposited with the U.S. postal service, properly addressed to the last–known address of the lessee or person specified in the rental agreement under sub. (2m) with postage prepaid.

(8) SUPPLEMENTAL NATURE OF SECTION. This section does not impair or affect in any way the right of parties to create liens by special contract or agreement, nor does it impair or affect any lien not arising under this section, whether the other lien is statutory or of any other nature.

(9) RULES. The department of agriculture, trade and consumer protection may promulgate rules necessary to carry out the purposes of this section.

(10) PENALTIES. (a) Except as provided in par. (b), any person who violates this section or any rule promulgated under this section may be required to forfeit not more than $1,000 for the first offense and may be required to forfeit not more than $3,000 for the 2nd or any later offense within a year. Each day of continued violation constitutes a separate offense. The period shall be measured by using the dates of the offenses which resulted in convictions.

(b) Paragraph (a) does not apply to a lessee who violates sub. (4g) or (4r) (b) because he or she defaults or fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement.

(c) Forfeitures under par. (a) shall be enforced by action on behalf of the state by the department of justice or by the district attorney of the county where the violation occurs.

(11) DUTIES OF THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION. (a) Except as provided in par. (c), the department of agriculture, trade and consumer protection shall investigate alleged violations of this section and rules promulgated under sub. (9). To facilitate its investigations, the department may subpoena persons and records and may enforce compliance with the subpoenas as provided in **s.** 885.12.

(b) Except as provided in par. (a), the department may, on behalf of the state, bring an action for tetnporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this section or any rule promulgated under sub. (9).

(c) This subsection does not apply to a lessee who violates sub. (4g) or (4r) (bj because he or she defaults or fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement.

(12) RIGHT TO ACTION FOR VIOLATION. In addition to the remedies otherwise provided by law, any person injured by a violation of this section or any rule promulgated under sub. (9) may bring a civil action to recover damages together with costs, disbursements and reasonable attorney fees, notwithstanding **s.** 814.04 (1), and any equitable relief as may be determined by the court.

History: 1987 **a. 23:** 1991 a. 39; 1995 a. **27.**

CHAPTER 706

CONVEYANCES OF REAL PROPERTY; RECORDING; TITLES

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706.001 Scope and construction. (I) Subject to the exclusions in sub. (2), this chapter shall govern every transaction by which any interest in land is created, aliened, mortgaged, assigned or may be otherwise affected in law or in equity.

(2) Excluded from the operation of this chapter are transactions which an interest in land is affected:

(a) By act or operation of law; or

(b) By will; or

(c) By lease for a term limited to one year or less; or by contract or option to lease for such period which postpones the commencement of the agreed lease to a time not later than 60 days after the date of the contract or option; or by assignment, modification or termination of lease when, at the time such assignment, modification or termination is made, the unexpired term is limited to one year or less, and remains *so* limited under the lease as modified; except that instruments relating to such excluded transactions, if in recordable form, shall be entitled to record.

(3) This chapter shall be liberally construed, in cases of conflict or ambiguity, so as to effectuate the intentions of parties who have acted in good faith.

History: 1999 a. 85 ss. 135. 138.

706.01 Definitions. In this chapter:

(4) "Conveyance" means a written instrument, evidencing a transaction governed by this chapter, that satisfies the requirements of **s.** 706.02.

(5) "Conveyance of mineral interests" means any transaction under s. 706.001 (1) entered into for the purpose of determining the presence, location, quality or quantity of metalliferous minerals or for the purpose of mining, developing or extracting metalliferous minerals, or both. Any transaction under **s.** 706.001 (1) entered into by a mining company is rebuttably presumed to be a conveyance of mineral interests.

(6) "Grantor" means the person from whom an interest in lands passes by conveyance, including, without limitation, lessors, vendors, mortgagors, optionors, releasors, assignors and trust settlors of interest in lands, and "grantee" means the person to whom the interest in land passes. Whenever consistent with the context, reference to the interest of a **party** includes the interest of the party's heirs, successors, personal representatives and assigns.

(7) "Homestead", as used in this chapter, means the dwelling, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, but not less than one–fourth acre, if available. and not exceeding 40 acres.

(7m) "Interest in minerals" means any fee simple interest in minerals beneath the surface of land that is:

(a) Separate from the fee simple interest in the surface of the land; and

(b) Created by an instrument transferring, granting, assigning or reserving the minerals.

(8) "Metalliferous minerals" means naturally occumng minerals containing metal.

(8m) "Mineral" means a naturally occumng substance recognized by standard authorities as mineral, whether metalliferous or nonmetalliferous.

(9) "Mining company" means any person or agent of a person who has a prospecting or mining permit under s. 293.45 or 293.49.

(10) "Signed" includes any handwritten signature or symbol on a conveyance intended by the person affixing or adopting the signature or symbol to constitute an execution of the conveyance.

History: 1971 c. 41; 1977 c. 253; 1983 a 189, 455; 1993 a. 486: 1995 a. 227; 1999 a. 85.

The doctrine of part performance is not an "operation **of** law" under sub. (2) (a) that excludes the application of ch. 706 to a transaction. Wyss v. Albee, 183 Wis. 2d 245, 515 N.W.2d 517 (Ct. App. 1994).

706.02 Formal requisites. (I) Transactions under s. 706.001 (1) shall not be valid unless evidenced by a conveyance that satisfies all of the following:

(a) Identifies the parties; and

(b) Identifies the land; and

(c) Identifies the interest conveyed, and any material term, condition, reservation, exception or contingency upon which the interest is to arise, continue or be extinguished, limited or encumbered; and

(d) Is signed by or on behalf of each of the grantors; and

(e) Is signed by or on behalf of all parties, if a lease or contract to convey; and

(f) Is signed, or joined in by separate conveyance, by or on behalf of each spouse, if the conveyance alienates any interest of a married person in a homestead under s. 706.01 **(7)** except conveyances between spouses, but on a purchase money mortgage pledging that property as security only the purchaser need sign the mortgage; and

(g) **Is** delivered. Except under s. 706.09, a conveyance delivered upon a parol limitation or condition shall be subject thereto only if the issue arises in an action or proceeding commenced within 5 years following the date of such conditional delivery; however, when death or survival of a grantor is made such a limiting or conditioning circumstance, the conveyance shall be subject thereto only if the issue arises in an action or proceeding commenced within such 5–year period and commenced prior to such death.

(2) A conveyance may satisfy any of the foregoing requirements of this section:

(a) By specific reference, in a writing signed as required, to extrinsic writings in existence when the conveyance is executed; or

(b) By physical annexation of several writings to one another, with the mutual consent of the parties; or

(c) By several writings which show expressly on their faces that they refer to the same transaction, and which the parties have mutually acknowledged by conduct or agreement as evidences of the transaction.

History: 1971 c. 211 s. 126; 1977 c. 177; 1999 a. 85.

There can be no waiver of the necessity of a spouse'sjoining in a deed of a homestead and no finding of agency will sustain the deed. Wangen v. Leum, 46 Wis. 2d 60, 174 N.W.2d 266 (1970).

In pleading a contract that is subject to the statute of frauds. it is not necessary to allege facts to establish that the contract complies with the statute or is within its exceptions. Ritterbusch v. Ritterbusch, 50 Wis. 2d 633,184 N.W.2d 865 (1971).

An option to purchase land must be in writing and cannot be modified orally, but a seller may orally agree to accept payment in full rather than in installments. Kubnick v. Bobne, 56 Wis. 2d 527,202 N.W.2d 400 (1972).

The test of undue influence to set aside a will is also applicable in order to void an inter vivos transfer due to undue influence. Ward v. Ward, 62 Wis. 2d 543, 215 N.W.2d 3 (1976).

Standing alone, an added provision in a 30–day option agreement to purchase real estate did not comply with the statute of frauds. Edlebeck v. Barnes, 63 Wis. 2d 240. 216 N.W.2d 551 (1974).

An oral contract for the conveyance of an interest in land is void unless there is a memorandum that conforms to the statute of frauds. Trimblc v. Wis. Builders, Inc. 72 Wis. 2d 435.241 N.W.2d 409 (1976).

When a contract for the sale of land with an indefinite description is taken out of the statute of frauds by Part performance. extrinsic evidence admissible but for the statute of frauds may be introduced to provide the description Clay v Bradley, 74 Wis 2d 153.246 N W2d 142 (1976)

The question under sub. (1) (b) of whether property boundaries are identified to a reasonable certainty is for the jury to determine with the aid of all competent extrinsic evidence. Zapuchlak v. Hucal, 82 Wis. 2d 184,262 N.W.2d 514 (1978).

The homestead defense under s. 706.02 (1) (f) is not defeated by s. 706.04. but a tort claim may exist against a signing spouse who misrepresents the non–signing spouse's acquiescence. Glinski v. Sheldon, 88 Wis. 2d 509,276 N.W.2d 815 (1979).

The defense of the statute of frauds is waived if not raised in the trial court. Hine v. Vilter, 88 Wis. 2d 645,277 N.W.2d 712 (1979).

A mortgage fraudulently executed by the use of a forged signature of one grantor was wholly void. State Bank of Drummond v. Christophersen. 93 Wis. 2d 148,286 N.W.2d 547 (1980).

When a contract for the sale of land and personalty is not divisible, the contract is entirely void if this section is not satisfied. Spensley Feed v. Livingston Feed, 128 Wis. 2d 279,381 N.W.2d 601 (Ct. App. 1985).

The homestead signature requirement of sub. (1) (f) must be waived affirmatively by actual signing of the mortgage. A failure to plead the statute of frauds as an affirmative defense did not constitute a waiver. Weber v. Weber, 176 Wis. 2d 1085,501 N.W.2d 413 (1993).

A quitclaim deed of a married couple's homestead from one spouse to the other is not valid to alienate the grantor's interest in the property in any way that would eliminate either spouse's contractual obligations under a mortgage containing a valid dragnet clause. Schmidt v. Waukesha State Bank, 204 Wis. 2d 426,555 N.W.2d 655 (Ct. App. 1996).

An in–court oral stipulation could create a mortgage interest in property, but a homestead conveyance must bear the conveyor's signatures. Because the stipulation lacked signatures. it was not a mortgage that could defeat the homestead exemption tinder s. 815.20. Equitable Bank, S.S.B. v. Chabron, 2000 WI App 210.238 Wis. 2d 708, 618 N.W.2d 262.

If the language within the four corners of a deed is unambiguous, the court need look no further for the parties' intent. Eckendorfv. Austin, 2000 WI App 219.239 Wis. 2d 69,619 N.W.2d 129.

Spouses may afiimiatively waive the homestead protection in sub. (1) (f) in a premarital agreement. Jones v. Estate of Jones, 2002 WI 61, 253 Wis. 2d 158. 646 N.W.2d 280.

The statute of frauds does not bar a tort action for intentional misrepresentation. Winger v. Winger, 82 F.3d 140 (I 996).

706.03 Agents, officers and guardians. (1) In this section:

(a) "Private corporation" means a corporation other than a public corporation.

(b) "Public corporation" means this state, a county, town, city or village in this state, a subunit of the state, county, town, city or village, a special purpose district in this state or any state or municipal authority or similar organization financed in whole or in part by public funds.

(1m) A conveyance signed by one purporting to act as agent for another shall be ineffective as against the purported principal unless such agent was expressly authorized, and unless the authorizing principal is identified as such in
the conveyance or in the form of signature or acknowledgment. The burden of proving the authority of any such agent shall be upon the person asserting the same.

(2) Unless a different authorization is recorded under sub. (3) or is contained in the corporation's articles of incorporation, any one officer of a private corporation is authorized to sign conveyances in the corporate name. The absence of a corporate seal shall not invalidate any corporate conveyance. Public corporations shall authorize and execute conveyances as provided by law.

(3) Any private corporation may, by resolution of its governing board, duly adopted, certified and recorded in the office of the register of deeds of the county in which a conveyance executed by such corporation is to be recorded, authorize by name or title one or more persons, whether or not officers of such corporation, to execute conveyances, either generally or with specified limitation, in the name and on behalf of such corporation. After adoption and recording of such resolution and until recording of a resolution amending or revoking the same, conveyances may be executed on behalf of such corporation only in accordance with the terms thereof.

(3m) A nonprofit association, as defined in s. 184.01 (2), may authorize a person to execute conveyances of estates or interests in real property by executing and filing a statement of authority under s. 184.05.

(4) A conveyance by a minor or incompetent is effective only if executed by an authorized guardian on behalf of such minor or incompetent. In the case of a limited incompetency, such restriction does not apply if an individual has been determined competent to make contracts under s. 880.33 (3).

History: 1971 c. 228; 1975 c. 393: 1977 c. 428; 1989 a. 303; 1991 a. 16,173; 1997 a. 140.

When a partner's actions in a transaction on behalf of a partnership fall within the express provisions of s. 178.06 (1), the partner is "an agent of the partnership" and s. 178.06 (1) controls. When the partner's actions do not fall within those provisions the partner "purports to act as an agent" and s. 706.03 controls. Wyss v. Albee, 193 Wis. 2d 101,532 N.W.2d 444 (1995).

If the grantor's attorney–in–fact does not have authority to exercise the power of attorney in his or her own favor, any deed that the attorney–in–fact signs to himself or herself and others is void in its entirety under sub. (Im). Lucareli v. Lucareli, 2000 WI App 133,237 Wis. 2d 487,614 N.W.2d 60.

706.04 Equitable relief. A transaction which does not satisfy one or more of the requirements of s. 706.02 may be enforceable in whole or in part under doctrines of equity, provided all of the elements of the transaction are clearly and satisfactorily proved and, in addition:

(1) The deficiency of the conveyance may be supplied by reformation in equity; or

(2) The party against whom enforcement is sought would be unjustly enriched if enforcement of the transaction were denied; or

(3) The party against whom enforcement is sought is equitably estopped from asserting the deficiency. A party may be so estopped whenever, pursuant to the transaction and in good faith reliance thereon, the party claiming estoppel has changed his or her position to the party's substantial detriment under circumstances such that the detriment so incurred may not be effectively recovered otherwise than by enforcement of the transaction, and either:

(a) The grantee has been admitted into substantial possession or use of the premises or has been permitted to retain such possession or use after termination of a prior right thereto; or

(b) The detriment so incurred was incurred with the prior knowing consent or approval of the party sought to be estopped.

History: 1993 a. 486.

A partnership created to deal in real estate is void unless conforming to the statute of frauds unless all parties have performed the contract, thus indicating their acquiescence in its terms. In re Estate of Schaefer, 72 Wis. 2d 600.241 N.W.2d 607 (1976).

In an equity action seeking the conveyance of a farm under an oral agreement, the trial court properly the ordered the conveyance under sub. (3) where the tenants gave up plans to build a bomc on other property. planted crops on the farm, and painted the interior of the farmhouse. Krauza v. Mauritz, 78 Wis. 2d 276,254 N.W.2d 251 (1977).

Personal services to a vendor in reliance upon an oral agreement are not enough. standing alone, to constitute part performance. In the Matter of the Estate of Lade, 82 Wis. 2d 80. 260 N.W.2d 665 (1978).

Under sub. (3) (a), a grantee with knowledge of equitable estoppel against the grantor takes title subject to the estoppel. Brevig v. Webster, 88 Wis. 2d 165, 277 N.W.2d 321 (Ct. Any. 1979).

The homestead defense under s. 706.02 (1) (f) is not defeated by s. 706.04, but a tort claim may exist against a signing spouse who misrepresents the non–signing spouse's acquiescence. Glinski v. Sheldon, 88 Wis. 2d 509,276 N.W.2d 815 (1979).

Failure to execute a document can be cured under this section. The "unclean hands" defense is discussed. Security Pacific National Bank v. Ginkowski, 140 Wis. 2d 332,410 N.W.2d 589 (Ct. App. 1987).

Once a deed has been properly executed and recorded. a court, in equity. may not alter the document when a party later expresses a different intent than was memorialized. Wynhoff v. Vogt, 2000 WI App 57,233 Wis. 2d 673.608 N.W.2d 400.

Section 706.04 does not refer to deficiencies under 706.03. Triple Interest, Inc. v. Motel 6, **Inc.** 414 F. Supp. 589.

706.05 **Formal requisites for record.** **(1)** Subject to *s.* 59.43 (2m), every conveyance, and every other instrument which affects title to land in this state, shall be entitled to record in the office of the register of deeds of each county in which land affected thereby may lie.

(2) Except as different or additional requirements may be provided by law, every instrument offered for record shall:

(a) Bear such signatures as are rcquircd by law;

(b) Contain a form of authentication authorized by **s.** 706.06 or 706.07;

(c) Identify, to the extent that the nature of the instrument permits, and in form and terms which permit ready entry upon the various books and indexes publicly maintained as land records of such county, the land to which such instrument relates and the parties or other persons whose intcrcsts in such land are affected. Except as provided in sub. (2m), identification may be either by the terms of the instrument or by reference to an instrument of record in the same office, naming the place where such record may be found.

(2m) (a) Except as provided in par. (b), any document submitted for recording or fling that is to be indexed in the real estate records, any document submitted for recording or filing that modifies an original mortgage or land contract and any subordination agreement submitted for recording or filing shall contain the full legal description of the property to which it relates if the document or subordination agreement is intended to relate to a particular parcel of land. The legal description may be included on the document or may be attached to the document. Any such document shall also contain the document number of any original mortgage or land contract that the document affects and, if given on the original mortgage or land contract, the volume and page numbers of the original mortgage or land contract.

(b) The requirement of a full legal description under par. (a) docs not apply to:

1. Descriptions of casements for the construction, operation or maintenance of electric, gas, railroad, water, telecommunications or telephone lines or facilities.

2. Descriptions of property that is subject to liens granted on property thereafter acquired by a rural electric cooperative, or a telephone cooperative, organized under ch. 185, by a pipeline company under **s.** 76.02 (5), by a public utility under **s.** 196.01 *(5)* or by a railroad under *s.* 195.02 (1) or *(5)*.

(c) The requirement under par. (a) does not affect the validity of liens under par. (b) 2.

(3) In addition to the requirements undcr sub. (2), every conveyance of mineral interests offered for record shall:

(a) Fully disclose the terms and conditions of the agreement including both the financial arrangements and the exploration rights. Financial arrangements include the consideration exchanged for the interest in land, temis for payment, optional payments, royalty agreements and similar arrangcments. Exploration rights include the conditions and extent of any surface and subsurface rights to the land. options to purchase further interest in the land, options to conduct mining operations and similar arrangements.

(b) Fully disclose the parties including any principal, parent corporation, partner or business associate with an interest in the conveyance. This paragraph shall be interpreted to provide maximum disclosure of any person with an economic interest in the transaction.

(4) Any person who anticipates becoming a party to a number of conveyances of a given form may cause a prototype of such form to be recorded, accompanied by a certificate declaring the intention of the recording party to incorporate the terms of such prototype in future recorded conveyances by reference.

(5) Copies of instruments affecting title to land in this state, authenticated by certificate of any public officer, either of this or any other state or foreign country, in whose office the original is filed or recorded pursuant to law, may be recorded in every case in which the original would be entitled to record under this section.

(6) Except as may otherwise be expressly provided, no instrument shall be denied acceptance for record because of the absence of venue, seals, witnesses or other matter of form.

(7) Every instrument which the register of deeds shall accept for record shall be deemed duly recorded despite its failure to conform to one or more of the requirements of this section, provided the instrument is properly indexed in a public index maintained in the office of such register of deeds and recorded at length at the place there shown.

(8) A duly recorded Certificate signed by or on behalf of the holder of record of any mortgage or other security interest in lands. and authenticated as provided by **s.** 706.06 or 706.07 identifying the mortgage or other interest and stating that the same has been paid or satisfied in whole or in part, shall be sufficient to satisfy such mortgage or other interest of record.

(9) If any mortgage–holder after partial performance of the conditions of the mortgage, whether before or after a breach thereof, unreasonably fails or refuses to execute and record, within 7 days after written request and tender of recording fees, a proper partial satisfaction of the mortgage together with any instruments required to establish of record the right of the mortgagor to satisfy the same, the mortgage–holder is liable to the mortgagor in the sum of $100 penalty damages, plus actual damages occasioned by the failure or refusal.

(10) (a) Unless otherwise requested in writing or unless par. (b) applies, a mortgage–holder shall execute and record a proper full satisfaction of a mortgage, together with any instruments required to establish of record the right of the mortgagor to satisfy the mortgage, within 30 days after the date on which the mortgagor completes full performance of the conditions of the mortgage.

(b) A mortgage–holder shall execute and record a mortgage satisfaction as required under par. (a) within 7 days after both the mortgagor completes full performance and the mortgage–holder receives by certified mail a written request from the mortgagor for a full satisfaction.

(c) Any person who violates par. (b) is liable to the mortgagor for penalty damages of $100 for each day that the violation remains uncorrected, up to a total of $2,000, plus actual damages resulting from the violation. A person may not be held liable for actual damages unless the mortgagor paid the costs that are to be compensated.

(d) **A** mortgage–holder may charge a mortgagor for the cost of fees paid in recording the satisfaction.

(12) Every conveyance of any interest in real property offered for recordation shall be accompanied by the form under *s.* 77.22 (2). If the property is subject to certification under **s.** 101.122 (4) (a), waiver under s. 101.122 (4) (b) or stipulation under s. 101.122 (4) (c). the documents of Conveyance offered for recordation shall have appended the certificate required under s. 101. 122 (4) (a). a waiver under **s.** 101.122 (4) (b) or a stipulation under **s.** 101.122 (4) (c).

History: 1971 *c.* 211; 1977 c. 217,253,447: 1979 *c.* 221; 1983 a. 492 **s. 3:** 1985 a. 174: 1991 a. 66,269: 1993 a. 145,486; 1995 a. 110, 201; 1997 a. 35: 1999 **a.** 96.

706.055 **Register of mineral rights.** The register of deeds shall record all conveyances of mineral interests in a register of mineral rights.

History: 1977 c. 253.

706.057 **Lapse and reversion of interests in minerals.** **(1)** APPLICABILITY. This section does not apply to an interest in

minerals which is owned by the same person who owns the fee simple interest in the surface of the land above the interest in minerals.

(2) USE OF AN INTEREST IN MINERALS. In this section, an interest in minerals is used if any of the following occur:

(a) Any minerals are mined in exploitation of the interest in minerals.

(b) A conveyance of mineral interests is recorded under this chapter.

(c) Any other conveyance evidencing a transaction by which the interest in minerals is created, aliened, reserved, mortgaged or assigned is recorded under this chapter.

(d) Property taxes are paid on the interest in minerals by the owner of the interest in minerals.

(e) The owner of the interest in minerals records a statement of claim under sub. (4) or (5) concerning the interest in minerals.

(3) LAPSE. (a) Except as provided in par. (b) or (c), an interest in minerals lapses if the interest in minerals was not used during the previous 20 years.

(b) An interest in minerals which was not used during the 20–year period prior to July 1, 1984, does not lapse if the interest in minerals is used within 3 years after July 1, 1984.

(c) An interest in minerals which was used during the period from 17 to 20 years prior to July 1, 1984, does not lapse if the interest in minerals is used within 3 years after July 1, 1984.

(4) STATEMENT OF CLAIM; RECORDING; REQUIREMENTS. If the owner of an interest in minerals uses the interest in minerals by recording a statement of claim, the statement of claim shall comply with this subsection. The statement of claim shall contain the name and address of the owner of the interest in minerals, a description of the location and boundary of the interest in minerals and a reference to the recorded instrument which created the interest in minerals. The statement of claim shall be recorded with the register of deeds for the county in which the interest in minerals is located.

(5) CURE OF LAPSE. The lapse of an interest in minerals under sub. (3) is cured if the owner of the interest in minerals records a statement of claim complying with all of the requirements of sub. (4) before the surface owner records a statement of claim under sub. (6) (a) or before a statement of claim takes effect under sub. (6) (b) 1., whichever is later.

(6) CLAIM OF LAPSED INTEREST IN MINERALS. (a) The owner of the land under which an interest in minerals exists may claim that portion of a lapsed interest in minerals which lies beneath the owner's land by recording a statement of claim. The statement of claim shall contain the name and address of the owner of the land under which the lapsed interest in minerals is located and a description of the land under which the interest in minerals is located. The statement of claim shall be recorded with the register of deeds for the county in which the land is located.

(b) 1. Except as provided in subd. 2., a statement of claim which is recorded under par. (a) before the lapse of the interest in minerals to which the claim applies takes effect when the interest in minerals lapses.

2. A statement of claim which is recorded under par. (a) before the lapse of the interest in minerals to which the claim applies is void 6 years after the statement of claim is recorded if the interest in minerals does not lapse within that 6–year period.

(7) STATEMENT OF CLAIM: RECORDING: REGISTER OF DEEDS' DUTY. The register of deeds shall provide copies of the uniform form for statements of claim under subs. (4), (5) and (6). Upon receipt of a statement of claim under sub. (4), (5) or (6) in the office of the register of deeds, the register of deeds shall record the claim in a manner which will permit the existence of an interest in minerals to be determined by reference to the parcel or parcels of land above the interest in minerals. The claimant shall pay the recording fee under s. 59.43 (2).

(9) DETERMINATION OF OWNERSHIP. (a) The owner of an interest in minerals which is the subject of a claim under sub. (6) (a), within 3 years after the claim is recorded with the register of deeds or within 3 years after the claim takes effect as provided under sub. (6) (b) 1., whichever is later, may bring an action for a declaratory judgment or declaration of interest on the ownership of the interest in minerals. The action shall be commenced in the circuit court in the county where the interest in minerals is located.

(b) 1. If the court finds that the owner of the interest in minerals used the interest in minerals within the time limits specified under sub. (3) or that the owner of the interest in minerals recorded a claim under sub. (5) before the surface owner recorded a claim under sub. (6) (a) or before the claim took effect as provided under sub. (6) (b) 1., whichever is later, the court shall issue a judgment declaring that the interest in minerals is not lapsed.

2. If the court finds that the owner of the interest in minerals did not use the interest in minerals within the time limits specified under sub. (3) and did not record the claim under sub. (5) before the surface owner recorded the claim under sub. (6) (a) or before the claim took effect as provided under sub. (6) (h) 1. whichever is later, the court shall issue a judgment affirming the surface owner's claim.

(c) Upon the issuance of a judgment affirming the surface owner's claim or, if no action is brought under par. (a), at the end of the 3–year period after the surface owner's claim is recorded or at the end of the 3–year period after the claim takes effect as provided under sub. (6) (b) 1., whichever is later, the ownership of the interest in minerals reverts to the owner of the land under which the lapsed interest in minerals is located and title to the interest in minerals is merged with the title to the surface of the land.

(10) WAIVER; LIMITATION. No person may waive or agree to waive the provisions of this section and any waiver or agreement of this type is void.

History: 1983 a. 455; 1985 a. 29: 1995 a. 201.

Due process requires that every owner of a recorded interest, including a mineral interest under s. 706.057, be provided written notice of an application for a tax deed. 74 Atty. Gen. 59.

Under this section the owner of land under which mineral rights have lapsed must record a claim to the lapsed mineral rights in order to foreclose a separate mineral rights owner from curing the lapse. 79 Atty. Gen. 61.

706.06 Authentication. (1) Any instrument may be acknowledged. or its execution otherwise authenticated by its signators, as provided by the laws of this state; or as provided in this section or s. 706.07.

(2) Any public officer entitled by virtue of his or her office to administer oaths, and any member in good standing of the State Bar of Wisconsin, may authenticate one or more of the signatures on an instrument relating to lands in this state, by endorsing the instrument "Acknowledged," "Authenticated," or "Signatures Guaranteed," or other words to similar effect, adding the date of authentication. his or her own signature, and his or her official or professional title. The endorsement, unless expressly limited, shall operate as an authentication of all signatures on the instrument; and shall constitute a certification that each authenticated signature is the genuine signature of the person represented; and, as to signatures made in a representative capacity, shall constitute a certification that the signer purported, and was believed, to be such representative.

(3) Affidavits shall be authenticated by a certificate of due execution of the instrument, executed by a person entitled to administer oaths.

(4) In addition to any criminal penalty or civil remedy otherwise provided by law, knowingly false authentication of an instrument shall subject the authenticator to liability in tort for compensatory and punitive damages caused thereby to any person.

History: 1971c. 211; 1973 c. 243; 1979 c. 110; 1983 a. 492 s. 3; 1993 a. 486; 2001 a. 103.

706.07 Uniform law on notarial acts. (1) DEFINITIONS. In this section:

(a) "Acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein.

(b) "In a representative capacity" means:

1. For and on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;

2. As a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;

3. As an attorney in fact for a principal; or

4. In any other capacity as an authorized representative of another.

(c) "Notarial act" means any act that a notary public of this state is authorized to perform, and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(d) "Notarial officer" means a notary public or other officer authorized to perform notarial acts.

(e) 'Verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation.

(2) NOTARIAL ACTS. (a) In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

(b) In taking a verification upon oath or affirmation, the notarial officer must dctcrmine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

(c) In witnessing or attesting a signature, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named therein.

(d) In certifying or attesting a copy of a document or other item, the notarial officer must determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.

(e) In making or noting a protest of a negotiable instrument, the notarial officer must determine the matters set forth in **s. 403.505** (2).

(f) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person:

1. Is personally known to the notarial officer;

2. Is identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or

3. Is identified on the basis of identification documents.

(3) NOTARIAL ACTS IN THIS STATE. (a) A notarial act may be performed within this state by the following persons of this state:

1. A notary public;

2. A judge, clerk or deputy clerk of a court of record;

3. A court commissioner;

4. A register of deeds or deputy register of deeds;

5. A municipal judge; or

6. A county clerk or deputy county clerk.

(b) Notarial acts performed within this state under federal authority as provided in sub. **(5)** have the same effect as if performed by a notarial officer of this state.

(c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(4) NOTARIAL ACTS IN OTHER JURISDICTIONS OF THE UNITED STATES. (a) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state, if performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

1. A notary public of that jurisdiction;

2. A judge, clerk, or deputy clerk of a court of that jurisdiction; or

3. Any other person authorized by the law of that jurisdiction to perfonn notarial acts.

(b) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in sub. **(5)** have the same effect as if performed by a notarial officer of this state.

(c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(d) The signature and indicated title of an officer listed in par. (a) 1. or 2. conclusively establish the authority of a holder of that title to perform a notarial act.

(5) NOTARIAL ACTS UNDER FEDERAL AUTHORITY. (a) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed anywhere by any of the following persons under authority granted by the law of the United States:

1. A judge, clerk, or deputy clerk of a court.

2. A commissioned officer on active duty in the military service of the United States.

3. An officer of the foreign service or consular officer of the United States.

4. Any other person authorized by federal law to perform notarial acts.

(b) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(c) The signature and indicated title of an officer listed in par. (a) 1., 2. or 3. conclusively establish the authority of a holder of that title to perfonn a notarial act.

(6) FOREIGN NOTARIAL ACTS. (a) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

1. A notary public or notary;

2. A judge, clerk, or deputy clerk of a court of record; or

3. Any other person authorized by the law of that jurisdiction to perform notarial acts.

(b) An "apostille" in the form prescribed by the Hague convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(c) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(d) An official stamp or seal of the person perfonning the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

(e) An official stamp or seal of an officer listed in par. (a) 1. or 2. is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

(f) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that infomiation, the authority of an

officer with that title to perform notarial acts is conclusively established.

(7) CERTIFICATE OF NOTARIAL ACTS. (a) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is perfonned and the title of the office of the notarial officer and may include the official stamp or seal of office. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States. it must also include the officer's rank.

(b) A certificate of a notarial act is sufficient if it meets the requirements of par. (a) and it:

1. Is in the short fonn set forth in sub. (8);

2. Is in a form otherwise prescribed by the law of this state;

3. Is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

4. Sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

(c) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determination required by sub. (2).

(8) SHORT FORMS. The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by sub. (7) (a):

(a) For an acknowledgment in an individual capacity:

State of ....

County of ....

This instrument was acknowledged before me on (date) by (name(s) of person(s)).

....(Signature of notarial officer)

(Seal, if any)

....Title (and Rank) [My commission expires: ....]

(b) For an acknowledgment in a representative capacity:

State of ....

County of ....

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, ctc.) of (name of party on behalf of whom instrument was executed).

.... (Signature of notarial officer)

(Seal, if any)

....Title (and Rank) [My commission expires: ....]

(c) For a verification upon oath or affirmation:

State of ....

County of ....

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement).

....(Signature of notarial officer)

(Seal, if any)

....Title (and Rank) [My commission expires: ....]

(d) For witnessing or attesting a signature:

State of ....

County of ....

Signed or attested before me on (date) by (name(s) of person(s)).

....(Signature of notarial officer)

(Seal, if any)

....Title (and Rank) [My commission expires: ....]

(e) For attestation of a copy of a document:

State of ...

County of ....

1 certify that this is a true and correct copy of a document in the possession of ....

Dated: ....

....(Signature of notarial officer)

(Seal,, if any)

.....Title (and Rank) [My commission expires: ....]

(9) NOTARIAL ACTS AFFECTED BY THIS SECTION. This section applies to notarial acts performed on or after November 1, 1984.

(10) UNIFORMITY OF APPLICATION AND CONSTRUCTION. This section shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this section among states enacting it.

(11) SHORT TITLE. This section may be cited as the uniform law on notarial acts.

History: 1983 a. 492: 1989 a. 123; 1995 a. 449; 1999 a. 85.

706.08 Nonrecording, effect. (1) (a) Except for patents issued by the United States or this state, or by the proper officers of either, every conveyance that is not recorded as provided by law shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate or any portion of the same real estate whose conveyance is recorded first.

(b) A conveyance of mineral interests which is not recorded in the office of the register of deeds of the county in which the land is located, within 30 days after it is signed by the lessor, is void.

(2) Where a public tract index or abstract of title index is maintained, an instrument properly indexed therein and recorded at length at the place there shown shall be deemed to be duly recorded for purposes of this section, despite any error or omission in the process of including the instrument, or prior instruments in the same chain of title, in other records. Where an instrument is not properly indexed in such tract or abstract of title index, or where such index is not publicly maintained, the instrument shall be deemed to be duly recorded only if the instrument, together with prior instruments necessary to trace title by use of alphabetical indexes by names of parties, are properly indexed in such alphabetical indexes, and recorded at length at the places there shown. Wherever an instrument is duly recorded hereunder, its record shall be effective as of the date and hour at which it is shown by the general index to have been accepted for record.

(3) When an express trust is created, but its existence is not disclosed in a recorded conveyance to the trustee, the title of the trustee shall be deemed absolute as against the subsequent creditors of the trustee not having notice of the trust and as against purchasers from such trustee without notice and for a valuable consideration.

(4) It shall be conclusively presumed that a person is a trustee of a valid express trust and has full power of conveyance if all of the following occur:

(a) The person is designated as trustee and holds an interest in land as trustee.

(b) The person's authority and powers as trustee are not set forth in a recorded instrument.

(c) The person conveys an interest in land as trustee to a good faith purchaser, as defined in s. 401.201 (33).

(5) When a conveyance purports to be absolute in terms, but is made or intended to be made defeasible by force of another instrument for that purpose, the original conveyance shall not be thereby defeated or affected as against any person other than the maker of the defeasance or the maker's heirs or devisees or persons having actual notice thereof, unless the instrument of defeasance has been recorded in the office of the register of deeds of the county where the lands lie.

(6) The recording of an assignment of a mortgage shall not in itself be deemed notice of such assignment to the mortgagor so as to invalidate any payment made to the mortgagee without actual notice of such assignment.

(7) No letter of attorney or other instrument containing a power to convey lands, when executed and recorded under this chapter, shall be deemed to be revoked by any act of the party by whom it was executed unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded, and such record shall import notice to all persons, including the agent named in said letter of attorney of the contents thereof. The death of the party executing such letter of attorney shall not operate as a revocation thereof as to the attorney or agent until the attorney or agent has notice of the death, or as to one who without notice of such death in good faith deals with the attorney or agent.

History: 1977 c. 253: 1989 a. 231; 1993 a. 486; 1999 a. 85.

An unrecorded Conveyance, if delivered. **is** valid against judgment creditors since they **are** not bona fide creditors for value. West Federal Savings & Loan v. Interstate Investment. 57 Wis. 2d 690. 205 N.W.2d 361 (1973).

A purchaser having constructive notice that there may have **been** an unrecorded conveyance **was** not a "purchaser in good faith" under sub. (1) (a). Kordecki v. Rizzo. 106 Wis. 2d 713.317 N.W.2d 479 (1982).

706.09 Notice of conveyance from the record. (1) WHEN CONVEYANCE IS FREE OF PRIOR AVVERSE CLAIM. A purchaser for a valuable consideration, without notice as defined in sub. (2), and the purchaser's successors in interest, shall take and hold the estate or interest purported to be conveyed to such purchaser free of any claim adverse to or inconsistent with such estate or interest, if such adverse claim is dependent for its validity or priority upon:

(a) *Nondelivery.* Nondelivery, or conditional or revocable delivery, of any recorded conveyance, unless the condition or revocability is expressly referred to in such conveyance or other recorded instrument.

(b) *Conveyance outside chnin of title not identified by definite reference.* Any conveyance, transaction or event not appearing of record in the chain of title to the real estate affected, unless such conveyance, transaction or event is identified by definite reference in an instrument of record in such chain. No reference shall be definite which fails to specify, by direct reference to a particular place in the public land record, or, by positive statement, the nature and scope of the prior outstanding interest created or affected by such conveyance, transaction or event, the identity of the original or subsequent owner or holder of such interest, the real estate affected, and the approximate date of such conveyance, transaction or event.

(c) *Unrecorded extensions of interests expiring by lapse of time.* Continuance, extension or renewal of rights of grantees, purchasers, optionees, or lessees under any land contract, option, lease or other conveyance of an interest limited to expire, absolutely or upon a contingency, within a fixed or determinable time, where 2 years have elapsed after such time, unless there is recorded a notice or other instrument referring to such continuance. extension or renewal and stating or providing a later time for the enforcement, exercise, performance or termination of such interest and then only if less than 2 years have elapsed after such later time. This paragraph shall not apply to life estates, mortgages or trust deeds, nor shall it inferentially extend any interest otherwise expiring by lapse of time.

(d) *Nonidentity of persons in chain of title.* Nonidentity of persons named in, signing or acknowledging one or more related conveyances or instruments affecting real estate, provided the persons appear in such conveyances under identical names or under variants thereof, including inclusion, exclusion or use of: commonly recognized abbreviations, contractions, initials, or foreign, colloquial, or other equivalents; first or middle names or initials; simple transpositions which produce substantially similar pronunciation; articles or prepositions in names or titles; description of entities as corporations, companies, or any abbreviation or contraction of either; name suffixes such as senior or junior; where such identity or variance has appeared of record for 5 years.

(e) *Marital interests.* Homestead of the spouse of any transferor of an interest in real estate, if the recorded conveyance purporting to transfer the homestead states that the person executing it is single, unmarried or widowed or fails to indicate the marital status of the transferor, and if the conveyance has, in either case, appeared of record for 5 years. This paragraph does not apply to the interest of a married person who is described of record as a holder in joint tenancy or of marital property with that transferor.

(f) *Lock of authority of officers, agents or fiduciaries.* Any defect or insufficiency in authorization of any purported officer, partner, manager, agent or fiduciary to act in the name or on behalf of any corporation, partnership, limited liability company, principal, trust, estate, minor, incompetent or other holder of an interest in real estate purported to be conveyed in a representative capacity, after the conveyance has appeared of record for 5 years.

(g) *Defects in judicial proceedings.* Any defect or irregularity, jurisdictional or otherwise, in an action or proceeding out of which any judgment or order affecting real estate issued after the judgment or order has appeared of record for 5 years.

(h) *Nonexistence, incapacity or incompetency.* Nonexistence, acts in excess of legal powers or legal incapacity or incompetency of any purported person or legal entity, whether natural or artificial, foreign or domestic, provided the recorded conveyance or instrument affecting the real estate shall purport to have been duly executed by such purported person or legal entity, and shall have appeared of record for 5 years.

(i) *Facts not asserted of record.* Any fact not appearing of record, but the opposite or contradiction of which appears affirmatively and expressly in a conveyance, affidavit or other instrument of record in the chain of title of the real estate affected for 5 years. Such facts may, without limitation by noninclusion, relate to age, sex, birth, death, capacity, relationship, family history, descent, heirship, names, identity of persons, marriage, marital status, homestead, possession or adverse possession, residence, service in the armed forces, conflicts and ambiguities in descriptions of land in recorded instruments, identification of any recorded plats or subdivisions, corporate authorization to convey, and the happening of any condition or event which terminates an estate or interest.

(j) *Defects in tax deed.* Nonexistence or illegality of any proceedings from and including the assessment of the real estate for taxation up to and including the execution of the tax deed after the tax deed has been of record for 5 years.

(k) *Interests not of record within **30** years.* Any interest of which no affirmative and express notice appears of record within 30 years.

(2) NOTICE OF PRIOR CLAIM. A purchaser has notice of a prior outstanding claim or interest, within the meaning of this section wherever, at the time such purchaser's interest arises in law or equity:

(a) *Affirmative notice.* Such purchaser has affirmative notice apart from the record of the existence of such prior outstanding claim, including notice, actual or constructive, arising from use or occupancy of the real estate by any person at the time such purchaser's interest therein arises, whether or not such use or occupancy is exclusive; but no constructive notice shall be deemed to arise from use or occupancy unless due and diligent inquiry of persons using or occupying such real estate would, under the circumstances, reasonably have disclosed such prior outstanding interest; nor unless such use or occupancy is actual, visible, open and notorious; or

(b) *Notice of record within **30** years.* There appears of record in the chain of title of the real estate affected, within 30 years and prior to the time at which the interest of such purchaser arises in law or equity, an instrument affording affirmative and express notice of such prior outstanding interest conforming to the requirements of definiteness of sub. (1) (b); or

(c) *Same.* The applicable provisions of sub. (1) (c) to (k) requiring that an instrument remain for a time of record, have not been fully satisfied.

(3) WHEN PRIOR INTEREST NOT BARRED. This section shall not be applied to bar or infringe any prior outstanding interest in real estate:

(a) *Public service corporations, railroads, electric cooperatives, trustees, governmental units.* While owned, occupied or used by any public service corporation, any railroad corporation as defined in s. 195.02, any electric cooperative organized and operating on a nonprofit basis under ch. 185, or any trustee or receiver of any such corporation or electric cooperative, or any mortgagee or trust deed trustee or receiver thereof; nor any such interest while held by the United States, the state or any political subdivision or municipal corporation thereof; or

(b) *Unplatted, unimproved, unused, etc.* Which, at the time such subsequent purchaser's interest arises, is unplatted, vacant and unoccupied, unused, unimproved and uncultivated; except that this paragraph shall not apply to prior interests dependent for validity or priority upon the circumstances described in sub. (1) (a), (b), (j) and (k).

(4) CHAIN OF TITLE: DEFINITION. The term "chain of title" as used in this section includes instruments, actions and proceedings discoverable by reasonable search of the public records and indexes affecting real estate in the offices of the register of deeds and in probate and of clerks of courts of the counties in which the real estate is located; a tract index shall be deemed an index where the same is publicly maintained.

(5) CONSTRUCTION. Nothing in this section shall be construed to raise or support any inference adverse or hostile to marketability of titles.

(6) EFFECTIVE DATE. This section shall take effect and may be invoked by qualified purchasers without notice as defined in sub. (2) whose interests arise on or after July 1, 1968, and by their successors in interest thereafter.

History: 1975 c. 94 s. 91 (16); 1979 c. 110; 1983 a. 186: 1987a.330; 1993 a. 112, 486, 496.

This section does not create or govern interests in land but deals with circumstances when a purchaser of land will be held to have notice of adverse interests. Interests arising through adverse possession or use are governed by ch. 893. Rock Lake Estates Unit Owners Association v. Lake Mills, 195 Wis. 2d 348,536 N.W.2d 415 (Ct. App. 1995).

Marketable title and stale records: Clearing exceptions and closing deals. Halligan. WBB May. 1986.

706.095 Interspousal remedies. Nothing in this chapter limits a spouse's remedy against the other spouse under ch. 766 for misuse of marital property.

History: 1983 a. 186.

706.10 Forms, construction. (1) The several terms and forms of conveyance authorized by law or in common use in this state on July 1, 1971, shall have the same operation and effect under this chapter as formerly, except as this chapter may expressly provide to the contrary; but this section shall not preclude the adoption or use of other, different or more concise forms which conform to the requirements of this chapter.

(2) No conveyance shall be void for the reason that at the time of delivery thereof such lands are in actual possession of a person claiming under title adverse to the grantor.

(3) In conveyances of lands words of inheritance shall not be necessary to create or convey a fee, and every conveyance shall pass all the estate or interest of the grantor unless a different intent shall appear expressly or by necessary implication in the terms of such conveyance.

(4) A quitclaim deed shall pass all of the interest in or appurtenant to the land described which the grantor could lawfully convey, but shall not warrant or imply the existence, quantity or quality of any such interest.

(5) A conveyance by which the grantor contracts to warrant the land or its title shall be construed according to its terms, under rules of law for construction of contracts. A conveyance by which the grantor warrants the land or its title shall be construed, except as the terms of the conveyance may otherwise provide, to include covenants. for the benefit of the grantee, the grantee's heirs, successors and assigns, that the grantor at the time of conveyance is lawfully seized of the land; has good right to convey the same land or its title; that the same land or its title is free from all encumbrance; and that the grantor, the grantor's heirs and personal representatives will forever guarantee and defend the title and quiet possession of the land against all lawful claims whatever originating prior to the conveyance, except as the claims may arise out of open and notorious rights of easement, or out of public building, zoning or use restrictions.

(6) Except as provided in sub. (7) and except as otherwise provided by law, no warranty or covenant shall be implied in any conveyance, whether or not such conveyance contains special warranties or covenants. No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured, and when there shall be no express covenant for such payment contained in the mortgage and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee, shall be confined to the lands mentioned in the mortgage.

(7) In the absence of an express or necessarily implied provision to the contrary, a Conveyance evidencing a transaction under which the grantor undertakes to improve the premises so as to equip them for grantee's specified use and occupancy, or to procure such improvement under grantor's direction or control, shall imply a covenant that such improvement shall be performed in a workmanlike manner, and shall be reasonably adequate to equip the premises for such use and occupancy.

History: 1973 c. 243: 1979 c. 175; 1993 a. 486.

A subdivider–vendor must disclose material facts that are not readily discernible to a noncommercial purchaser. Ollerman v. O'Rourke Co.. Inc. 94 Wis. 2d 17, 288 N.W.2d 95 (1980).

Sub. (5) eonfimis that the rules of contract construction are to be used in interpreting the covenants of a deed. The measure of damages for breach of a covenant is the common law measure of damages for breach of warranty of title. Schorsch v. Blader, 209 Wis. 2d 401,563 N.W.2d 538 (Ct. App. 1997).

A warranty deed grants a present fee simple interest. A purported reservation of a power of appointment in a warranty deed is ineffective. Powers may be reserved and lesser interests granted, but not by warranty deed. Lucareli v. Lucareli, 2000 WI App 133, 237 Wis. 2d 487,614 N.W.2d 60.

Builder–vendor liability for construction defects in houses. Kirschnik, *55* MLR 369.

Duty to disclose limited to commercial vendors. 64 MLR 547 (1981).

706.105 Applicability of general transfers at death provisions. Chapter 854 applies to transfers at death under a conveyance.

History: 1997 a. 188

706.11 Priority of certain mortgages, trust funds. (1) Except as provided in sub. (4), when any of the following mortgages has been duly recorded, it shall have priority over all liens upon the mortgaged premises and the buildings and improvements thereon, except tax and special assessment liens filed after the recording of such mortgage and except liens under ss. 292.31 (8) (i) and 292.81:

(a) Any mortgage executed to a federal savings and loan association or state or federal savings bank.

(b) Any mortgage executed to the department of veterans affairs under s. 45.352, 1971 stats.

(c) Any mortgage assigned to or executed to any of the following:

1. The United States, this state or a county, city, village or town in this state, or an agency, department or other fonnally constituted subunit of any of the foregoing.

2. The Wisconsin Health and Educational Facilities Authority created under ch. 231, the Wisconsin Housing and Economic Development Authority created under ch. 234. or any other authority created by state law.

(d) Any mortgage executed to a state or national bank or to a state or federally chartered credit union.

(e) Any mortgage executed under s. 66.1103 to a trustee, as defined in s. 66.1103 (2) (n).

(f) Any mortgage cxccuted to a mortgage banker, as defined in s. 224.71 (3).

(g) Any mortgage executed to an insurer licensed to do business in this state.

(h) Any mortgage executed to a licensee under s. 138.09.

(1m) (a) In this subsection:

1. "Commitment" means an agreement under which a mortgagee agrees to advance to the mortgagor or another person funds that will be secured by the mortgage.

2. "Construction mortgage" *means* a mortgage that secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land.

(b) An advance of funds, including accrued but unpaid interest on the advance, that is secured by a duly recorded mortgage specified in sub. (1) (a) to (d) or *(f)* to (h) and that is made after the mortgage has been recorded has the same priority as the mortgage if the advance is made before the mortgagee has actual knowledge of an intervening lien or, regardless of when the advance is made, if any of the following applies:

1. The advance is made under a commitment that is entered into before the mortgagee has actual knowledge of an intervening lien, regardless of whether the advance was made after a default or other event outside of the mortgagee's control relieved the mortgagee of the obligation to advance funds under the commitment.

2. The advance is made for the reasonable protection of the mortgagee's interest, including for the payment of real property taxes. property insurance or assessments or other maintenance charges imposed under a condominium declaration or a restrictive covenant.

3. The mortgage is a construction mortgage that clearly states on the first page of the mortgage that it is a construction mortgage and the advance is made to enable completion of the contemplated improvement on the mortgaged premises.

(2) State savings and loan associations shall have the priorities specified under s. 215.21 (4).

(3) The proceeds of any such mortgage referred to in this section shall, when paid out by a state savings bank, federal savings bank, state savings and loan association or federal savings and loan association, or of any other mortgage from any other source and received by the owner of the premises or by any contractor or subcontractor performing the work and labor, forthwith constitute a trust fund only in the hands of such owner, contractor or subcontractor for the payment proportionally of all claims due and to become due or owing from such contractor or subcontractor for lienable labor and materials until all such claims have been paid, and shall not be a trust fund in the hands of any other person. This section shall not create a civil cause of action against any person other than such owner, contractor or subcontractor. The use of any of such moneys by any owner, contractor or subcontractor for any other purpose until all claims, except those which are the subject of a bona fide dispute, have been paid in full, or proportionally in cases of a deficiency, shall constitute theft by such owner, contractor or subcontractor of any moneys so misappropriated. The district attorney of the county where the premises are situated shall on the complaint of any aggrieved party prosecute such owner, contractor or subcontractor misappropriating such moneys for such theft.

(4) Subsection (1) does not apply to a 2nd mortgage assigned to or executed to the department of veterans affairs under s. 45.79 (3) (a) 1. or s. 45.80 (4) (a) 1, 1989 stats.

History: 1971 c. 164; 1973 c. 208; 1975 c. 358,409; 1979 c. 110 s. 60 (12); 1989 a. 231; 1991 a. 39,221; 1993 a. 453; 1995 a. 27, 227; 1997 a. 27.44: 1999 a. 150 s. 672; 2001 a. 104.

The word "contractor" in sub. (3) includes an owner who acts as his own general contractor. and he can he held liable for conversion. Paulsen Lumber, Inc. v. Meyer, 47 Wis. 2d 621, 177 N.W.2d 884.

Phrase "filed after the recording of such mortgage" in (1) modifies "all liens." Marine Bank Appleton v. Hietpas, Inc. 149 Wis. 2d 587,439 N.W.2d 604 (Ct. App. 1989).

Term "lien" in this section does not include lease. Grosskopf Oil, Inc. v. Winter, 156 Wis. 2d 575,457 N.W.2d 514 (Ct. App. 1990).

706.12 Uniform vendor and purchaser risk act. (1) Any contract made in this state for the purchase and sale of realty shall be interpreted as including an agreement that the parties shall have the following rights and duties, unless the contract expressly provides otherwise:

(a) If, when neither the legal title nor the possession of the subject matter of the contract has been transferred, all or a material part thereof is destroyed without fault of the purchaser or is taken by eminent domain, the vendor cannot enforce the contract, and the purchaser is entitled to recover any portion of the price that the purchaser has paid.

(b) If, when either the legal title or the possession of the subject matter of the contract has been transferred, all or any part thereof is destroyed without fault of the vendor or is taken by eminent domain, the purchaser is not thereby relieved from a duty to pay the price, nor is the purchaser entitled to recover any portion thereof that the purchaser has paid.

(2) This section shall be so construed as to make uniform the law of those states which enact it.

(3) This section may be cited as the uniform vendor and purchaser risk act.

History: 1975 c. 422; 1993 a. 486.

706.13 Slander of title. (1) In addition to any criminal penalty or civil remedy provided by law, any person who submits for filing, entering in the judgment and lien docket or recording, any lien, claim of lien, lis pendens, writ of attachment, financing statement or any other instrument relating to a security interest in or the title to real or personal property, and who knows or should have known that the contents or any part of the contents of the instrument are false, a sham or frivolous, is liable in tort to any person interested in the property whose title is thereby impaired, for punitive damages of $1,000 plus any actual damages caused by the filing, entering or recording.

(2) This section applies to any person who causes another person to act in the manner specified in sub. (1).

(3) This section does not apply to a register of deeds or other government employee who acts in the course of his or her official duties and files, enters or records any instrument relating to title on behalf of another person.

History: 1979 c. 221: 1995 a. 224; 1997 a. 27.

Enactment of this section did not create a cause of action nor destroy the common-law right of recovery. Schlytter v. Lesperance. 62 Wis. 2d 661, 215 N.W.2d 552 (1974).

When a lawsuit is commenced under this section, conditional rather than absolute privilege applies to the filing of a lis pendens. Kensington Development v. Israel, 142 Wis. 2d 894, 419 N.W.2d 241 (1988).

The filing of a lis pendens is not privileged when there is no relationship between the filing and the underlying action. Larson v. Zilz, 151 Wis. 2d 637,445 N.W.2d 699 (Ct. App. 1989).

To recover for slander of title, it is not necessary in all cases to prove the loss of an actual sale. The trial court must consider whether it is reasonable under the circumstances to require proof that the slander prevented a particular sale, and if not, the court must determine the degree of particularity required. Tym v. Ludwig, 196 Wis. 2d 375,538 N.W.2d 600 (Ct. App. 1995).

706.14 Transitional and curative provisions. The operation or effect of a conveyance made or recorded in accordance with the provisions of any prior law of this state, or thereafter validated, perfected or cured under any such prior law, shall not be impaired by any provision of this chapter.

706.15 Liens against public officials or employees. No lien may be filed, entered or recorded against the real or personal property of any official or employee of the state or any political subdivision of the state, relating to an alleged breach of duty by the official or employee, except after notice and a hearing before

a court of record and a finding by the court that probable cause exists that there was a breach of duty.

History: 1979 c 221, 1995 a. 224.

706.20 Disclosure duty; immunity for providing notice about the sex offender registry. (1) Except as provided in sub. (2), an owner of an interest in real property has no duty to disclose to any person in connection with the sale, exchange, purchase or rental of the real property any information related to the fact that a particular person is required to register as a sex offender under s. 301.45 or any infonnation about the sex offender registry under s. 301.45.

(2) If, in connection with the sale, exchange, purchase or rental of real property, a person requests of an owner of an interest in the real property information related to whether a particular person is required to register as a sex offender under s. 301.45 or any other information about the sex offender registry under s. 301.45, the owner has a duty to disclose such information, if the owner has actual knowledge of the information.

(3) Notwithstanding sub. (2), the owner is immune from liability for any act or omission related to the disclosure of information under sub. (2) if the owner in a timely manner provides to the person requesting the information written notice that the person may obtain information about the sex offender registry and persons registered with the registry by contacting the department of corrections. The notice shall include the appropriate telephone number and Internet site of the department of corrections.

History: 1999 a. 89.

CHAPTER 707
TIME–SHARE OWNERSHIP

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SUBCHAPTER I
GENERAL PROVISIONS

707.02 Definitions. In this chapter: **(1)** "Affiliate of a developer" means any person who controls, is controlled by or is under common control with a developer.

(2) "Association" means the association organized under s. 707.30 (2).

(4) "Campground" means real property that is available for use by campground members under a campground contract and is intended for camping or outdoor recreation, including the use of campsites and campground amenities by campground members, but does not include a mobile home park as defined in s. 66.0435 (1) (e).

(5) "Campground amenity" means a major recreational building or recreational facility at a campground, including a swimming pool, ski hill, marina, pier, tennis court, utility–serviced campsite, clubhouse, trading post or grocery store; but does not include an individual campsite or general campsite location, any minor recreational building or facility, horseshoe pit or other minor game or athletic court, or a nonrecreational building or facility, including a restroom, road, dump station or pumphouse.

(6) "Campground contract" means an agreement entered into within this state evidencing a campground member's ownership of a time–share easement in a campground.

(7) "Campground member" means a person who enters into a campground contract with a campground operator, or a transferee of a person who enters into a campground contract with a campground operator.

(8) "Campground operator" means a developer who is the owner or operator of a campground for which campground contracts are offered or sold.

(9) "Closing" means: (a) With respect to time–share estates, conveyance of legal or equitable title to the time share by delivery of a deed or contract to purchase to the purchaser.

(b) With respect to time–share easements, delivery by all parties of the documents necessary to vest in the purchaser the rights to access and use of the time–share unit.

(9m) "Controls" or "controlled by" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, by common management or otherwise, including any of the following, unless the powers are held solely as security for an obligation and are not exercised:

(a) Owning or controlling more than 20% of the voting interest in a person.

(b) Controlling the election of a majority of the directors of a person.

(c) Contributing more than 20% of the capital of a person.

(10) "Conversion building" means a building that at any time before the disposition of any time share was occupied wholly or partially by persons other than purchasers and persons who occupied with the consent of purchasers.

(11) "Developer" means any person who offers to dispose of, or disposes of, an interest in a time share not previously disposed of or succeeds to any special developer right under s. 707.31.

(12) "Dispose" or "disposition" means a voluntary transfer of any legal or equitable interest in a time share, excluding the transfer or release of a security interest.

(13) "Dues payment" means the periodic fee paid by a campground member, other than the sales payment, for the purpose of using a campground, excluding fees charged for specific goods or services provided, such as campsite reservations, daily campsite rentals, equipment rentals or meals.

(14) "Manager" means any person, other than all time–share owners or the association, named or employed under the time–share instrument or project instrument to manage the time–share units.

(15) "Managing entity" means the manager or, if there is no manager, the association.

(17) "Offering" means any advertisement, inducement, solicitation or attempt to encourage any person to acquire a time share, other than as security for an obligation.

(20) "Project" means real property which is subject to a project instrument and contains more than one unit, including real property which contains units that are not time–share units.

(21) "Project instrument" means any document, recordable under s. 706.05, regulating the use, occupancy or disposition of units in an entire project, including any amendments to the document.

(22) "Purchaser" means any person, other than the developer, who by means of a voluntary transfer acquires a legal or equitable interest in a time share, other than as security for an obligation.

(24) "Time share" means a time–share estate or a time–share easement.

(25) "Time–share easement" means an interest in property vesting in the purchaser and the purchaser's heirs, successors and assigns and evidencing a right to access to and use of a unit or any of several units during at least 4 separated periods over at least 4 years, including renewal options.

(26) "Time–share estate" means a right to occupy a unit during at least 4 separated periods over at least 4 years, together with a fee simple absolute interest or an interest for years in a time– share property.

(27) "Time–share expenses" means expenditures, fees, charges, liabilities or real property taxes incurred with respect to time shares by or on behalf of all time–share owners in a time– share property and imposed on the time–share units by the entity governing a project of which the time–share property is a part, together with any allocations to reserves, but excluding purchase money payable for time shares.

(28) "Time–share instrument" means a document creating or regulating time shares.

(29) "Time–share liability" means the liability for time–share expenses allocated to each time share under s. 707.21 (1) (e).

(31) "Time–share owner" means a person who is an owner or co-owner of a time share, other than as security for an obligation.

(32) "Time–share property" means one or more time–share units subject to the same time–share instrument, together with any real estate or rights to real estate appurtenant to those units.

(33) "Time–share unit" means a unit in which time shares exist.

(34) "Unit" means real property designated for separate occupancy and use.

History: 1987 a. 399; 1999 a. 150 s. **672.**

707.03 Status of time–share estates. (1) A grant of an estate in a unit conferring the right of possession during a potentially infinite number of separated periods creates a fee simple absolute interest, and a grant of an estate in a unit

conferring the right of possession during 4 or more separated periods over a finite number of years equal to at least 4, including renewai options, creates an interest for years.

(2) Each time–share estate constitutes for all purposes a separate estate in real property.

History: *1987* **a.** *399.*

707.05 Variation by agreement. Except as otherwise provided in this chapter, the provisions of this chapter may not be varied by agreement, and rights conferred under this chapter may not be waived. A developer may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this chapter or the time–share instrument.

History: *1987* **a.** *399.*

SUBCHAPTER IV
PROTECTION OF PURCHASERS

707.40 Applicability; exemptions. This subchapter applies to all time shares subject to this chapter, except that ss. 707.41 to 707.45 and 707.48 do not apply to any of the following:

(1) The disposition of a time share in any of the following circumstances:

(a) By gift.

(b) By court order.

(c) By a government or governmental agency.

(d) By foreclosure or deed in lieu of foreclosure.

(2) The disposition of a time share if the purchaser may cancel at any time and for any reason without penalty.

(3) The disposition of a time share in a unit situated wholly outside this state under a contract executed wholly outside this state, if there has been no offering within this state.

(4) An offering by a developer of time shares in not more than one time–share unit at any one time.

(5) Disposition to one purchaser of a time–share property or all of the time shares in a time–share property.

(6) A transaction normal and customary in the hotel and motel business, including but not limited to acceptance of advance reservations, if the person engaging in the transaction operates or owns a motel or hotel substantially engaged in the business of accepting short–term, single reservation contracts with customers who obtain no associated long–term use rights.

History: *1987* **a.** *399.*

707.47 Purchaser's right to cancel. (1) PROVISION OF STATEMENT. A person required to deliver a time–share disclosure statement under s. 707.41 (2) shall, before transfer of a time share and no later than the date of any contract for the purchase of a time share, provide a prospective purchaser with a copy of the time– share disclosure statement and all amendments and supplements to the statement.

(2) RIGHT TO CANCEL. If delivery of a time–share disclosure statement is required under s. 707.41 (2), the purchaser may cancel a contract for the purchase of a time share until midnight of the 8th business day after whichever of the following is later:

(a) The date that the contract is executed.

(b) The date on which the purchaser receives the last of the documents required to be provided to the purchaser under sub. (1).

(3) ACTIVITY BEFORE CANCELLATION PERIOD EXPIRES. No title may be recorded, deed delivered or deposit released until the cancellation period under sub. (2) has expired. Nothing in this subsection or sub. (4) precludes the execution of documents before the cancellation period expires, for delivery after the cancellation period expires.

(4) WAIVER PROHIBITED. The purchaser or any person on behalf of the purchaser may not waive the right to cancel under sub. **(2).**

(5) NOTICE OF CANCELLATION. If a purchaser elects to cancel a contract under sub. (2), the purchaser may do so by personally–delivering notice of the cancellation to the seller or by mailing the notice to the developer or to the developer's agent for service of process. If mailed, any notice of cancellation shall be considered given on the date that the notice is postmarked.

(6) REFUND. (a) Cancellation under sub.(2) shall be without penalty, and, except as provided in par.

(b), all payments made by the purchaser before cancellation shall be refunded within 20 days after receipt of the notice of cancellation or within 5 days after receipt of funds from the purchaser's cleared check, whichever is later.

(b) If the purchaser has used or occupied the time–share property for more than 12 hours before cancellation, the funds to be returned to the purchaser may be reduced by a reasonable charge to cover the length of stay plus the cost for damages, if any, to the time–share property directly attributable to the purchaser's use or occupancy of the time share property.

History: *1987* **a.** *399.*

707.49 Deposits; escrow requirement. (1) DEFINITIONS. In this section:

(a) "Completion of construction" means that all accommodations of the time–share unit and all buildings, improvements and other facilities of the time–share property, including campground amenities, are available for use in a manner identical in all material respects to the manner portrayed by the time–share instrument, promotional materials, advertising and the time–share disclosure statements.

(b) "Deposit" means any money or property given by a purchaser as earnest money, downpayment or other payment in connection with the purchase of a time share, whether the payment is intended to be applied toward the purchase price or other obligation or returned to the purchaser, but excluding any dues payment.

(c) "Escrow account" means an account established solely for the purposes set forth in this section with a financial institution, as defined in s. 705.01 (3), which is located within this state and the accounts of which are insured by a governmental agency or instrumentality.

(d) "Escrow agent" means any of the following: 1. A savings and loan association, savings bank, bank or trust company located in this state. 2. An attorney who is a member of the State Bar of Wisconsin. 3. **A** real estate broker licensed under ch. 482. 4. A title insurance company authorized to do business in this state.

(2) ESCROW AGENT. (a) ***Designation.*** Except as provided in sub.(4), before the sale of any time shares in a project, the developer shall establish an escrow account and shall designate an escrow agent for the purpose of protecting the deposits of purchasers. All escrow agents shall be independent of the developer, and the developer, any affiliate of the developer or any officer, director, subsidiary or employee of the developer shall not serve as escrow agent.

(b) ***Duties.*** An escrow agent designated under par.(a) shall do all of the following:

1. Maintain, in accordance with generally accepted accounting practices, separate books and records for each time share.

2. Maintain the accounts required by this section only in such a manner as to be under the direct supervision and control of the escrow agent.

3. Retain for 5 years all affidavits received under sub. (3) (b).

4. Upon receipt of conflicting demands for the escrowed funds or property, immediately and with the consent of all parties either submit the matter to arbitration or, by interpleader or otherwise, seek an adjudication of the matter in court.

(3) ESCROW AGREEMENT; RELEASE OF FUNDS. (a) Until the deposit may be released from escrow under par. (b), an amount equal to 50% of the deposit shall be deposited in an escrow account under an escrow agreement.

(b) The escrow agreement shall provide that the deposit may be released from escrow only as follows:

1. If a purchaser gives a valid notice of cancellation under s. 707.47 (5) or is otherwise entitled to cancel the sale, the deposit shall be returned to the purchaser under s. 707.47 (6).

2. After expiration of the cancellation period under s. 707.47 (2), if the purchaser defaults in the performance of his or her obligations under the contract to purchase, the developer shall provide an affidavit to the escrow agent requesting release of the escrowed deposit and shall provide a copy of the affidavit to the purchaser who has defaulted. The developer's affidavit shall include all of the following:

a. A statement that the purchaser has defaulted and that the developer has not defaulted.

b. A brief explanation of the nature of the default and the date of default.

c. A statement that the developer is entitled under the contract to the deposit held by the escrow agent.

d. A statement that the developer has not received from the purchaser any written notice of a dispute between the purchaser and developer or a claim by the purchaser to the escrowed deposit.

3. If no cancellation or default has occurred, the escrow agent may release the escrowed deposit upon presentation by the developer of an affidavit and, if the project is subject to a blanket encumbrance, as defined in s. 707.38 (1), a certified copy of a recorded nondisturbance agreement. The developer's affidavit shall state that all of the following have occurred:

a. Expiration of the cancellation period.

b. Completion of construction of the time–share unit and amenities or, if ownership is not related to a specific unit, completion of construction of sufficient units to provide appropriate use of the completed time–share units by the purchaser.

c. Completion of the closing.

d. Execution and recording of a nondisturbance agreement meeting the requirements of s. 707.38 (Im).

(4) SURETY BOND AND OTHER OPTIONS. Instead of placing deposits in an escrow account, a developer may obtain a surety bond issued by a company authorized to do business in this state, an irrevocable letter of credit or a similar arrangement, in an amount which at all times is not less than the amount of the deposits otherwise subject to the escrow requirements of this section. The bond, letter of credit or similar arrangement shall be filed with the department of agriculture, trade and consumer protection and made payable to the department of agriculture, trade and consumer protection for the benefit of aggrieved parties.

History: 1987 a. 399; 1991 a. 221; 1995 a. 27; 2001 a. 103.

CHAPTER 709

DISCLOSURES BY OWNERS OF RESIDENTIAL REAL ESTATE

709.01 Requirements for transfer.
709.02 Disclosure.
709.03 Report form.
709.035 Amendments to report.
709.04 Indication of compliance.
709.05 Right to rescind.
709.06 Good Faith.
709.07 Liability precluded
709.08 Waiver.

709.01 Requirements for transfer. **(1)** Except as provided in sub. (2), all persons who transfer real property located in this state, including a condominium unit, as defined in s. 703.02 (15), and time–share property, as defined in s. 707.02 (32), but excluding property that has not been inhabited, that includes 1 to 4 dwelling units, as defined in s. 101.61 (1), by sale, exchange or land contract, unless the transfer is exempt from the real estate transfer fee under s. 77.25, shall comply with ss. 709.02 to 709.04 and 709.06.

(2) Subsection (1) does not apply to any of the following persons, if those persons have never occupied the property transferred:

(a) Personal rcprcsentatives.

(b) Trustees.

(c) Conservators.

(d) Fiduciaries who are appointed by, or subject to the supervision of. a court.

History: 1991 a. 162; 1995 a. 180.

Truth or Consequences? Residential Seller Disclosure Law. Conrad. Wis. Law. August 1992.

Protecting the Residential Seller. Young. Wis. Law. May 1993.

709.02 Disclosure. In regard to transfers described in s. 709.01, the owner of the property shall furnish, not later than 10 days after acceptance of a contract of sale or option contract, to the prospective buyer of the property a completed copy of the report under s. 709.03, subject to s. 709.035, except that the owner may substitute for any entry information supplied by a licensed engineer, land surveyor or structural pest control operator or by an individual who is a qualified 3rd party, as defined in s. 452.23 (2) (b), or by a contractor about matters within the scope of the contractor's occupation if the information is in writing and is furnished on time and if the entry to which it relates is identified and except that the owner may substitute for any entry infomation supplied by a public agency, as defined in s. 66.0825 (3) (h). Information that substitutes for an entry on the report under s. 709.03 and that is supplied by a person specified in this section may be submitted and certified on a supplemental report prepared by the person, as long as the information otherwise satisfies the requirements under this section. A prospective buyer who does not receive a report within the 10 days may, within 2 business days after the end of that 10–day period, rescind the contract of sale or option contract by delivering a written notice of recision to the owner or to the owner's agent.

Historv: 1991 a. 162; 1995 a. 180: 1999 a. 150 s. 672.

Residential Real Property Disclosure Duties. Hinkston. Wis. Law. May, 2002.

709.03 Report form. The report required under s. 709.02 shall be in substantially the following form and shall include at least all of the following information:

REAL ESTATE CONDITION REPORT

DISCLAIMER

A. THIS CONDITION REPORT CONCERNS THE REAL PROPERTY LOCATED AT .... IN THE .... (CITY) (VILLAGE) (TOWN) OF ...., COUNTY OF ...., STATE OF WISCONSIN. THIS REPORT IS A DISCLOSURE OF THE CONDITION OF THAT PROPERTY IN COMPLIANCE WITH SECTION 709.02 OF THE WISCONSIN STATUTES AS OF .... (MONTH), ... (DAY), ... (YEAR). IT IS NOT A WARRANTY OF ANY KIND BY THE OWNER OR ANY AGENTS REPRESENTING ANY PRINCIPAL IN THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THAT THE PRINCIPALS MAY WISH TO OBTAIN.

OWNER'S INFORMATION

B. 1. In this form, "am awarc" means have notice or knowledge. In this form, "defect" means a condition that would have a significant adverse effect on the value of the property; that would significantly impair the health or safety of future occupants of the property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

B. 2. The owner discloses the following information with the knowledge that, even though this is not a warranty, prospective buyers may rely on this information in deciding whether and on what terms to purchase the property. The owner hereby authorizes any agent representing any principal in this transaction to provide a copy of this statement, and to disclose any information in the statement, to any person in connection with any actual or anticipated sale of the property.

B. 3. The owner represents that to the best of his or her knowledge the responses to the following statements have been accurately noted as "yes", "no" or "not applicable" to the property being sold. If the owner responds to any statement with "yes", the owner shall provide, in the additional information area of this form, an explanation of the reason why the response to the statement is "yes".

B. 4. If the transfer is of a condominium unit, the property to which this form applies is the condominium unit, the common elemcnts of the condominium and any limited common elements that may be used only by the owner of the condominium unit being transferred.

		YES	NO	N/A
C. 1.	I am aware of defects in the roof.	....	....	...
C. 2.	I am aware of defects in the electrical system.	....	....	....
C. 3.	I am aware of defects in part of the plumbing system (including the water heater, water softener and swimming pool) that is included in the sale.	....	....	....
C. 4.	I am awarc of defects in the heating and air conditioning system (including the air filters and humidifiers).	....	....	....
C. 5.	I am aware of defects in the well, including unsafe well water.	....	....	....
C. 6.	I am awarc that this property is served by a joint well.	....	....	....
		YES	NO	N/A

C. 7. I am aware of defects in the septic system or other sanitary disposal system. .....

C. 8. I am aware of underground or aboveground fuel storage tanks on the property. (If "yes", the owner, hy law, may have to register the tanks with the department of commerce at P.O. Box '7970, Madison, Wisconsin, 53'70'7, whether the tanks are in use or not. Regulations of the department of commerce may require the closure or removal of unused tanks. .....

C. 9. I am aware of an "LP" tank on the property. (If "yes", specify in the additional information space whether the owner of the property either owns or leases the tank. .....

C. 10. I am aware of defects in the basement or foundation (including cracks, seepage and bulges). .....

C. 11. I am aware that the property is located in a floodplain, wetland or shoreland zoning area. .....

C. 12. I am aware of defects in the structure of the property. .....

C. 13. I am aware of defects in mechanical equipment included in the sale either as fixtures or personal property. .....

C. 14. I am aware of boundary or lot line disputes, encroachments or encumbrances (including a joint driveway). .....

C. 15. I am aware of a defect caused by unsafe concentrations of, or unsafe conditions relating to, radon, radium in water supplies, lead in paint. lead in soil, lead in water supplies or plumbing system or other potentially hazardous or toxic substances on the premises. .....

C. 16. I am aware of the presence of asbestos or asbestos–containing materials on the premises. .....

C. 17. I am aware of a defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of. hazardous or toxic substances on neighboring properties.

C. 18. I am aware of current or previous termite, powder–post beetle or carpenter ant infestations. .....

	YES	NO	N/A
C. 19. I am aware of defects in a wood-burning stove or fireplace or of defects caused by a fire in a stove or fireplace or elsewhere on the property.			
C. 20. I am aware either that remodeling affecting the property's structure or mechanical systems was done or that additions to this property were made during my period of ownership without the required permits.			
C. 21. I am aware of federal, state or local regulations requiring repairs, alterations or corrections of an existing condition.			
C. 22. I have received notice of property tax increases, other than normal annual increases, or am aware of a pending property reassessment.			
C. 23. I am aware that remodeling that may increase the property's assessed value was done.			
C. 24. I am aware of proposed or pending special assessments.			
C. 25. I am aware of the proposed construction of a public project that may affect the use of the property.			
C. 26. I am aware of subdivision homeowners' associations, common areas co–owned with others, zoning violations or nonconforming uses, rights–of–way, easements or another use of a part of the property by nonowners, other than recorded utility easements.			
C. 27. I am aware of other defects affecting the property.			

ADDITIONAL INFORMATION

	YES	NO	N/A
D. 1. I am aware that a structure on the property is designated as a historic building or that part of the property is in a historic district.			

D. 2. The owner has lived on the property for ....years.

D. 3. Explanation of "yes" responses. (See B. 3.) .....

OWNER'S CERTIFICATION

E. The owner certifies that the information in this report is true and correct to the best of the owner's knowledge as of the date on which the owner signs this report.

Owner .... Date ....

Owner .... Date ....

CERTIFICATION BY PERSON SUPPLYING INFORMATION

F. A person other than the owner certifies that he or she has supplied information on which the owner relied for this report and that that information is true and correct to the best of that person's knowledge as of the date on which the person signs this report.

Person	Items	Date ....
Person	Items	Date ....
Person	Items	Date ....

NOTICE REGARDING ADVICE OR MSPECTIONS

G. THE PROSPECTIVE BUYER AND THE OWNER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTIONS, DEFECTS OR WARRANTIES.

BUYER'S ACKNOWLEDGEMENT

H. 1. The prospective buyer acknowledges that technical knowledge such as that acquired by professional inspectors may be required to detect certain defects such as the presence of asbestos, building code violations and floodplain status.

H. 2. I acknowledge receipt of a copy of this statement.

Prospective buyer	Date ....
Prospective buyer	Date ....
Prospective buyer	Date ....

History: 1991 a. 162; 1995 a. 27 ss. 7067, 9116 (5), 9130 (4); 1995 a. 180.

709.035 Amendments to report. If at any time after completing a report, whether the original or an amended report, but before acceptance of a contract of sale or option contract an owner obtains information or becomes aware of any condition that would change a response on the completed report, the owner shall submit to a prospective buyer, within the time required under s. 709.02, a complete amended report or an amendment to the previously completed report, along with a copy of the previously completed report if not already submitted to the prospective buyer, that states all of the following:

(1) The address of the property.

(2) The owner's name.

(3) The date of the report being amended.

(4) The number of any statement on the report that is affected by the new information.

(5) How the owner's original response to the statement is changed and, if the response is changed to "yes", an explanation of the reason why the response to the statement is "yes".

History: 1995 a. 180.

709.04 Indication of compliance. An owner shall indicate compliance with this chapter on the contract of sale or option contract, on the closing statement or in an addendum to one of those documents.

History: 1991 a. 162; 1995 a. 180.

709.05 Right to rescind. (1) Except as provided in sub. (2) (b), if a buyer receives a report after submission of a contract of sale or option contract to the owner or the owner's agent, the buyer may, after receipt of that report by the prospective buyer and before the applicable deadline, rescind in writing a contract of sale or option contract if a defect, as defined in the report, is disclosed, without any liability on his or her part, and a buyer is entitled to the return of any deposits or option fees paid in the transaction. A prospective buyer who receives a report that is incomplete or that contains an inaccurate assertion that an item is not applicable and who is not aware of the defects that the owner failed to disclose may, within 2 business days after receipt of that report, rescind in writing a contract of sale or option contract without any liability on his or her part and is entitled to the return of any deposits or option fees paid in the transaction.

(2) (a) 1. Except as provided in subd. 2., a buyer may not rescind a contract of sale or option contract under this section if he or she receives a complete report before submitting the contract of sale or option contract to the owner or the owner's agent.

2. Unless par. (b) applies, a buyer under subd. 1. who, after submitting the contract of sale or option contract to the owner or the owner's agent, receives an amended report. or an amendment to the report previously received, that discloses a defect that was not disclosed in the report previously received may, after receipt of the amended report or amendment to the report and before the applicable deadline, rescind in writing the contract of sale or option contract and is entitled to the return of any deposits or option fees paid in the transaction.

(b) A buyer may not rescind a contract of sale or option contract under this section on the basis of a defect disclosed in a report, amended report or amendment to a report if the buyer was aware, or had written notice, of the nature and extent of the defect at the time the contract of sale or option contract was submitted to the owner or the owner's agent.

(3) Rescissions under this section are timely if they are delivered to the owner or the owner's agent within 2 business days after the prospective buyer or the prospective buyer's agent receives the report, amended report or amendment to the report.

(4) The right to rescind under this section is the only remedy under this chapter.

History: 1991 a. 162; 1995 a. 180.

709.06 Good faith. The owner shall perform each act, and make each disclosure, required by this chapter with honesty in fact.

History: 1991 a. 162.

709.07 Liability precluded. An owner is not liable for an error or omission in a report under s. 709.03 if the owner had no knowledge of that error or omission, if the error or omission was based on information provided by a public agency, as defined in s. 66.0825 (3) (h), or by a licensed engineer, land surveyor, structural pest control operator or qualified 3rd party, as defined in s. 452.23 (2) (b), or by a contractor about matters within the scope of the contractor's occupation.

History: 1991 a. 162; 1999 a. 150 s. 672.

709.08 Waiver. A buyer may waive in writing the right to rescind under s. 709.05. If a buyer proceeds to closing, the buyer's right to rescind under s. 709.05 is terminated. A buyer may waive in writing the right to receive the report required under s. 709.02.

History: 1991 a. 162.

CHAPTER 710
MISCELLANEOUS PROPERTY PROVISIONS

710.01 Aliens may acquire lands.
710.02 *Limitation* on **nonresident aliens and corporations.**

710.01 Aliens may acquire lands. Subject to the limitations of s. 710.02 an alien may acquire and hold lands or any right thereto or interest therein by purchase, devise or descent, and the alien may convey, mortgage and devise the same; and if the alien shall die intestate the same shall descend to the alien's heirs; and in all cases such lands shall be held, conveyed, mortgaged or devised or shall descend in like manner and with like effect as if such alien were a native citizen of the state or of the United States.

History: 1993 a. 486.

710.02 Limitation on nonresident aliens and corporations. (1) LIMITATION. The following persons may not acquire, own or hold any interest, directly or indirectly, except an interest used to secure repayment of a debt incurred in good faith, in more than 640 acres of land in this state:

(a) Aliens not residents of a state of the United States.

(bj Corporations not created under the laws of the United States or a state of the United States.

(c) 1. Corporations, limited liability companies, partnerships or associations having more than 20% of their stock, securities or other indicia of ownership held or owned by persons under par.(a) or (b).

2. Trusts having more than 20% of the value of their assets held for the benefit of persons under par.(a) or (b).

(2) EXCEPTIONS. Except as provided in sub.(3), sub.(1) does not apply to:

(a) Subject to sub.(5), any person acquiring an interest in land by devise, inheritance or in the good faith collection of debts by due process of law.

(b) Citizens, foreign governments or subjects of a foreign government whose rights to hold larger quantities of land are secured by treaty.

(c) Railroad or pipeline corporations.

(d) An exploration mining lease as defined in s. 107.001 (1) and land used for mining and associated activities.

(ej Manufacturing activities specified under division D of the standard industrial classification manual published by the U.S. printing office, 1972 and later editions.

(f) Mercantile activities specified under divisions C, E, F, G, H and I of the standard industrial classification manual published by the U.S. printing office, 1972 and later editions.

(gj Leases for exploration or production of oil, gas, coal, shale and related hydrocarbons, including by–products of the production, and land used in connection with the exploration or production.

(3) USE OF LAND RESTRICTED. Land in excess Of 640 acres, acquired by a person listed under sub.(1) other than a person listed under sub.(2) (a), (b) or (c) for an activity listed under sub.(2) (d), (e), (f) or (g), may not be used directly or indirectly by that person for any activity not under sub.(2) (d), (e), (f) or (g). Pending the conversion and development of the land for a purpose permitted under sub.(2) (d), (e), (f) or (g), it may be used for agriculture or forestry purposes under a lease to a person not subject to sub.(l). Products of the land may be sold by the lessee to the owner of the land.

(4) REPORTING REQUIREMENTS. (a) Any person filing a report required under 7 USC 3501 to 3508 shall file with the secretary of agriculture, trade and consumer protection a duplicate original of the report, together with both of the following:

1. The tax parcel number or full legal description of the lands acquired, owned or held.

2. If the interest in land is acquired, owned or held under an exception set forth in sub.(2), a statement which sets forth the specific exception and, if under sub.(2) (d), (e), (f) or (g), the timetable and plan for conversion and development to a purpose permitted under sub.(2) (d), (e), (f) or (g).

(b) The secretary shall annually submit to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), a report summarizing information received under par.(a).

(5) DIVESTITURE. (a) Interests exceeding 640 acres acquired by persons under sub.(1) shall be divested at the discretion of the holder to comply with sub.(1j within 4 years after:

1. Acquiring the interest, if the interest is described under sub.(2) (a) and the person is subject to sub.(1) (a) or (b).

2. Acquiring the interest or becoming subject to sub.(1) (c), whichever is later, if the person is subject to sub.(1) (c).

(b) Land subject to divestiture under par.(a) may not be managed to cause undue levels of soil erosion or to injure the long– range productivity of the land. The attorney general may bring an action to enjoin these practices on the land.

(6) FORFEITURES. Interests in lands in excess of 640 acres acquired or held in violation of this section are forfeited to the state. The holder of the interest shall determine which lands are to be forfeited to comply with sub.(1).

(7) PENALTY FOR FAILURE TO REPORT. Any person violating sub.(4) (aj shall forfeit not less than $500 nor more than $5,000.

(8) ENFORCEMENT. The attorney general shall enforce this section.

(9) APPLICABILITY. This section applies to interests in land acquired after July 1, 1982. No interest acquired before July 1, 1982, is subject to divestiture or forfeiture under this section.

History: 1983 **a. 335; 1987 a.** 186; **1989 a. 31; 1993 a. 112.**

NOTE: 1983 Wis. Act 334, which repealed and recreated this section, contains a "legislative declaration" of intent in section 1.

The rationale of s. **710.02, 1973** stats., **which limited nonresident alien ownership of land, was premised upon potential detriment to the welfare** of **the community and was not** so **arbitrary as to deny equal protection.** Lehndorff **Geneva, Inc. v. Warren, 74** Wis. **2d** 369, 246 N.W.2d 815 **(1976).**

CHAPTER 766
PROPERTY RIGHTS OF MARRIED PERSONS; MARITAL PROPERTY

766.31 Classification of property of spouses.
766.51 Management and control of property of spouses.
766.60 Optional forms of holding property; survivorship ownership.
766.605 Classification of homestead.
766.63 Mixed property.

NOTE: Chapter 766 was created by 1983 Wis. Act 186 and affected by 1985 Wis. Act 37. Act 37 contains a prefatory note and notes following most of the sections affected by the act. These notes are not included. The explanatory notes in Act 37 were prepared by the legislative council and revised by its staff after the legislature adopted a conference substitute amendment to the original bill. Legislative council information memorandum 85–7, part I, contains original and supplemental explanatory notes to the marital property implementation law, 1985 Wis. Act 37. Part II of the memorandum contains supplemental explanatory notes to the tax provisions of the marital property implementation law, 1985 Wis. Acts 29 and 37. See also 1987 Wis. Act 393, which contains a long prefatory note and notes following the sections affected.

766.31 Classification of property of spouses. (1) All property of spouses is marital property except that which is classified otherwise by this chapter and that which is described in sub.(8).

(2) All property of spouses is presumed to be marital property.

(3) Each spouse has a present undivided one–half interest in each item of marital property, but the marital property interest of the nonemployee spouse in a deferred employment benefit plan or in assets in an individual retirement account that are traceable to the rollover of a deferred employment benefit plan terminates at the death of the nonemployee spouse if he or she predeceases the employee spouse.

(4) Except as provided under subs.(7) (a), (7p) and (10), income earned or accrued by a spouse or attributable to property of a spouse during marriage and after the determination date is marital property.

(5) The transfer of property to a trust does not by itself change the classification of the property.

(6) Property owned at a marriage which occurs after 12:01 a.m. on January 1, 1986, is individual property of the owning spouse if, at the marriage, both spouses are domiciled in this state.

(7) Property acquired by a spouse during marriage and after the determination date is individual property if acquired by any of the following means:

(a) By gift during lifetime or by a disposition at death by a 3rd person to that spouse and not to both spouses. A distribution of principal or income from a trust created by a 3rd person to one spouse is the individual property of that spouse unless the trust provides otherwise.

(b) In exchange for or with the proceeds of other individual property of the spouse.

(c) From appreciation of the spouse's individual property except to the extent that the appreciation is classified as marital property under s. 766.63.

(d) By a decree, marital property agreement or reclassification under sub.(10) designating it as the individual property of the spouse.

(e) As a recovery for damage to property under s. 766.70, except as specifically provided otherwise in a decree or marital property agreement.

(f) As a recovery for personal injury except for the amount of that recovery attributable to expenses paid or otherwise satisfied from marital property and except for the amount attributable to loss of income during marriage.

(7p) Income attributable to all or specified property other than marital property, with respect to which a spouse has executed under s. 766.59 a statement unilaterally designating that income as his or her individual property, is individual property.

(8) Except as provided otherwise in this chapter, the enactment of this chapter does not alter the classification and ownership rights of property acquired before the determination date or the classification and ownership rights of property acquired after the determination date in exchange for or with the proceeds of property acquired before the determination date.

(9) Except as provided otherwise in this chapter and except to the extent that it would affect the spouse's ownership rights in the property existing before the determination date, during marriage the interest of a spouse in property owned immediately before the determination date is treated as if it were individual property.

(10) Spouses may reclassify their property by gift, conveyance, as defined in s. 706.01 (4), signed by both spouses, marital property agreement, written consent under s. 766.61 (3) (e) or unilateral statement under s. 766.59 and, if the property is a security, as defined in s. 705.21 (11), by an instrument, signed by both spouses, which conveys an interest in the security. If a spouse gives property to the other spouse and intends at the time the gift is made that the property be the individual property of the donee spouse, the income from the property is the individual property of the donee spouse unless a contrary intent of the donor spouse regarding the classification of income is established.

History: 1983 a. 186; 1985 a. 37; 1987 a. 393; 1991 a. 301; 1993 a. 160.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

Marital property presumptions and tracing principals are applied. In Matter of Estate of Lloyd, 170 Wis. 2d 240, 487 N.W.2d 644 (Ct. App. 1992).

The marital property law does not reduce a non–negligent mother's wrongful death recovery for the father's contributory negligence in their child's death. Smith v. State Farm Fire & Casualty Co. 192 Wis. 2d 322, 531 N.W.2d 376 (Ct. App. 1995).

A quitclaim deed of a married couple's homestead from one spouse to the other is not valid to alienate the grantor's interest in the property in any way that would eliminate either spouse's contractual obligations under a mortgage containing a valid dragnet clause. Schmidt v. Waukesha State Bank, 204 Wis. 2d 426, 555 N.W.2d 655 (Ct. App. 1996).

The termination under sub.(3) of a marital property interest in pension benefits did not prevent the application of the equitable principle that a murderer should not be permitted to profit from the crime. The trial court acted properly in imposing a constructive on the decedent's marital property interest in the murderer's pension benefits. Estate of Hackl v. Hackl, 231 Wis. 2d 43, 605 N.W.2d 579 (Ct. App. 1999).

irreconcilable differences: Income from separate property under divorce law and under Wisconsin's marital property act. Bascom. 70 MLR 41 (1986).

The effects of the Wisconsin marital property act on trusts: Whose property is it? Kusky, WBB March, 1985.

766.51 Management and control of property of spouses. (1) A spouse acting alone may manage and control:

(a) That spouse's property that is not marital property.

(am) Except as provided in subs.(2) and (3), marital property held in that spouse's name alone or not held in the name of either spouse.

(b) Marital property held in the names of both spouses in the alternative, including marital property held in a form designating the holder by the words "(name of one spouse) or (name of other spouse)".

(d) A policy of insurance if that spouse is designated as the owner on the records of the policy issuer.

(e) Any right of an employee under a deferred employment benefit plan that accrues as a result of that spouse's employment.

(f) A claim for relief vested in that spouse by other law.

(1m) (a) Notwithstanding any provision in this section except par.(b), for the purpose of obtaining an extension of credit for an obligation described under s. 766.55 (2) (b), a spouse acting alone may manage and control all of the marital property.

(b) Unless the spouse acting alone may otherwise under this section manage and control the property, the right to manage and control marital property under this subsection does not include the right to manage and control marital property described in s. 766.70 (3) (a) to (d) or the right to assign, create a security interest in, mortgage or otherwise encumber marital property.

(2) Spouses may manage and control marital property held in the names of both spouses other than in the alternative only if they act together.

(3) The right to manage and control marital property transferred to a trust is determined by the terms of the trust.

(4) The right to manage and control marital property permits gifts of that property, subject to remedies under this chapter.

(5) The right to manage and control marital property does not determine the classification of property of the spouses and does not rebut the presumption under s. 766.31 **(2).**

(6) The enactment of this chapter does not affect the right to manage and control any property of either or both spouses acquired before the determination date.

(7) A court may appoint a conservator or guardian under ch. 880 to exercise a disabled spouse's right to manage and control marital property.

(8) This section does not affect s. 706.02 (1) (f).

(9) If an executory contract for the sale of property is entered into by a person having the right of management and control of the property, the rights of all persons then having or thereafter acquiring an interest in the property under this chapter are subject to the terms of the executory contract. This subsection applies to contracts entered into before or after the determination date.

(10) At the death of a spouse if property described under s. 766.70 (3) (a), (b) or (d) is held by either spouse, but not in the names of both spouses, such property may be subject to the management and control of the holding spouse as provided under s. 857.015.

History: 1983 a. 186; 1985 a. 37; 1987 a. 393.

766.60 Optional forms of holding property; survivorship ownership. (1) Spouses may hold marital property in a form that designates the holders of it by the words "(name of one spouse) or (name of other spouse) as marital property".

(2) Spouses may hold marital property in a form that designates the holder of it by the words "(name of one spouse) and (name of other spouse) as marital property".

(3) A spouse may hold individual property in a form that designates the holder of it by the words "(name of spouse) as individual property".

(4) (a) Spouses may hold property in any other form permitted by law, including but not limited to a concurrent form or a form that provides survivorship ownership. Except as provided in par.(b) and except with respect to any remedy a spouse has under this chapter, whether a tenancy in common or joint tenancy was created before or after the determination date, to the extent the incidents of the tenancy in common or joint tenancy conflict with or differ from the incidents of property classification under this chapter, the incidents of the tenancy in common or of the joint tenancy, including the incident of survivorship, control.

(b) 1. Except as provided in subd. 2. or in a marital property agreement under s. 766.58: a. If a document of title, instrument of transfer or bill of sale expresses an intent to establish a joint tenancy exclusively between spouses after the determination date, the property is survivorship marital property under sub.(5). b. If a document of title, instrument of transfer or bill of sale expresses an intent to establish a tenancy in common exclusively between spouses after the determination date, the property is marital property.

2. A joint tenancy or tenancy in common exclusively between spouses which is given to the spouses by a 3rd party after the determination date is survivorship marital property or marital property, respectively, unless the donor provides otherwise.

(5) (a) If the words "survivorship marital property" are used instead of the words "marital property" in the form described in sub.(1) or (2), the marital property so held is survivorship marital property. On the death of a spouse, the ownership rights of that spouse in the property vest solely in the surviving spouse by nontestamentary disposition at death. The first deceased spouse may not dispose at death of any interest in survivorship marital property. Holding marital property in a form described in sub.(1) or (2) does not alone establish survivorship ownership between the spouses with respect to the property held.

(b) A real estate mortgage, a security interest under ch. 409 or a lien under s. 71.91 (5) (b) or ch. 49 or 779 on or against the interest of a spouse in survivorship marital property does not defeat the right of survivorship on the death of the spouse. The surviving spouse takes the interest of the deceased spouse subject to the mortgage, security interest or lien.

(c) A judgment lien on the interest of a spouse in survivorship marital property does not defeat the right of survivorship on the death of the spouse. If execution on the judgment lien was issued before the spouse's death the surviving spouse takes the interest of the deceased spouse subject to the lien. If execution on the judgment lien was not issued before the spouse's death, the surviving spouse takes the interest of the deceased spouse free of the judgment lien, unless the judgment lien is on the interests of both spouses in the survivorship marital property and all of the property of the spouses was available under s. 766.55 to satisfy the obligation for which the judgment was rendered.

History: 1983 a. 186; 1985 a. 37; 1987 a. 27 s. 3202 (47) (a); 1987 a. 312 s. 17; 1991 a. 301.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

When land contract sellers who owned the property as survivorship marital property, received the property back from the buyers by quit claim deed in lieu of foreclosure, the sellers' ownership interest could not be changed by the deed to other than survivorship property. Wonka v. Estate of Bierbrauer, 2001 WI App 274, 249 Wis. 2d 23, 631 N.W.2d 92.

766.605 Classification of homestead. A homestead acquired after the determination date which, when acquired, is held exclusively between spouses with no 3rd party is survivorship marital property if no intent to the contrary is expressed on the instrument of transfer or in a marital property agreement. A homestead may be reclassified under s. 766.31 (10).

History: 1983 a. 186; 1987 a. 393; 1991 a. 301.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

766.63 Mixed property. (1) Except as provided otherwise in ss. 766.61 and 766.62, mixing marital property with property other than marital property reclassifies the other property to marital property unless the component of the mixed property which is not marital property can be traced.

(2) ,Application by one spouse of substantial labor, effort, inventiveness, physical or intellectual skill, creativity or managerial activity to either spouse's property other than marital property creates marital property attributable to that application if both of the following apply:

(a) Reasonable compensation is not received for the application.

(b) Substantial appreciation of the property results from the application.

History: 1983 a. 186; 1985 a. 37; 1991 a. 301.

Marital property presumptions and tracing principals are applied. In Matter of Estate of Lloyd, 170 Wis. 2d 240, 487 N.W.2d 644 (Ct. App. 1992).

If the tracing of the marital component of a mixed asset is established under sub.(1), reclassification does not occur. Instead, a claim for reimbursement exists in favor of the marital estate measured by the enhanced value of the asset, and not the marital amounts expended. Estate of Kobylski, 178 Wis. 2d 158, 503 N.W.2d 369 (Ct. App. 1993).

Under sub.(2), a party who applies substantial uncompensated labor to property may not recover if there is no resulting substantial appreciation. Estate of Kobylski, 178 Wis. 2d 158, 503 N.W.2d 369 (Ct. App. 1993).

Expenditures that result in the mere maintenance of property, including the payment of property taxes, do not result in marital property being created through mixing. Krueger v. Rodenberg, 190 Wis. 2d 367, 527 N.W.2d 381 (Ct. App. 1994).

If a nonmarital asset is mixed with marital property, tracing the nonmarital property to its nonmarital source preserves the traced component's nonmarital status. There is no requirement that the party tracing the nonmarital component also trace the mixing of the marital component. That the marital property was used to satisfy a nonmarital debt against the property does not change the nonmarital character of the traceable property. Bille v. Zuraff, 198 Wis. 2d 867, 543 N.W.2d 568 (Ct. App. 1995).

CHAPTER 788
ARBITRATION

788.015 Agreement to arbitrate real estate transaction disputes.

788.015 Agreement to arbitrate real estate transaction disputes. A provision in any written agreement between a purchaser or seller of real estate and a real estate broker, or between a purchaser and seller of real estate, to submit to arbitration any controversy between them arising out of the real estate transaction is valid, irrevocable and enforceable except upon any grounds that exist at law or in equity for the revocation of any agreement. The agreement may limit the types of controversies required to be arbitrated and specify a term during which the parties agree to be bound by the agreement.

History: 1991 a. **163.**

CHAPTER 799
PROCEDURE IN SMALL CLAIMS ACTIONS

799.01 Applicability of chapter.

799.01 Applicability of chapter. (1) EXCLUSIVE USE OF SMALL CLAIMS PROCEDURE. Except as provided in ss. 799.02 (1) and 799.21 (4) and except as provided under sub. (2), the procedure in this chapter is the exclusive procedure to be used in circuit court in the following actions:

(a) ***Eviction actions.*** Actions for eviction as defined in s. 799.40 regardless of the amount of rent claimed therein.

(am) ***Return of earnest money.*** Actions for the return of earnest money tendered pursuant to a contract for purchase of real property, including a condominium unit, as defined in s. 703.02 (15), and time–share property, as defined in s. 707.02 (32), that includes 1 to 4 dwelling units, as defined in s. 101.61 (1), by sale, exchange or land contract unless the transfer is exempt from the real estate transfer fee under s. 77.25 regardless of the amount claimed.

(b) ***Forfeitures.*** Actions to recover forfeitures except as a different procedure is prescribed in chs. 23, 66, 345 and 778, or elsewhere, and such different procedures shall apply equally to the state, a county or a municipality regardless of any limitation contained therein.

(c) ***Replevins.*** Actions for replevin under ss. 810.01 to 810.13 where the value of the property claimed does not exceed $5,000.

(cm)Arbitration. Actions for the confirmation, vacation, modification or correction of an arbitration award where arbitration was in settlement of a controversy arising out of a transaction for the purchase of real property, including a condominium unit, as defined in s. 703.02 (15), and time–share property, as defined in s. 707.02 (32), that includes 1 to 4 dwelling units, as defined in s. 101.61 (1), by sale, exchange or land contract regardless of the amount of that award.

(d) ***Other civil actions.*** Other civil actions where the amount claimed is $5,000 or less, if the actions or proceedings are: 1. For money judgments only except for cognovit judgments which shall be taken pursuant to s. 806.25; or 2. For attachment under ch. 811 and garnishment under subch. I of ch. 812, except that s. 811.09 does not apply to proceedings under this chapter; or 3. To enforce a lien upon personalty.

(2) PERMISSIVE USE OF SMALL CLAIMS PROCEDURE. A taxing authority may use the procedure in this chapter in an action to recover a tax from a person liable for that tax where the amount claimed, including interest and penalties, is $5,000 or less. This chapter is not the exclusive procedure for those actions.

History: Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 325, 365, 422; 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 175 s. 53; Stats. 1979 s. 799.01; 1983 a. 228; 1987 a. 208, 378, 403; 1989 a. 31, 359; 1991 a. 163; 1993 a. 80, 181; 1995 a. 27.

This section does not authorize the court to grant injunctional relief. County of Columbia v. Bylewski, 94 Wis. 2d 153, 288 N.W.2d 129 (1980).

The $5,000 small claims limitation applies to pecuniary loss, but not to costs and fees associated with the loss. Reusch v. Roob, 2000 WI App. 76, 234 Wis. 2d 270, 610 N.W.2d 168.

Chapter RL 1

PROCEDURES TO REVIEW DENIAL OF AN APPLICATION

RL 1.01	Authority and scope.	RL 1.08	Procedure.
RL 1.03	Definitions.	RL 1.09	Conduct of hearing.
RL 1.04	Examination failure: retake and hearing.	RL 1.10	Service.
RL 1.05	Notice of intent to deny and notice of denial	RL 1.11	Failure to appear.
RL 1.06	Parties to a denial review proceeding.	RL 1.12	Withdrawal of request
RL 1.07	Request for hearing.	RL 1.13	Transcription fees.

RL 1.01 Authority and scope. Rules in this chapter are adopted under authority in s. 440.03 (1), Stats., for the purpose of governing review of a decision to deny an application. Rules in this chapter do not apply to denial of an application for renewal of a credential. Rules in this chapter shall apply to applications received on or after July 1, 1996.

Note: Procedures used for denial of an application for renewal of a credential are found in Ch. RL 2. Wis. Admin. Code and s. 227.01 (3) (b), Stats.

History: Cr. Register, October. 1985. No. 358, eff. 11–1–85; am., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.02 Scope. History: Cr. Register, October. 1985. No. 358, eff. 11–1–85; r., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.03 Definitions. In this chapter:

(1) "Applicant" means any person who applies for a credential from the applicable credentialing authority. "Person" in this subsection includes a business entity.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(3) "Credentialing authority" means the department or an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential.

(4) "Denial review proceeding" means a class 1 proceeding as defined in s. 227.01 (3) (a), Stats., in which a crcdentialing authority reviews a decision to deny a completed application for a credential.

(5) "Department" means the department of regulation and licensing.

(6) "Division" means the division of enforcement *in* the department.

History: Cr. Register, October, 1985, No. 358. eff. 11–1–85; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register. May, 1988, No. 389: am. (1), (4), r. (2), renum. (3) to be (5), cr. (2), (3), (6), Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.04 Examination failure: retake and hearing. (1) An applicant may request a hearing to challenge the validity, scoring or administration of an examination if the applicant has exhausted other available administrative remedies. including, but not limited to, internal examination review and regrading, and if either:

(a) The applicant is no longer eligible to retake a qualifying examination.

(b) Reexamination is not available within 6 months from the date of the applicant's last examination.

(2) A failing score on an examination does not give rise to the right to a hearing if the applicant is eligible to retake the examination and reexamination is available within 6 months from the date of the applicant's last examination.

Note: An applicant is not eligible for a license until his or her application is complete. An application is not complete until an applicant has submitted proof of having successfully passed any required qualifying examination. If an applicant fails the qualifying examination, but has the right to retake it within 6 months, the applicant is not entitled to a hearing under this chapter.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.05 Request for hearing. History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; corrections in (2) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; r. Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.05 Notice of intent to deny and notice of denial. (1) NOTICE OF INTENT TO DENY. (a) A notice of intent *to* deny may be issued upon an initial determination that the applicant does not meet the eligibility requirements for a credential. A notice of intent to deny shall contain a short Statement in plain language of the basis for the anticipated denial, specify the statute, rule or other standard upon which the denial will be based and state that the application shall be denied unless, within 45 calendar days from the date of the mailing of the notice, the credentialing authority receives additional information which shows that the applicant meets the requirements for a credential. The notice shall be substantially in the form shown in Appendix I.

(b) If the credentialing authority does not receive additional information within the 45 day period, the notice of intent to deny shall operate as a notice of denial and the 45 day period for requesting a hearing described in s. RL 1.07 shall commence on the date of mailing of the notice of intent to deny.

(c) If the credentialing authority receives additional information within the 45 day period which fails to show that the applicant meets the requirements for a credential, a notice of denial shall be issued under sub. (2).

(2) NOTICE OF DENIAL. If the credentialing authority determines that an applicant does not meet the requirements for a credential, the credentialing authority shall issue a notice of denial in the form shown in Appendix II. The notice shall contain a short statement in plain language of the basis for denial, specify the statute. rule or other standard upon which the denial is based, and be substantially in the form shown in Appendix II.

History: Cr., Register, July, 1996, eff. 8–1–96.

RL 1.06 Parties to a denial review proceeding. Parties to a denial review proceeding are the applicant, the credentialing authority and any person admitted to appear under s. 227.44 (2m), Stats.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; renum. from RL 1.04 and am., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.07 Request for hearing. An applicant may request a hearing within 45 calendar days after the mailing of a notice of denial by the credentialing authority. The request shall be in writing and set forth all of the following:

(1) The applicant's name and address.

(2) The type of credential for which the applicant has applied.

(3) A specific description of the mistake in fact or law which constitutes reasonable grounds for reversing the decision to deny the application for a credential. If the applicant asserts that a mistake in fact was made, the request shall include a concise statement of the essential facts which the applicant intends to prove at the hearing. If the applicant asserts a mistake in law was made, the request shall include a statement of the law upon which the applicant relies.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.08 Procedure. The procedures for a denial review proceeding are:

(1) REVIEW OF REQUEST FOR HEARING. Within 45 calendar days of receipt of a request for hearing, the credentialing authority or its designee shall grant or deny the request for a hearing on a denial of a credential. A request shall be granted if requirements in s. RL 1.07 are met, and the credentialing authority or its designee shall

notify the applicant of the time, place and nature of the hearing. If the requirements in s. RL 1.07 are not met, a hearing shall be denied, and the crcdentialing authority or its designee shall inform the applicant in writing of the reason for denial. For purposes of a petition for review under s. 227.52, Stats., a request is denied if a response to a request for hearing is not issued within 45 calendar days of its receipt by the credentialing authority.

(2) DESIGNATION OF PRESIDING OFFICER. An administrative law judge employed by the department shall preside over denial hearings, unless the credentialing authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(3) DISCOVERY. Unless the parties otherwise agree, no discovery is permitted, except for the taking and preservation of evidence as provided in ch. 804, Stats., with respect to witnesses described in s. 227.45 (7) (a) to (d), Stats. An applicant may inspect records under s. 19.35, Stats., the public records law.

(4) BURDEN OF PROOF, The applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96.

RL 1.09 Conduct of hearing. (1) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence, and of other oral proceedings when requested by a party.

(2) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(3) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 227.45 (6m), Stats.

(b) A presiding officer may issue protective orders according to the provisions of s. 805.07, Stats.

(4) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(5) EVIDENCE. The credentialing authority and the applicant shall have the right to appear in person or by counsel, to call, examine and cross-examine witnesses and to introduce evidence into the record. If the applicant submits evidence of eligibility for a credential which was not submitted to the credentialing authority prior to denial of the application, the presiding officer may request the credentialing authority to reconsider the application and the evidence of eligibility not previously considered.

(6) BRIEFS. The presiding officer may require the filing of briefs.

(7) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr.. Register, July, 1996, No. 487, eff. 8-1-96.

RL 1.10 Service. Service of any document on an applicant may be made by mail addressed to the applicant at the last address filed in writing by the applicant with the credentialing authority. Service by mail is complete on the date of mailing.

History: Cr. Register. October. **1985,** No. **358,** eff. **11-1-85; renum. from RL 1.06 and am., Register, July, 1996, Nu. 487, eff. 8-1-96.**

RL 1.11 Failure to appear. In the event that neither the applicant nor his or her representative appears at the time and place designated for the hearing, the credentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal before the credentialing authority which denied the license.

History: Cr. Register, October, **1985,** No. **358,** eff. 11-1-85; **renum. from RL 1.07 and am., Register. July, 1996, No. 487, eff. 8-1-96.**

RL 1.12 Withdrawal of request. A request for hearing may be withdrawn at any time. Upon receipt of a request for withdrawal, the crcdentialing authority shall issue an order affirming the withdrawal of a request for bearing on the denial.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96,

RL 1.13 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath. For purposes of this section, a determination of indigency shall be based on the standards used for making a determination of indigency under s. 977.07, Stats.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96.

Chapter RL 1

APPENDIX I

NOTICE OF INTENT TO DENY

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Intent to Deny

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL]. On the basis of the application submitted, the [CREDENTIALING AUTHORITY] intends to deny your application for reasons identified below unless, within 45 calendar days from the date of the mailing of this notice, the [CREDENTIALING AUTHORITY] receives additional information which shows that you meet the requirements for a credential.

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

If the [CREDENTIALING AUTHORITY] does not receive additional information within the 45 day period, this notice of intent to deny shall operate as a notice of denial and the 45 day period you have for requesting a hearing shall commence on the date of mailing of this notice of intent to deny.

_____
[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. If you do not submit additional information in support of your application, you may request a hearing within 45 calendar days after the mailing of this notice. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S'] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued with 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 1

APPENDIX II

NOTICE OF DENIAL

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Denial

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL] and denies the application for the following reasons:

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

_____
[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL. 1 of the Wisconsin Administrative Code. You may request a hearing within 45 calendar days after the mailing of this notice of denial. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S] decision. Under s. RL. 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued within 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 2

PROCEDURES FOR PLEADING AND HEARINGS

RL 2.01	Authority.
RL 2.02	Scope; kinds of proceedings.
RL 2.03	Definitions.
RL 2.035	Receiving informal complaints.
RL 2.036	Procedure for settlement conferences.
RL 2.037	Parties to a disciplinary pi-oceeding.
RL 2.04	Commencement of disciplinary proceedings.
RL 2.05	Pleadings to be captioned.
RL 2.06	Complaint.
RL 2.07	Notice of hearing.
RL 2.08	Service and filing of complaint. notice of hearing and other papers
RL 2.09	Answer.
RL 2.10	Administrative law judge.
RL 2.11	Prehearing conference.
RL 2.12	Settlements.
RL 2.13	Discovery.
RL 2.14	Default.
RL 2.15	Conduct of hearing.
RL2.16	Witness fees and costs.
RL 2.17	Transcription fees.
RL 2.18	Assessment of costs.

RL 2.01 Authority. The rules in ch RL 2 are adopted pursuant to authority in s. 440.03 (1), Stats., and procedures in ch. 227, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, May, 1982, No. 317, eff. 6–1–82.

RL 2.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in class 2 proceedings, as defined in s. 227.01 (3) (b), Stats., against licensees before the department and all disciplinary authorities attached to the department, except that s. RL 2.17 applies also to class 1 proceedings, as defined in s. 227.01 (3) (a), Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, May, 1982, No. 317, eff. 6–1–82; corrections made under s. 13.93(2m) (b) 7., Stats., Register, May, 1988, No. 389; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.03 Definitions. In this chapter:

(1) "Complainant" means the person who signs a complaint.

(2) "Complaint" means a document which meets the requirements of ss. RL 2.05 and 2.06.

(3) "Department" means the department of regulation and licensing.

(4) "Disciplinary authority" means the department or the attached examining board or board having authority to revoke the license of the holder whose conduct is under investigation.

(5) "Disciplinary proceeding" means a proceeding against one or more licensees in which a disciplinary authority may determine to revoke or suspend a license, to reprimand a licensee, to limit a license, to impose a forfeiture, or to refuse to renew a license because of a violation of law.

(6) "Division" means the division of enforcement in the department.

(7) "Informal complaint" means any written information submitted to the division or any disciplinary authority by any person which requests that a disciplinary proceeding be commenced against a licensee or which alleges facts, which if true, warrant discipline.

(8) "Licensee" means a person, partnership, corporation or association holding any license, permit, certificate or registration granted by a disciplinary authority or having any right to renew a license, permit, certificate or registration granted by a disciplinary authority.

(9) "Respondent" means the person against whom a disciplinary proceeding has been commenced and who is named as respondent in a complaint.

(10) "Settlement conference" means a proceeding before a disciplinary authority or its designee conducted according to s. RL 2.036, in which a conference with one or more licensee is held to attempt to reach a fair disposition of an informal complaint prior to the commencement of a disciplinary proceeding

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (1) and (6), renum. (7) and (8) to be (8) and (9), cr. (7), Register, May, 1982, No. 317, eff. 6–1–82; r. (1), renum. (2) to (4) to be (1) to (3), cr. (4) and (10), am. (5), (7) and (8), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.035 Receiving informal complaints. All informal complaints received shall be referred to the division for filing, screening and, if necessary, investigation. Screening shall be done by the disciplinary authority, or, if the disciplinary authority directs, by a disciplinary authority member or the division. In this section, screening is a preliminary review of complaints to determine whether an investigation is necessary. Considerations in screening include, but are not limited to:

(1) Whether the person complained against is licensed;

(2) Whether the violation alleged is a fee dispute;

(3) Whether the matter alleged, if taken as a whole, is trivial; and

(4) Whether the matter alleged is a violation of any statute, rule or standard of practice.

History: Cr. Register, May, 1982, No. 317, eff. 6–1–82; am. (intro.) and (3), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.036 Procedure for settlement conferences. At the discretion of the disciplinary authority, a settlement conference may be held prior to the Commencement of a disciplinary proceeding, pursuant to the following procedures:

(1) SELECTION OF INFORMAL COMPLAINTS. The disciplinary authority or its designee may determine that a settlement conference is appropriate during an investigation of an informal complaint if the information gathered during the investigation presents reasonable grounds to believe that a violation of the laws enforced by the disciplinary authority has occurred. Considerations in making the determination may include, but are not limited to:

(a) Whether the issues arising out of the investigation of the informal complaint are clear, discrete and sufficiently limited to allow for resolution in the informal setting of a settlement conference; and

(b) Whether the facts of the informal complaint are undisputed or clearly ascertainable from the documents received during investigation by the division.

(2) PROCEDURES. When the disciplinary authority or its designee has selected an informal complaint for a possible settlement conference, the licensee shall be contacted by the division to determine whether the licensee desires to participate in a settlement conference. A notice of settlement conference and a description of settlement conference procedures, prepared on forms prescribed by the department, shall be sent to all participants in ad-

vance of any settlement conference. A settlement conference shall not be held without the consent of the licensee. No agreement reached between the licensee and the disciplinary authority or its designee at a settlement conference which imposes discipline upon the licensee shall be binding until the agreement is reduced to writing, signed by the licensee, and accepted by the disciplinary authority.

(3) ORAL STATEMENTS AT SETTLEMENT CONFERENCE. Oral statements made during a settlement conference shall not be introduced into or made part of the record in a disciplinary proceeding.

History: Cr. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.037 Parties to a disciplinary proceeding. Parties to a disciplinary proceeding are the respondent, the division and the disciplinary authority before which the disciplinary proceeding is heard.

History: Cr. Register, May, 1982, No. 317, eff. 6 1·82; renum. from RL 2.036 and am., Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.04 Commencement of disciplinary proceedings. Disciplinary proceedings are commenced when a notice of hearing is filed in the disciplinary authority office or with a designated administrative law judge.

History: Cr. Register, February, 1979, No. 278, eff. 3–1–79; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.05 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in disciplinary proceedings shall be captioned: "BEFORE THE _____" and shall be entitled: "IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST _____, RESPONDENT."

History: Cr. Register, October, 1978, No. 274. eff. 11–1–78.

RL 2.06 Complaint. A complaint may be made on information and belief and shall contain:

(1) The name and address of the licensee complained against and the name and address of the complainant:

(2) A short statement in plain language of the cause for disciplinary action identifying with reasonable particularity the transaction, occurrence or event out of which the cause arises and specifying the statute, rule or other standard alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the complainant demands that the disciplinary authority hear evidence relevant to matters alleged in this complaint, determine and impose the discipline warranted, and assess the costs of the proceeding against the respondent;" and,

(4) The signahire of the complainant.

History: Cr. Register: October, 1978, No. 274, eff. 11–1–78; **am.** (intro.), (3) and (4), Register, June. 1992, No. 438, eff. 7–1–92.

RL 2.07 Notice of hearing. (1) A notice of hearing shall be sent to the respondent at least 10 days prior to the hearing, unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be substantially in the form shown in Appendix I and signed by a disciplinary authority member or an attorney in the division.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; am. (2) (intro.), Register, February: 1979. No. 278. eff. 3–1–79; r. and recr. Register, June. 1992. No. 438, eff. 7–1–92.

RL 2.08 Service and filing of complaint, notice of hearing and other papers. (1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14(2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with a disciplinary authority may be mailed to the disciplinary authority office or, if an administrative law judge has been designated to preside in the matter. to the administrative law judge and shall be deemed filed on receipt at the disciplinary authority office or by the administrative law judge, An answer under s. RL 2.09, and motions under s. RL 2.15 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the disciplinary authority. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the disciplinary authority.

History: Cr. Register, October, 1978, No. 273, eff. 11–1–78; am. (2), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.09 Answer. (1) An answer to a complaint shall state in short and plain terms the defenses to each cause asscrtcd and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation. the rcspondcnt shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constihiting an affirmative defense.

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (4). Register. February, 1979, No. 278, eff. 3–1–79; **am. (1), (3) and (4),** Register, **June,** 1992, No. 438, eff. 7–1–92.

RL 2.10 Administrative law judge. (1) DESIGNATION. Disciplinary hearings shall be presided over by an administrative law judge employed by the department unless the disciplinary authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or aperson employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(2) AUTHORITY. An administrative law judge designated under this section to preside over any disciplinary proceeding has the authority described in s. 227.46 (1), Stats. Unless otherwise directed by a disciplinary authority pursuant to s. 227.46 (3), Stats., an administrative law judge presiding over a disciplinary proceeding shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. Unless otherwise directed by a disciplinary authority, the proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the disciplinary authority objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; r. and recr. (1). Register, November, 1986, No. 371, eff. 12–1–86; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; **am.** Register, June, 1992, No. 438. eff. 7-1–92.

RL 2.11 Prehearing conference. In any matter pending before the disciplinary authority the complainant and the respondent, or their attorneys, may be directed by the disciplinary authority or administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplifica-

tion of issues, the necessity or desirability of amendments to the pleadings, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, October. 1978. No. 274, eff. 11–1–78; am. Register, June, 1992, No. 438. eff. 1992.

RL 2.12 Settlements. No stipulation or settlement agreement disposing of a complaint or informal complaint shall be effective or binding in any respect until rcduccd to writing, signed bv the resnondent and approved bv the disciplinarv authority.

History: Cr. Register, October. 1978, No. 274. eff. 11–1–78; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.13 Discovery. The person prosecuting the complaint and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats. or other remedies as are appropriate for failure to comply with such orders may be made by the presiding officer.

History: Cr. Register, October, 1978, No. 274. eff. 11–1–78.

RL 2.14 Default. If the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register. June, 1992, No. 438, eff. 7–1–92.

RL 2.15 Conduct of hearing. (1) PRESIDING OFFICER. The hearing shall be presided over by a member of the disciplinary authority or an administrative law judge designated pursuant to s. RL 2.10.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The complainant and the respondent shall have the right to appear in person or by counsel, to call. examine, and cross–examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The presiding officer may require the filing of briefs.

(5) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(6) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) **A** presiding officer may issue protective orders according to the provision the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department ofregulation and licensing in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsew-here.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (l), (5) and (6), cr. (8). Register, June. 1992, No. 438, eff. 7–1–92.

RL 2.16 Witness fees and costs. Witnesses subpoenaed at the request of the division or the disciplinary authority shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, October, 1978, No. 274. eff. 11–1–78; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.17 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of S.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78: am. (1) Register, Map. 1982, No. 317, eff. 6–1–82; r. **and** recr. Register, June, 1992. No. 438, eff. 7 1- 92; **an.** (1) (b), Register. August, 1993, No. 452, eff. 9–1–93.

RL 2.18 Assessment of costs. (1) The proposed decision of an administrative law judge following hearing shall include a recommendation whether all or part of the costs of the proceeding shall be assessed against the respondent.

(2) If a respondent objects to the recommendation of an administrative law judge that costs be assessed, objections to the assessment of costs shall be filed, along with any other objections to the proposed decision, within the time established for filing of objections.

(3) The disciplinary authority's final decision and order imposing discipline in a disciplinary proceeding shall include a determination whether all or part of the costs of the proceeding shall be assessed against the respondent.

(4) When costs are imposed, the division and the administrative law judge shall file supporting affidavits showing costs incurred within 15 days of the date of the final decision and order. The respondent shall file any objection to the affidavits within 30 days of the date of the final decision and order. The disciplinary authority shall review any objections, along with the affidavits, and affirm or modify its order without a hearing.

History: Cr. Register, June, 1992. No. 438, **eff.** 7–1–92.

Chapter RL 2
APPENDIX I
NOTICE OF HEARING

THE STATE OF WISCONSIN

To each person named above as a respondent:

You are hereby notified that disciplinary proceedings have been commenced against you before the (#1). The Complaint, which is attached to this Notice, states the nature and basis of the proceeding. This proceeding may result in disciplinary action taken against you by the (#2). This proceeding is a class 2 proceeding as defined in s. 227.01 (3) (b), Wis. Stats.

Within 20 days from the date of service of the complaint, you must respond with a written Answer to the allegations of the Complaint. You may have an attorney help or represent you. The Answer shall follow the general rules of pleading contained in s. RL 2.09. If you do not provide a proper Answer within 20 days, you will be found to be in default, and a default judgment may be entered against you on the bais of the complaint and other evidence and the (#3) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

The original of your Answer should be filed with the Administrative Law Judge who has been designated to preside over this matter pursuant to s. RL 2.10, who is:

(#4)
Department of Regulation and Licensing
Office of Board Legal Services
P. O. Box 8935
Madison, Wisconsin 53708

You should also file a copy of your Answer with the complainant's attorney, who is:

(#5)
Department of Regulation and Licensing
Division of Enforcement
P. O. Box 8935
Madison, Wisconsin 53708

A hearing on the matters contained in the Complaint will be held at the time and location indicated below:

Hearing Date, Time and Location

Date: (#6)
Time: (#7)
Location: Room(#8)
1400 East Washington Ave
Madison, Wisconsin

or as soon thereafter as the matter may **be** heard. The questions to he determined at this hearing are whether the license previously issued to you should be revoked or suspended, whether such license should be limited, whether you should be reprimanded, whether, if authorized by law, a forfeiture should be imposed, or whether any other discipline should be imposed on you. You may be represented by an attorney at the hearing. The legal authority and procedures under which the hearing is to be held is set forth in s. 227.44, Stats., **s.** (#9), Stats., ch. RL 2, and s. (#10).

If you do not appear for hearing at the time and location set forth above, you will be found to be in default, and a default judgment may be entered against you on the basis of the complaint and other evidence and the (#11) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the disciplinary authority and the Administrative Law Judge within 20 days of your receiving this Notice.

Dated at Madison, Wisconsin this _____day of, _____20___ .

_____
Signature of Licensing Authority Member or Attorney
(#12)

INSERTIONS

1. Disciplinary authority
2. Disciplinary authority
3. Disciplinary authority
4. Administrative Law Judge
5. Complainant's attorney
6. Date of hearing
7. Time of hearing
8. Location of hearing
9. Legal authority (statute)
10. Legal authority (administrative code)
11. Disciplinary authority
12. Address and telephone number of person signing the complaint

Chapter RL 3

ADMINISTRATIVE INJUNCTIONS

RL 3.01	Authority.	RL 3.09	Administrative law judge
RL 3.02	Scope; kinds of proceedings.	RL3.10	Prehearing conference.
RL 3.03	Definitions.	RL3.11	Settlements.
RL 3.04	Pleadings to be captioned.	RL 3.12	Discovery.
RL 3.05	Petition for administrative injunction.	RL3.13	Default.
RL 3.06	Notice of hearing.	RL3.14	Conduct of hearing.
RL 3.07	Service and filing of petition, notice of hearing and other papers	RL3.15	Witness fees and costs.
RL 3.08	Answer.	RL3.16	Transcription fees.

RL 3.01 Authority. The rules inch. RL 3 are adopted pursuant to authority in ss. 440.03 (1) and 440.21, Stats.

History: Cr. Register. July. 1993, No. 451, eff. 8–1–93.

RL 3.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in public hearings before the department to determine and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and for issuance of an administrative injunction.

History: Cr. Register, July, 1993, No. 451. eff. 8–1–93.

RL 3.03 Definitions. In this chapter:

(1) "Administrative injunction" means a special order enjoining a person from the continuation of a practice or use of a title without a credential required under chs. 440 to 459, Stats.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 459, Stats.

(3) "Department" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Petition" means a document which meets the requirements of s. RL 3.05.

(6) "Respondent" means the person against whom an administrative injunction proceeding has been commenced and who is named as respondent in a petition.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.04 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in an administrative injunction proceeding shall be captioned: "BEFORE THE DEPARTMENT OF REGULATION AND LICENSING" and shall be entitled: "IN THE MATTER OF A PETITION FOR AN ADMINISTRATIVE INJUNCTION INVOLVING _____, RESPONDENT."

History: Cr. Register, July. 1993, No. 451, eff. 8–1–93.

RL 3.05 Petition for administrative injunction. A petition for an administrative injunction shall allege that a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats. A petition may be made on information and belief and shall contain:

(1) The name and address of the respondent and the name and address of the attorney in the division who is prosecuting the petition for the division;

(2) A short statement in plain language of the basis for the division's belief that the respondent has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and specifying the statute or rule alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the division demands that a public hearing be held and that the department issue a special order enjoining the person from the continuation of the practice or use of the title;" and,

(4) The signature of an attorney authorized by the division to sign the petition.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.06 Notice of hearing. (1) A notice of hearing shall be sent to the respondent by the division at least 10 days prior to the hearing, except in the case of an emergency in which shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be essentially in the form shown in Appendix I and signed by an attorney in the division.

History: Cr. Register. July, 1993, No. 451, eff. 8–1–93.

RL 3.07 Service and filing of petition, notice of hearing and other papers. (1) The petition, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with the department may be mailed to the administrative law judge designated to preside in the matter and shall be deemed filed on receipt by the administrative law judge. An answer under s. RL 3.08, and motions under s. RL 3.14 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the department. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after rcccipt by the department.

History: Cr. Register. July, 1993, No. 451, eff. 8–1–93.

RL 3.08 Answer. (1) An answer to a petition shall state in short and plain terms the defenses to each allegation asserted and shall admit or deny the allegations upon which the division relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or to provide a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a petition are admitted when not denied in the answer.

(4) An answer to a petition shall be filed within 20 days from the date of service of the petition.

History: Cr. Register, July, 1993, No. 451. eff. 8–1–93.

RL 3.09 Administrative law judge. (1) DESIGNATION. Administrative injunction proceedings shall be presided over by an administrative law judge. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department. The administrative law judge may not be an employe in the division.

(2) AUTHORITY. **An** administrative law judge designated under this section has the authority described in s. 227.46 (1), Stats. Unless otherwise directed under s. 227.46 (3), Stats., an administrative law judge shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted by the department as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. The proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the department objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, July. 1993. No. 451, eff. 8–1–93.

RL 3.10 Prehearing conference. In any matter pending before the department, the division and the respondent may be directed by the administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplification of issues, the necessity or desirability of amendments to the pleading, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.11 Settlements. No stipulation or settlement agreement disposing of a petition or informal petition shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the department.

History: Cr. Register, July, 1993, No. 451. eff. 8–1–93.

RL 3.12 Discovery. The division and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats., or other remedies as are appropriate for failure to comply with such orders may be made by the administrative law judge.

History: Cr. Register, July, 1993, No. 451. eff. 61–93.

RL 3.13 Default. If the respondent fails to answer as required by s. RL 3.08 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the department may make findings and enter an order on the basis of the petition and other evidence. The department may, for good cause, relieve the respondent from the effect of the findings and permit the respondent to answer and defend at any time before the department enters an order or within a reasonable time thereafter.

History: Cr. Register, July, 1993, No. 451. eff. 8–1–93.

RL 3.14 Conduct of hearing. (1) ADMINISTRATIVE LAW JUDGE. The hearing shall be presided over by an administrative law judge designated pursuant to s. RL 3.09.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The division and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross–examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The administrative law judge may require the filing of briefs.

(5) MOTIONS. (a) *How made.* An application to the administrative law judge for an order shall be by motion which, unless made during a hearing or prehearing conference, shall be in writing, state with particularity the grounds for the order, and set forth the relief or order sought.

(b) *Filing.* A motion shall be filed with the administrative law judge and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(c) *Supporting papers.* Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion.

(6) ADJOURNMENTS. The administrative law judge may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) An administrative law judge may issue protective orders according to the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the dcpartmcnt in Madison unless the administrative law judge determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, July, 1903, No. 451, eff. 8–1–93.

RL 3.15 Witness fees and costs. Witnesses subpoenaed at the request of the division shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, July, **1093,** No. 451, **eff.** 8–1–93.

RL 3.16 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

Note: The State Operational Purchasing Bulletin may be **obtained** from the Department of Administration. State Bureau of Procurement, 101 E. Wilson Street, **6th** Floor, P.O. Box 7867. Madison. Wisconsin 53707–7867.

(b) If a transcript is prepared by thedepartment, the department shall charge a transcription fee of $1.75 per page and a copying charge of S.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of an affidavit showing that the person is indigent according to the standards adopted in rules of the state public defender under ch. 977, Stats.

History: Cr. Register, July, 1993, No. 451, **eff. 8–1–93.**

Chapter RL 3

APPENDIX I

STATE OF WISCONSIN
BEFORE: THE DEPARTMENT OF REGULAITON AND LICENSING

IN THE MATTER OF A PETITION : FOR AN ADMINISTRATIVE; NOTICE OF INJUNCTION INVOLVING : HEARING

(#1),:
Respondent.

NOTICE OF HEARING

TO: (#2)

You are hereby notified that a proceeding for an administrative injunction has been commenced against you by the Department of Regulation and Licensing. The petition attached to this Notice states the nature and basis of the proceeding. This proceeding may result in a special order against you under s. 440.21, Stats., enjoining you from the continuation of a practice or use of a title.

A HEARING ON THE MATTERS CONTAINED IN THE PETITION WILL BE HELD AT:

Date: (#3) Time: (#4)
Location: Room (#5),
1400 East Washington Avenue
Madison, Wisconsin

or as soon thereafter as the matter may be heard.
The questions to be determined at this hearing are whether (#6).

Within 20 days from the date of service of the Notice, you must respond with a written Answer to the allegations of the Petition. You may have an attorney help or represent you. Your Answer must follow the rules of pleading in s. RL 3.08 of the Wisconsin Administrative Code. File your Answer with the Administrative Law Judge for this matter who is:

(#7), Department of Regulation and Licensing, Office of Board Legal Services,
P.O. **Box** 8935,
Madison, Wisconsin 53708

Please file a copy of your answer with the division's attorney, who is:

(#8), Division of Enforcement,
Department of Regulation and Licensing,
P.O. Box 8935,
Madison, Wisconsin 53708

If you do not provide a proper Answer within 20 days or do not appear for the hearing, you will be found to be in default and a special order may be entered against you enjoining you from the continuation of a practice or use of a title. If **a** special order is issued as a result of this proceeding and thereafter you violate the special order, you may be required to forfeit not more than $10,000 for each offense.

You may be represented by an attorney at the hearing. This proceeding is a class 2 proceeding as defined in s. 227.01 (3) (b), Stats. If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the Administrative Law Judge and the division within 20 days after you receive this Notice.

The legal authority and procedures under which the hearing is to be held are set forth in ss. 227.21, 440.44, (#9), Stats., and ch. RL 3, Wis. Admin. Code.

Dated at Madison, Wisconsin this _____ day of ——20—.

_____
(...#10...), Attorney

INSERTIONS
1. Respondent
2. Respondent with address
3. Date of hearing
4. Time of hearing
5. Place of hearing
6. Issues for hearing
7. Administrative Law Judge
8. Division of Enforcement attorney
9. Legal authority (statute)
10. Division of Enforcement attorney

Chapter RL 4

DEPARTMENT APPLICATION PROCEDURES AND APPLICATION FEE POLICIES

RL 4.01 Authorization.
RL 4.02 Definitions.
RL 4.03 Time for review and determination of credential applications.
RL 4.04 Fees for examinations, reexaminations and proctoring examinations.
RL 3.05 Fee for test review.
RL 4.06 Refunds.

RL 4.01 Authorization. The following rules are adopted by the department of regulation and licensing pursuant to ss. 440.05, 440.06 and 440.07, Stats.

History: Cr. Register, October, 1978, No. 274. eff. 11–1–78; am. Register, July, 1996, No. 487, eff. 8–1–96.

RL 4.02 Definitions. (1) "Applicant" means a person who applies for a license, permit, certificate or registration granted by the department or a board.

(2) "Authority" means the department or the attached examining board or board having authority to grant the credential for which an application has been filed.

(3) "Board" means the board of nursing and any examining board attached to the department.

(4) "Department" means the department of regulation and licensing.

(5) "Examination" means the written and practical tests required of an applicant by the authority.

(6) "Service provider" means a party other than the department or board who provides examination services such as application processing, examination products or administration of examinations.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; ***renum. (1) to (4) to*** be (4), (3), (1), ***(5)*** and am. (5), cr. (2) and (6), Register, July. 1996, No. 487, eff. **8–1–96.**

RL 4.03 Time for review and determination of credential applications. (1) TIME LIMITS. An authority shall review and make a determination on an original application for a credential within 60 business days after a completed application **is** received by the authority unless a different period for review and determination is specified by law.

(2) COMPLETED APPLICATIONS. An application is completed when all materials necessary to make a determination on the application and all materials requested by the authority have been received by the authority.

(3) EFFECT OF DELAY. **A** delay by an authority in making a determination on an application within the time period specified in this section shall be reported to the permit information center under s. 227.116, Stats. Delay by an authority in making a determination on an application within the time period specified in this section does not relieve any person from the obligation to secure approval from the authority nor affect in any way the authority's responsibility to interpret requirements for approval and to grant or deny approval.

History: Cr. Register, August, 1992, No. 440, eff. 9–1–92; renum. from RL 4.06 and am., Register, July, 1996. No. 487, eff. 8–1–96.

RL 4.04 Fees for examinations, reexaminations and proctoring examinations. (1) EXAMINATION FEE SCHEDULE. A list of all current examination fees may be obtained at no charge from the Office of Examinations, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(3) EXPLANATION OF PROCEDURES FOR SETTING EXAMINATION FEES. (a) Fees for examinations shall be established under s. 440.05 (1) (b), Stats., at the department's best estimate of the actual cost of preparing, administering and grading the examination or obtaining and administering an approved examination from a service provider.

(b) Examinations shall be obtained from a service provider through competitive procurement procedures described in ch. Adm 7.

(c) Fees for examination services provided by the department shall be established based on an estimate of the actual cost of the examination services. Computation of fees for examination services provided by the department shall include standard component amounts for contract administration services, test development services and written and practical test administration services.

(d) Examination fees shall be changed as needed to reflect changes in the actual costs to the department. Changes to fees shall be implemented according to par. (e).

(e) Examination fees shall be effective for examinations held 45 days or more after the date of publication of a notice in application forms. Applicants who have submitted fees in an amount less than that in the most current application form shall pay the correct amount prior to administration of the examination. Overpayments shall be refunded by the department. Initial credential fees shall become effective on the date specified by law.

(4) REEXAMINATION OF PREVIOUSLY LICENSED INDIVIDUALS. Fees for examinations ordered as part of a disciplinary proceeding or late renewal under s. 440.08 (3) (b), Stats., are equal to the fee set for reexamination in the most recent examination application form, plus $1 0 application processing.

(5) PROCTORING EXAMINATIONS FOR OTHER STATES. (a) Examinations administered by an authority of the state may be proctored for persons applying **for** credentials in another state if the person has been determined eligible in the other state and meets this state's application deadlines. Examinations not administered by an authority of the state may only be proctored for Wisconsin residents or licensees applying for credentials in another state.

(b) Department fees for proctoring examinations of persons who are applying for a credential in another state are equal to the cost of administering the examination to those persons, plus any additional cost charged to the department by the service provider.

History: Cr. Register, October, 1978, No. 274. eff. 11–1–78; r. and recr. Register, May, 1986, No. 365, eff. 6-1–86; am. Register. December, 1986. No. 372, eff. 1–1–87; am. Register, September, 1987, No. 381, eff. 10–1–87; am. (3), Register, September, 1988, No. 393, eff. 10–1–88; am. (31, Register, September, 1990, No. 417, eff. 10–1–90; r. and recr. (1) to (3), cr. (4), renum. Figure and am. Register, April, 1992, No. 436, eff. 5–1–92; **am.(4)** Figure, cr. (5), Register, July, 1993, No. 451, eff. 8–1–93; r. and recr. Register, November, 1993, No. 455, eff. 12–1–93; **r. (2), am. (3) (a), (b), (c), (e), (4), (5),** Register, July, 1996, No. 487, **eff.** 8–1–96.

RL 4.05 Fee for test review. (1) The fee for supervised review of examination results by a failing applicant which is conducted by the department is $28.

(2) The fee for review of examination results by a service provider is the fee established by the service provider.

History Cr. Register, April, 1992, No. 436. eff. 5–1–92; am. Register, **July,** 1996, No. 487, **eff.** 8–1–96.

RL 4.06 Refunds. (1) A refund of all but $10 of the applicant's examination fee and initial credential fee submitted to the department shall be granted if any of the following occurs:

(a) An applicant is found to be unqualified for an examination administered by the authority.

(b) An applicant is found to be unqualified for a credential for which no examination is required.

(c) An applicant withdraws an application by written notice to the authority at least 10 days in advance of any scheduled examination.

(d) An applicant who fails to take an examination administered by the authority either provides written notice at least 10 days in advance of the examination date that the applicant is unable to take the examination, or if written notice was not provided, submits a written explanation satisfactory to the authority that the applicant's failure to take the examination resulted from extreme personal hardship.

(2) An applicant eligible for a refund may forfeit the refund and choose instead to take an examination administered by the authority within 18 months of the originally scheduled examination at no added fee.

(3) An applicant who misses an examination as a result of being called to active military duty shall receive a full refund. The applicant requesting the refund shall supply a copy of the call up orders or a letter from the commanding officer attesting to the call up.

(4) Applicants who pay fees to service providers other than the department are subject to the refund policy established by the service provider.

History: Cr. Register, October, **1978,** No. **274, eff. 11-1-78; am.** *(2)* (intro.). Register, May, 1986, **No. 365, eff.** 6–1–86; **am.** (1) and (2) (intro.). renum. (2) (c) **and (3)** to be **(3)** and (4), **cr.** (5). Register, September, **1987,** No. 381. eff. 10-1-87; r. and recr. (1) and (4), Register, **April, 1992,** No. **436,** eff. 5–1–92: r. (2), renum. **(3)** to (5) to be (2) to (4), Register, July. **1993,** No. **451,** eff. **8-1–93; renum. from RL 4.03 and am., Register. July, 1996, No. 487, eff. 8-1–96.**

Chapter RL 6

SUMMARY SUSPENSIONS

RL 6.01 Authority and intent.
RL 6.02 Scope.
RL 6.03 Definitions.
RL 6.04 Petition for summary suspension.
RL 6.05 Notice ofpetition to respondent.
RL 6.06 Issuance of summary suspension order:
RL 6.07 Contents of summary suspension order.
RL 6.08 Service of summary suspension order.
RL 6.09 Hearing to show cause.
RL 6.10 Commencement of disciplinary proceeding.
RL6.11 Delegation.

RL 6.01 Authority and intent. (1) This chapter is adopted pursuant to authority in ss. 227.11 (2) (a) and 440.03 (l), Stats., and interprets s. 227.51 (3), Stats.

(2) The intent of the department in creating this chapter is to specify uniform procedures for summary suspension of licenses, permits, certificates or registrations issued by the department or any board attached to the department in circumstances where the public health, safety or welfare imperatively requires emergency action.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.02 Scope. This chapter governs procedures in all summary suspension proceedings against licensees before the department or any board attached to the department. To the extent that this chapter is not in conflict with s. 448.02 (4). Stats.. the chapter shall also apply in proceedings brought under that section.

History: Cr. Register, May. 1988, No. 389, eff. 6–1–88.

RL 6.03 Definitions. In this chapter:

(1) "Board" means the bingo control board, real estate board or any examining board attached to the department.

(2) "Department" means the department of regulation and licensing.

(3) "Disciplinary proceeding" means a proceeding against one or more licensees in which a licensing authority may determine to revoke or suspend a license, to reprimand a licensee, or to limit a license.

(4) "License" means any license, permit, certificate, or registration granted by a board or the department or a right to renew a license, permit, certificate or registration granted by a board or the department.

(5) "Licensee" means a person, partnership, corporation or association holding any license.

(6) "Licensing authority" means the bingo control board, real estate board or any examining board attached to the department, the department for licenses granted by the department, or one acting under a board's or the department's delegation under s. RL 6.11.

(7) "Petitioner" means the division of enforcement in the department.

(8) "Respondent" means a licensee who is named as respondent in a petition for summary suspension.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.04 Petition for summary suspension. (1) A petition for a summary suspension shall state the name and position of the person representing the petitioner, the address of the petitioner, the name and licensure status of the respondent, and an assertion of the facts establishing that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

(2) A petition for a summary suspension order shall be signed upon oath by the person representing the petitioner and may be made on information and belief.

(3) The petition shall be presented to the appropriate licensing authority.

History: Cr. Register, May. 1988. No. 389, eff. 6–1–88.

RL 6.05 Notice of petition to respondent. Prior to the presenting of the petition, the petitioner shall give notice to the respondent or respondent's attorney of tbe time and place when the petition will be presented to the licensing authority. Notice may bc given by mailing a copy of the petition and notice to the last–known address of the respondent as indicated in the records of the licensing authority as provided in s. 440.11 (2), Stats. as created by 1987 Wis. Act 27. Notice by mail is complete upon mailing. Notice may also be given by any procedure described in s. 801.11, Stats.

History: Cr. Register, May. 1988, No. 389, eff. 6–1–88.

RL 6.06 Issuance of summary suspension order. (1) If the licensing authority finds that notice has been given under s. RL 6.05 and finds probable cause to believe that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license, the licensing authority may issue an order for summary suspension. The order may be issued at any time prior to or subsequent to the commencement of a disciplinary proceeding under s. RL 2.04.

(2) The petitioner may establish probable cause under sub. (1) by affidavit or other evidence.

(3) The summary suspension order shall be effective upon service under s. RL 6.08, or upon actual notice of the summary suspension order to the respondent or respondent's attorney, whichever is sooner, and continue through the effective date of the final decision and order made in the disciplinary proceeding against the respondent, unless the license is restored under s. RL 6.09 prior to a formal disciplinary hearing.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.07 Contents of summary suspension order. The summary suspension order shall include the following:

(1) A statement that the suspension order is in effect and continues until the effective date of a final order and decision in the disciplinary proceeding against the respondent, unless otherwise ordered by the licensing authority;

(2) Notification of the respondent's right to request a hearing to show cause why the summary suspension order should not be continued;

(3) The name and address of the licensing authority with whom a request for hearing should be filed;

(4) Notification that the hearing to show cause shall be scheduled for hearing on a date within 20 days of receipt by the licensing authority of respondent's request for hearing, unless a later time is requested by or agreed to by the respondent;

(5) The identification of all witnesses providing evidence at the time the petition for summary suspension was presented and identification of the evidence used as a basis for the decision to issue the summary suspension order;

(6) The manner in which the respondent or the respondent's attorney was notified of the petition for summary suspension; and

(7) A finding that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.08 Service of summary suspension order. An order of summary suspension shall be served upon the respondent in the manner provided in s. 801.11, Stats., for service of summons.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.09 Hearing to show cause. (1) The respondent shall have the right to request a hearing to show cause why the summary suspension order should not be continued until the effective date of the final decision and order in the disciplinary action against the respondent.

(2) The request for hearing to show cause shall be filed with the licensing authority which issued the summary suspension order. The hearing shall be scheduled and heard promptly by the licensing authority but no later than 20 days after the filing of the request for hearing with the licensing authority, unless a later time is requested by or agreed to by the licensee.

(3) At the hearing to show cause the petitioner and the respondent may testify, call, examine and cross-examine witnesses, and offer other evidence.

(4) At the hearing to show cause the petitioner has the burden to show by a preponderance of the evidence why the summary suspension order should be continued.

(5) At the conclusion of the hearing to show cause the licensing authority shall make findings and an order. If it is determined that the summary suspension order should not be continued, the suspended license shall be immediately restored.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.10 Commencement of disciplinary proceeding. (1) A notice of hearing commencing a disciplinary proceeding under s. RL 2.06 against the respondent shall be issued no later than 10 days following the issuance of the summary suspension order or the suspension shall lapse on the tenth day following issuance of the summary suspension order. The formal disciplinary proceeding shall be determined promptly.

(2) If at any time the disciplinary proceeding is not advancing with reasonable promptness. the respondent may make a motion to the hearing officer or may directly petition the appropriate board, or the department, for an order granting relief.

(3) If it is found that the disciplinary proceeding is not advancing with reasonable promptness. and the delay is not as a result of the conduct of respondent or respondent's counsel, a remedy, as would be just, shall be granted including:

(a) An order immediately terminating the summary suspension; or

(b) An order compelling that the disciplinary proceeding be held and determined by a specific date.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.11 Delegation. (1) A board may by a two-thirds vote:

(a) Designate under s. 227.46 (1), Stats., a member of the board or an employe of the department to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09; or

(b) Appoint a panel of no less than two-thirds of the membership of the board to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09.

(2) In matters in which the department is the licensing authority, the department secretary or the secretary's designee shall rule on a petition for summary suspension, issue a summary suspension order, and preside over and rule in a hearing provided for in s. RL 6.09.

(3) Except as provided in s. 227.46 (3), Stats., a delegation of authority under subs. (1) and (2) may be continuing.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

Chapter RL 7

IMPAIRED PROFESSIONALS PROCEDURE

RL 7.01	Authority and intent.	RL 7.07	Intradepartmental referral.
RL 7.02	Definitions.	RL 7.08	Records.
RL 7.03	Referral to and eligibility for the procedure.	RL 7.09	Report.
RL 7.04	Requirements for participation.	RL 7.10	Applicability of procedures to direct licensing by the department
RL 7.05	Agreement for participation.	RL7.11	Approval of drug testing programs
RL 7.06	Standards for approval of treatment facilities or individual therapists.		

RL 7.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority in **ss.** 15.08 (5) (b), 51.30, 146.82, 227.11 and 440.03, Stats.

(2) The intent of the department in adopting rules in this chapter is to protect the public from credential holders who are impaired by reason of their abuse of alcohol or other drugs. This goal will be advanced by providing an option to the formal disciplinary process for qualified credential holders committed to their own recovery. This procedure is intended to apply when allegations are made that a credential holder has practiced a profession while impaired by alcohol or other drugs or when a credential holder contacts the department and requests to participate in the procedure. It is not intended to apply in situations where allegations exist that a credential holder has committed violations of law, other than practice while impaired by alcohol or other drugs, which are substantial. The procedure may then be utilized in selected cases to promote early identification of chemically dependent professionals and encourage their rehabilitation. Finally, the department's procedure does not seek to diminish the prosecution of serious violations but rather it attempts *to* address the problem of alcohol and other drug abuse within the enforcement jurisdiction of the department.

(3) In administering this program, the department intends to encourage board members to share professional expertise so that all boards in the department have access to a range of professional expertise *to* handle problems involving impaired professionals.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; an. (2), Register, July. 1996, No. 487. eff. 8–1–96.

RL 7.02 Definitions. In this chapter:

(1) "Board" means any examining board or affiliated credentialing board attached to the department and the real estate board.

(2) "Board liaison" means the board member designated by the board as responsible for approving credential holders for the impaired professionals procedure under s. RL 7.03, for monitoring compliance with the requirements for participation under **s.** RL 7.04, and for performing other responsibilities delegated to the board liaison under these rules.

(2a) "Coordinator" means a department employee who coordinates the impaired professionals procedure.

(2b) "Credential holder" means a person holding any license, permit, certificate or registration granted by the department or any board.

(3) "Department" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Informal complaint" means any written information submitted by any person to the division, department or any board which requests that a disciplinary proceeding be commenced against a credential holder or which alleges facts, which if true, warrant discipline. "Informal complaint" includes requests for disciplinary proceedings under s. 440.20, Stats.

(6) "Medical review officer" means a medical doctor or doctor of osteopathy who is a licensed physician and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with an individual's medical history and any other relevant biomedical information.

(7) "Procedure" means the impaired professionals procedure.

(8) "Program" means any entity approved by the department to provide the full scope of drug testing services for the department.

History: Cr Register, January, 1991 No 421, eff. 2–1–91, am (1) (2), (5), cr (2a), (2b), r (6), Register, July, 1996, Yo 487, eff. 8 1 96; cr. **(6)** and **(8), Register,** January, **2001, No.** 541, **eff. 2–1-01**

RL 7.03 Referral to and eligibility for the procedure. (1) All informal complaints involving allegations of impairment due to alcohol or chemical dependency shall be screened and investigated pursuant to **s.** RL 2.035. After investigation, informal complaints involving impairment may be referred to the procedure and considered for eligibility as an alternative to formal disciplinary proceedings under ch. RL 2.

(2) A credential holder who has been referred to the procedure and considered for eligibility shall be provided with an application for participation, a summary of the investigative results in the form of a draft statement of conduct to be used as a basis for the statement of conduct under s. RL 7.05 (1) (a), and a written explanation of the credential holder's options for resolution of the matter through participation in the procedure or through the formal disciplinary process pursuant to ch. RL 2.

(3) Eligibility for the procedure shall be determined by the board liaison and coordinator who shall review all relevant materials including investigative results and the credential holder's application for participation. Eligibility shall be determined upon criteria developed by each credentialing authority which shall include at a minimum the credential holder's past or pending criminal, disciplinary or malpractice record, the circumstances of the credential holder's referral to the department, the seriousness of other alleged violations and the credential holder's prognosis for recovery. The decision on eligibility shall be consistent with the purposes of these procedures as described in **s.** RL 7.01 (2). The board liaison shall have responsibility to make the determination of eligibility for the procedure.

(4) Prior to the signing of an agreement for participation the credential holder shall obtain a comprehensive assessment for chemical dependency from a treatment facility or individual therapist approved under **s.** RL 7.06. The credential holder shall arrange for the treatment facility or individual therapist to file a copy of its assessment with the board liaison or coordinator. The assessment shall include a statement describing the credential holder's prognosis for recovery. The board liaison and the credential holder may agree to waive this requirement.

(5) If a credential holder is determined to be ineligible for the procedure, the credential holder shall be referred to the division for prosecution.

(6) A credential holder determined to be ineligible for the procedure by the board liaison or the department may, within 10 days of notice of the determination, request the credentialing authority to review the adverse determination.

History: Cr. Register, **January,** 1991, No. 421, eff. 2–1–91; am. **(2)** to (6), Register, **July,** 1996, No. 487, eff 8–1–96.

RL 7.04 Requirements for participation. (1) A credential holder who participates in the procedure shall:

(a) Sign an agreement for participation under s. RL 7.05.

(b) Remain free of alcohol, controlled substances, and prescription drugs, unless prescribed for a valid medical purpose.

(c) Timely enroll and participate in a program for the treatment of chemical dependency conducted by a facility or individual therapist approved pursuant to s. RL 7.06.

(d) Comply with any treatment recommendations and work restrictions or conditions deemed ncccssary by the board liaison or department.

(e) Submit random monitored blood or urine samples for the purpose of screening for alcohol or controlled substances provided by a drug testing program approved by the department under s. RL 7.11, as required.

(f) Execute releases valid under state and federal law in the form shown in Appendix I to allow access to the credential holder's counseling, treatment and monitoring records.

(g) Have the credential holder's supervising therapist and work supervisors file quarterly reports with the coordinator.

(h) Notify the coordinator of any changes in the credential holder's employer within 5 days.

(i) File quarterly reports documenting the credential holder's attendance at meetings of self–help groups such as alcoholics anonymous or narcotics anonymous.

(2) If the board liaison or department determines, based on consultation with the person authorized to provide treatment to the credential holder or monitor the credential holder's enrollment or participation in the procedure, or monitor any drug screening requirements or restrictions on employment under sub. (1), that a credential holder participating in the procedure has failed to meet any of the requirements *set* under sub. (1), the board liaison may request that the board dismiss the credential holder from the procedure. The board shall review the complete record in making this determination. If the credential holder is dismissed the matter shall be referred to the division.

(3) If a credential holder violates the agreement and the board does not dismiss and refer the credential holder to the division, then a new admission under s. RL 7.05 (1) (a) shall be obtained for violations which are substantiated.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. Register, **July,** 1996, No. 487, eff. 8–1–96; **am. (1) (e), Register, January, 2001, No. 541, eff. 2–1–01.**

RL 7.05 Agreement for participation. (1) The agreement for participation in the procedure shall at a minimum include:

(a) **A** statement describing conduct the credential holder agrees occurred relating to participation in the procedure and an agreement that the statement may be used as evidence in any disciplinary proceeding under ch. RL 2.

(b) An acknowledgement by the credential holder of the need for treatment for chemical dependency;

(c) An agreement to participate at the credential holder's expense in an approved treatment regimen.

(d) An agreement to submit to random monitored drug screens provided by a drug testing program approved by the department under s. RL 7.11 at the credential holder's expense, if deemed necessary by the board liaison.

(e) An agreement to submit to practice restrictions at any time during the treatment regimen as deemed necessary by the board liaison.

(f) An agreement to furnish the coordinator with signed consents for release of information from treatment providers and employers authorizing the release of information to the coordinator and board liaison for the purpose of monitoring the credential holder's participation in the procedure.

(g) An agreement to authorize the board liaison or coordinator to release information described in pars. (a), (c) and (e), the fact that a credential holder has been dismissed under s. RL 7.07 (3) (a) or violated terms of the agreement in s. RL 7.04 (1) (b) to (e) and (h) concerning the credential holder's participation in the procedure to the employer, therapist or treatment facility identified by the credential holder and an agreement to authorize the coordinator to release the results of random monitored drug screens under par. (d) to the therapist identified by the credential holder.

(h) An agreement to participate in the procedure for a period of time as established by the board.

(2) The board liaison may include additional requirements for an individual credential holder, if the circumstances of the informal complaint or the credential holder's condition warrant additional safeguards.

(3) The board or board liaison may include a promise of confidentiality that all or certain records shall remain closed and not available for public inspection and copying.

History: Cr. Register, **January,** 1991, No. 421, eff. 2- I–91; am. (1) (a) to (g) **and** (2). Register, **July.** 1996, No. 487, eff. 8–1–96; **am. (1) (d), Register, January, 2001, No.** 541, **eff. 2–1–01.**

RL 7.06 Standards for approval of treatment facilities or individual therapists. (1) The board or board liaison shall approve a treatment facility designated by a credential holder for the purpose of participation in the procedure if:

(a) The facility is certified by appropriate national or state certification agencies.

(b) The treatment program focus at the facility is on the individual with drug and alcohol abuse problems.

(c) Facility treatment plans and protocols are available to the board liaison and coordinator.

(d) The facility, through the credential holder's supervising therapist, agrees to file reports as required, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(2) As an alternative to participation by means of a treatment facility. a credential holder may designate an individual therapist for the purpose of participation in the procedure. The board liaison shall approve an individual therapist who:

(a) Has credentials and experience determined by the board liaison to be in the credential holder's area of need.

(b) Agrees to perform an appropriate assessment of the credential holder's therapeutic needs and to establish and implement a comprehensive treatment regimen for the credential holder.

(c) Forwards copies of the therapist's treatment regimen and office protocols to the coordinator.

(d) Agrees to file reports as required to the coordinator, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(3) If a board liaison does not approve a treatment facility or therapist as requested by the credential holder, the credential holder may, within 10 days of notice of the determination, request the board to review the board liaison's adverse determination.

History: Cr. Register, **January,** 1991, *No.* 421, eff. 2–1–91; **am.** Register, **July.** 1996, No. 487, **eff.** 8–1–96; **r. (1) (d) and (2) (d), renum. (1) (e) and (2) (e) to be (1) (d) and (2) (d) and am., Register, January, 2001, No.** 541, **eff. 2–1–01.**

RL 7.07 Intradepartmental referral. (1) A credential holder who contacts the department and requests to participate in the procedure shall be referred to the board liaison and the coordinator for determination of acceptance into the procedure.

(2) The division may refer individuals named in informal complaints to the board liaison for acceptance into the procedure.

(3) The board liaison may refer cases involving the following to the division for investigation or prosecution:

(a) Credential holders participating in the procedure who are dismissed for failure to meet the requircmcnts of their rehabilitation program or who otherwise engage in behavior which should be referred to prevent harm to the public.

(b) Credential holders who apply and who are determined to bc ineligible for the procedure where the board liaison is in possession of information indicating a violation of law.

(c) Credential holders who do not complete an agreement for participation where the board liaison is in possession of information indicating a violation of law.

(d) Credential holders initially referred by the division to the board liaison who fail to complete an agreement for participation.

History: Cr. Register. January, 1991, No. 421, eff. 2–1–91: am. (l). (3) (a) to (d), Register, July, 1996, No. 487. eff. 8–1–96.

RL 7.08 Records. (1) CUSTODIAN. All records relating to the procedure including applications for participation, agreements for participation and reports of participation shall be maintained in the custody of the department secretary or the secretary's designee.

(2) AVAILABILITY OF PROCEDURE RECORDS FOR PUBLIC INSPECTION. Any requests to inspect procedure records shall be made to the custodian. The custodian shall evaluate each request on a case by case basis using the applicable law relating to open records and giving appropriate weight to relevant factors in order to determine whether public interest in nondisclosure outweighs the public interest in access to the records, including the reputational interests of the credential holder, the importance of confidentiality to the functional integrity of the procedure, the existence of any pledge of confidentiality, statutory or common law rules which accord a status of confidentiality to the records and the likelihood that release of the records will impede an investigation.

(3) TREATMENT RECORDS. Treatment records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under **s.** 51.42 or 51.437, Stats., and their staffs and by treatment facilities are confidential under **s.** 51.30, Stats., and shall not be made available for public inspection.

(4) PATIENTHEALTH CARE RECORDS. Patient health care records are confidential under **s.** 146.82, Stats., and shall not be made available to the public without the informed consent of the patient or of a person authorized by the patient or as provided under **s.** 146.82 (2), Stats.

History: Cr. Register, January, 1991. No. 421, eff. 2–1–91; am.(2), Register, July, 1996, No. 487. eff. 8–1–96.

RL 7.09 Report. The board liaison or coordinator shall report on the procedure to the board at least twice a year and if requested to do so by a board.

History: Cr. Register, **January.** 1991, No. 421, eff. 1–1–91; am. Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.10 Applicability of procedures to direct licensing by the department. This procedure may be used by the department in resolving complaints against persons licensed directly by the department if the department has authority to discipline the credential holder. In such cases, the department secretary shall have the authority and responsibility of the "board" as the term is used in the procedure and shall designate an cmployce to perform the responsibilities of the "board liaison."

History: Cr. Register. January, 1991, No. 421, eff. 2–1–91; am. Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.11 Approval of drug testing programs. The department shall approve drug testing programs for use by credential holders who participate in drug and alcohol monitoring programs pursuant to agreements between the department or boards and credential holders, or pursuant to disciplinary orders. To be approved as a drug testing program for the department, programs shall satisfactorily meet all of the following standards in the areas of program administration, collection site administration, laboratory requirements and reporting requirements:

(1) Program administration requirements are:

(a) The program shall enroll participants by setting up an account, establishing a method of payment and supplying preprinted chain–of–custody forms.

(b) The program shall provide the participant with the address and phone number of the nearest collection sites and shall assist in locating a qualified collection site when traveling outside the local area.

(c) Random selection of days when participants shall provide specimens shall begin upon enrollment and the program shall notify designated department staff that selection has begun.

(d) The program shall maintain a nationwide 800 number or an internet website that is operational 24 hours per day. 7 days per week to inform participants of when to provide specimens.

(e) The program shall maintain and make available to the department through an internet website data that are updated on a daily basis verifying the date and time each participant was notified after random selection to provide a specimen, the date, time and location each specimen was collected, the results of drug screen and whether or not the participant complied as directed.

(f) The program shall maintain internal and external quality of test results and other services.

(g) The program shall maintain the confidentiality of participants in accordance with **s.** 146.82, Stats.

(h) The program shall inform participants of the total cost for each drug screen including the cost for program administration, collection, transportation, analysis, reporting and confirmation. Total cost shall not include the services of a medical review officer.

(i) The program shall immediately report to the department if the program, laboratory or any collection site fails to comply with this section. The department may remove a program from the approved list if the program fails to comply with this section.

(j) The program shall make available to the department experts to support a test result for 5 years after the test results are released to the department.

(k) The program shall not sell or otherwise transfer or transmit names and other personal identification information of the participants to other persons or entities without permission from the department. The program shall not solicit from participants prescntly or formerly in the monitoring program or otherwise contact participants except for purposes consistent with administering the program and only with permission from the department.

(L) The program and laboratory shall not disclose to the participant or the public the specific drugs tested.

(2) Collection site administration requirements are:

(a) The program shall locate, train and monitor collection sites for compliance with the U.S. department of transportation collection protocol under 49 CFR 40.

(b) The program shall require delivery of specimens to the laboratory within 24 hours of collection.

(3) Laboratory requirements are:

(a) The program shall utilize a laboratory that is certified by the U.S. department of health and human services, substance abuse and mental health services administration under 49 CFR 40. If the laboratory has had adverse or corrective action, the department shall evaluate the laboratory's compliance on a case by case basis.

(b) The program shall utilize a laboratory capable of analyzing specimens for dmgs specified by the department.

(c) Testing of specimens shall be initiated within 48 hours of pickup by courier.

(d) All positive drug screens shall be confinned utilizing gas chromatography in combination with mass spectrometry. mass spectrometry, or another approved method.

(e) The laboratory shall allow department pcrsonncl to tour facilities where participant specimens are tested.

(4) The requirements for reporting of results are:

(a) The program shall provide results of each specimen to designated department personnel within 24 hours of processing.

(b) The program shall inform designated department personnel of confirmed positive test results on the same day the test results are confirmed or by the next business day if the results are confinned after hours, on the weekend or on a state or federal holiday.

(c) The program shall fax, e–mail or electronically transmit laboratory copies of drug test results at the request of the department.

(d) The program shall provide a medical review officer upon request and at the expense of the participant, to review disputed positive test results.

(e) The program shall provide chain–of–custody transfer of disputed specimens to an approved independent laboratory for retesting at the request of the participant or the department.

History: Cr. Register, January, 2001, No. 541, eff. 2–1-01.

Chapter RL 7

APPENDIX I

CONSENT FOR RELEASE OF INFORMATION

I, (#1), hereby authorize (#2) to provide the board liaison for the Department of Regulation and Licensing Impaired Professionals Procedure, P.O. Box 8935, Madison, Wisconsin 53708, or pcrsons dcsignatcd by the board liaison who are directly involved in administration of the procedure, with (#3). I further authorize (#4) to discuss with the board liaison or the board liaison's designee any matter relating to the records provided and to allow the board liaison or the board liaison's designee to examine and copy any records or information relating to me.

I hereby also authorize the board liaison or the board liaison's designee to provide (#5) with copies of any information provided to the board liaison pursuant to this consent for release of information authorizing the release of infonnation to the board liaison from those persons and institutions.

In the event of my dismissal from the Impaired Professionals Procedure, I hereby also authorize the board liaison or the board liaison's designee to provide the Division of Enforcement with the results of any investigation conducted in connection with my application to participate in the Impaired Professionals Procedure and with any documentation, including patient health care records. evidencing my failure to meet participation requirements.

This consent for release of information is being made for the purposes of monitoring my participation in the Impaired Professionals Procedure, and any subsequent procedures before the Wisconsin (#6); and for the further purpose of permitting exchange of information between the board liaison or the board liaison's designee and persons or institutions involved in my participation in the Impaired Professionals Procedure where such exchange is necessary in the furtherance of my treatment or to provide information to the Division of Enforcement in the event of my dismissal from the Impaired Professionals Procedure.

Unless revoked earlier, this consent is effective until (#7). I understand that I may revoke this consent at any time and that information obtained as a result of this consent may be used after the above expiration date or revocation. A reproduced copy of this consent form shall be as valid as the original.

I understand that should I fail to execute this consent for release of information, I shall be ineligible to participate in the Impaired Professionals Procedure. I also understand that should I revoke this consent prior to completion of my participation in the Impaired Professionals Procedure, I will be subject to dismissal from the procedure.

I understand that the recipient of information provided pursuant to this Consent for Release of Information is not authorized to make any further disclosure of thc information without my specific written consent, or except as otherwise permitted or required by law.

Dated this _____ day of _____, 19___.

_____

Signature of IPP Participant Participant's Date of Birth

INSERTIONS

1. Participant

2. Persons and institutions provided with releases for provision of information to the department

3. Examples: Drug and alcohol treatment records
Mental health/psychiatric treatment records
Personnel records; work records
Results of blood or urine screens

4. Persons or institutions given authorization

5. Persons or institutions given authorization in the first paragraph

6. Name of board

7. Date to which consent is effective

Chapter RL 8

ADMINISTRATIVE WARNINGS

RL 8.01	Authority and scope.	RL 8.05	Request for a review of an adiiiinistrative warning
RL 8.02	Definitions.	RL 8.06	Procedures.
RL 8.03	Findings before issuance of an administrative warning.	RL 8.07	Transcription fees.
RL 8.04	issuance of an administrative warning.		

RL 8.01 Authority and scope. Rules in this chapter arc adopted under the authority of s. 440.205, Stats., to establish uniform procedures for the issuance and use of administrative warnings.

History: Cr. Register, January, 1999, Nu. 517, eff. 2–1–99.

RL 8.02 Definitions. As used in s. 440.205, Stats., and in this chapter:

(1) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(2) "Department" means the department of regulation and licensing.

(3) "Disciplinary authority" means the department or an attached examining board, affiliated credentialing board or board having authority to reprimand a credential holder.

(4) "Division" means the division of enforcement in the department.

(5) "First occurrence" means any of the following:

(a) The credential holder has never been charged as a respondent in a formal complaint filed under ch. RL 2.

(b) Other than the matter pending before the disciplinary authority, no informal complaint alleging the same or similar misconduct has been filed with the department against the credential holder.

(c) The credential holder has not been disciplined by a disciplinary authority in Wisconsin or another jurisdiction.

(6) "Minor violation" means all of the following:

(a) No significant h a m was caused by misconduct of the credential holder.

(b) Continued practice by the credential holder presents no immediate danger to the public.

(c) If prosecuted. the likely result of prosecution would be a reprimand or a limitation requiring the credential holder to obtain additional education.

(d) The complaint does not warrant use of prosecutorial resources.

(e) The credential holder has not previously received an administrative warning.

(7) "Misconduct" means a violation of a statute or rule related to the profession or other conduct for which discipline may be imposed under chs. 440 to 480, Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.03 Findings before issuance of an administrative warning. Before issuance of an administrative warning, a disciplinary authority shall make all of the following findings:

(1) That there is specific evidence of misconduct by the credential holder.

(2) That the misconduct is a first occurrence for the credential holder.

(3) That the misconduct is a minor violation of a statute or rule related to the profession or other conduct for discipline may be imposed.

(4) That issuance of an administrative warning will adequately protect the public.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.04 Issuance of an administrative warning. **(1)** An administrative warning shall be substantially in the form shown in Appendix I.

(2) An administrative warning may be issued to a credential holder by mailing the administrative warning to the last address provided by the credential holder to the department. Service by mail is complete on the date of mailing.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.05 Request for a review of an administrative warning. A credential holder who has been issued an administrative warning may request the disciplinary authority to review the issuance of the administrative warning by filing a written request with the disciplinary authority within 20 days after the mailing of the administrative warning. The request shall be in writing and set forth:

(1) The crcdcntial holder's name and address.

(2) The reason for requesting a review.

History: Cr. Register, January. 1999, No. 517, eff. 2–1–99.

RL 8.06 Procedures. The procedures for an administrative warning review are:

(1) Within 45 calendar days of receipt of a request for review, the disciplinary authority shall notify the credential holder of the time and place of the review.

(2) No discovery is permitted. A credential holder may inspect records under s. 19.35, Stats., the public records law.

(3) The disciplinary authority or its designee shall preside over the review. The rcview shall be recorded by audio tape unless otherwise specified by the disciplinary authority.

(4) The disciplinary authority shall provide the credential holder with an opportunity to make a personal appearance before the disciplinary authority and present a statement. The disciplinary authority may request the division to appear and present a statement on issues raised by the credential holder. The disciplinary authority may establish a time limit for making apresentation. Unless otherwise determined by the disciplinary authority, the time for making a personal appearance shall be 20 minutes.

(5) If the Credential holder fails to appear for a review, or withdraws the request for a review, the disciplinary authority may note the failure to appear in the minutes and leave the administrative warning in effect without further action.

History: Cr. Register, January. 1999, No. 517, eff. 2–1–99.

RL 8.07 Transcription fees. **(1)** The fee charged for a transcript of a rcvicw under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made. the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigence signed under oath.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

Chapter RL 8

APPENDIX I

DEPARTMENT OF REGULATION AND LICENSING

[DISCIPLINARY AUTHORITY]

ADMINISTRATIVE WARNING

This administrative warning is issued by the (disciplinary authority) to {credential holder) pursuant to s. 440.205, Stats. The (disciplinary authority) makes the following findings:

1) That there is evidence of professional misconduct by (credential holder}, to wit:

2) That this misconduct is a first occurrence for {credential holder).

3) That this misconduct is a minor violation of {statute or rule).

4) That issuance of this administrative warning will adequately protect the public and no further action is warranted.

Therefore, the (disciplinary authority] issues this administrative warning and hereby puts the {credential holder) on notice that any subsequent violation may result in disciplinary action. The investigation of this matter is hereby closed.

Date:_____ _____

Signature of authorized representative
For (Disciplinary Authority)

Right to Review

You may obtain a review of this administrative warning by filing a written request with the {disciplinary authority) within 20 days of mailing of this warning. The review will offer the credential holder an opportunity to make a personal appearance before the (disciplinary authority).

The record thnt this administrative warning was issued is a public record.

The content of this warning is private and confidential

Chapter RL 9

DENIAL OF RENEWAL APPLICATION BECAUSE APPLICANT IS LIABLE FOR DELINQUENT TAXES

RL 9.01 Authority
RL 9.02 Scope, nature of proceedings
RL 9.03 Definitions.
RL 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes.
RL 9.05 Denial of renewal.

RL 9.01 Authority. The rules in ch. RL 9 are adopted under the authority in **s.** 440.03, Stats.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, **eff. 9–1–96.**

RL 9.02 Scope; nature of proceedings. The rules in this chapter govern the procedures for requesting the Wisconsin department of revenue to certify whether an applicant **is** liable for delinquent taxes owed to this state under s. 440.08 (4) (b), Stats,, as created by 1995 Wis. Act 27 and amended by 1995 Wis. Act 233, to review denial of an application for renewal because the applicant is liable for delinquent taxes.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, **eff. 9–1–96.**

RL 9.03 Definitions. In this chapter:

(1) "Applicant" means a person who applies for renewal of a credential. "Person" in this subsection includes a business entity.

(2) "Credential" has the meaning in **s.** 440.01 (2) (a), Stats.

(3) "Department" means the department of regulation and licensing.

(4) "Liable for any delinquent taxes owed to this state" has the meaning set forth in **s.** 73.0301 (1) (c), Stats.

History: Emerg. **cr.** eff. 11–14–96; Cr. Register, August, 1996, No. 488, **eff.** 9–1–96; **correction in (4) made under s. 13.93 (2m) (b) 7., Stats.**

RL 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes. (1) RENEWAL APPLICATION FORM. If the department receives a renewal application that does not include the information required by s. 440.08 (2g) (b), Stats., the application shall be denied unless the applicant provides the missing information within 20 days after the department first received the application.

Note: 1997 **Wis.** Act **191** repealed s. 440.08 (2g) (b), Slats.

(2) SCREENING FOR LIABILITY FOR DELINQUENT TAXES. The name and social security number or federal employer identification number of an applicant shall be compared with information at the Wisconsin department of revenue that identifies individuals and organizations who are liable for delinquent taxes owed to this state.

(3) NOTICE OF INTENT TO **DENY** BECAUSE OF TAX DELINQUENCY. If an applicant is identified as being liable for any delinquent taxes owed to this state in the screening process under sub, (2), the Wisconsin department of revenue shall mail a notice to the applicant at the last known address of the applicant according to **s.** 440.1 1, Stats., or to the address identified in the applicant's renewal application, if different from the address on file in the department. The notice shall state that the application for renewal submitted by the applicant shall be denied unless, within 10 days from the date of the mailing of the notice, the department of regulation and licensing receives a copy of a certificate of tax clearance issued by the Wisconsin dcpartmcnt of revenue which shows that the applicant is not liable for delinquent state taxes or unless the Wisconsin department of revenue provides documentation to the department showing that the applicant is not liable for delinquent state taxes.

(4) OTHER REASONS FOR **DENIAL.** If the department determines that grounds for denial of an application for renewal may exist other than the fact that the applicant is liable for any delinquent taxes owed to this state, the department shall make a determination on the issue of tax delinquency before investigating other issues of renewal eligibility.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August. 1996, No. 488, **eff. 9–1–96.**

RL 9.05 Denial of renewal. The department shall deny an application for credential renewal if the applicant fails to complete the information on the application form under **s.** RL 9.04 or if the Wisconsin department of revenue certifies or affirms its certification under **s.** 440.08 (4) **(b)** 3., Stats., that the applicant is liable for delinquent taxes and the department does not receive a current certificate of tax clearance or the Wisconsin department of revenue does not provide documentation showing that the applicant is not liable for delinquent taxes within the time required under **s.** RL 9.04 (2) and (3). The department shall mail a notice of denial to the applicant that includes a statement of the facts that warrant the denial under s. 440.08 (4) (b), Stats., and a notice that the applicant may file a written request with the department to have the denial reviewed at a hearing before the Wisconsin department of revenue.

Note: Section 440.08 **(4) (b) 3.,** Stats., referred to here **was** repealed by *1997* Wis. Act 237 and **a** new, unrelated **s.** 440.08 (4) (b) recreated.

History: Emerg. *cr. eff. 11–14–96;* Cr. Register, August, 1996, No. 488, **eff. 9–1–96.**

Chapter RL 11

AUTHORITY AND DEFINITIONS

RL 11.01 Authority.
RL 11.02 Definitions.

History: Chapter REB 1 as it existed on April 30, 1972 was repealed and a new chapter RER 1 was created, Register, April. 1972, No. 196, effective May 1, 1972. Renumbered to be chapter RL 11, effective March 1. 1983.

RL 11.01 Authority. The rules in chs. RL 11 to 26 are adopted by the department pursuant to ss. 227.11 (2), 440.03 (1) and 452.07, Stats.

History: Cr. Register, April, 1972, No. 196, eff. 5–1–72; renum. from REB 1.01 and am. Register, February, 1983, No. 326, eff. 3-1–83; am. Register, July, 1998, No. 511, eff. 8–1–98.

RL 11.02 Definitions. As used in chs. RL 11 to 26:

(1) "Board" means the real estate board.

(2) "Business entity" has the meaning under s. 452.01 (3j), Stats.

(3) "Business representative" has the meaning under s. 452.01 (3k), Stats.

(4) "Closing statement" means a detailed computation of the balance of the purchase price due to the seller and the balance of the purchase price due from the buyer at the time of closing.

(5) "Department" means the department of regulation and licensing.

(6) "Licensee" has the meaning under s. 452.01 (5), Stats.

History: Cr. Register, April, 1972, No. 196, eff. 5–1–72; renum. from REB 1.04 and am. Register, February, 1982, No. 326, eff. 3-1–83; am. (intro.), renum. (2) to be (5), cr. (2), (3), (4) and (6), Register, July, 1998, No. 511, eff. 8–1–98.

Chapter RL 12

APPLICATIONS

RL 12.005 Authority.
RL 12.01 Applications.
RL 12.015 Application requirements
RL 12.02 Examinations.
RL 12.025 Review of examinations and examination results
RL 12.026 Cheating on examination.
RL 12.03 Time for completing licensure requirements.
RL 12.04 Renewal after license expiration.

History: Chapter REB 2 as it existed on April 30, 1972 was repealed and a new chapter REB 2 was created, Register, April, 1972, No. 196, effective May 1, 1972. Renumbered to be chapter RL 12, effective March 1, 1983.

RL 12.005 Authority. The rules in this chapter are adopted pursuant to **ss.** 227.11 (2), 440.05, 440.06, 440.07, 440.08, 452.07, 452.09, 452.10, 452.11 and 452.12, Stats.

History: Cr. Register, July, 1998, No. 511, eff. 8–1–98.

RL 12.01 Applications. (1) GENERAL. (a) *Forms.* Applications for licenses and accompanying documents required by the provisions of ch. 452, Stats., and the rules of the department shall be made on forms provided by the department.

(b) *Action on completed applications.* The department shall review and make a determination on an original application for a license within 60 business days after a completed application is received by the department. An application is completed when all materials necessary to make a determination on the application and all materials requested by the department have been received.

(c) *Verification.* 1. 'Individuals.' All applications for a license as an individual shall be affirmed or verified by the applicant.

2. 'Business entities'. Applications for a license made by a business entity must be verified by a business representative of the business entity.

Note: Applications are available upon request to the department offices located at 1400 East Washington Avenue, P.O. **Box** 8935, Madison, Wisconsin 53708.

(e) *Fees prepaid.* No action shall be taken on any application until the prescribed fees are paid and deposited at the office of the department.

(f) *Previously licensed brokers and salespersons.* No action shall be taken on any new application of an applicant who has previously been licensed by the board or the department until the applicant furnishes sufficient proof to the department that the applicant has not acted as a salesperson or broker since the expiration of his or her license. The department may in its discretion waive this requirement.

(2) NEW APPLICATIONS. (a) *Non–resident brokers and salespersons.* No application for a real estate broker's or salesperson's license from any person not a resident of the state of Wisconsin may be processed prior to receipt by the department of an irrevocable consent to be sued as specified in **s.** 452.11, Stats.

(b) *Minors.* No action shall be taken on any new application for a broker's or salesperson's license received from any applicant unless said applicant is a person of the age of 18 years or over.

History: Cr. Register, April, 1972. No. 196, eff. 5–1–72; am. (2) (b), Register, July, 1972, No. 199, eff. 8–1–72; renum. from REB 2.01, r. (1) (b), renum. (1) (c) and (d) to be (1) (a) and (c), Register, February, 1981, No. 302, eff. 3–1–81; renum. from REB 2.02 and am. (1) (a), (c) 2., (e) and (f) and (2), Register, February, 1983, No. 326, eff. 3–1–83; am. (1) (a), (c) and (2) (a), r. and recr. (1) (b), Register. July, 1998, No. 511, eff. 8–1–98.

RL 12.015 Application requirements. (1) EDUCATIONAL REQUIREMENTS. Each applicant for an original real estate broker's license or an original real estate salesperson's license shall submit evidence that the educational requirements in ch. RL 25 were completed before taking the licensing examination.

(2) BROKER'S ELIGIBILITY REQUIREMENT. An applicant for examination to obtain an original real estate broker's license shall complete the education requirements specified in **s.** RL 25.02 (1) and shall either hold a Wisconsin real estate salesperson's license or shall have passed the salesperson's examination pursuant to s. RL 12.02.

History: Cr. Register, February. 1987, No. 374, eff. 6–1–87; am. (1), r. and recr. (2), Register, January, 1992, No. 433, eff. 2–1–92; m. (2) (a) 1. to be (2) (a), r. (2) (a) 2., Register, September, 1993, No. 453, eff. 10–1–93.

RL 12.02 Examinations. (1) WRITTEN EXAMINATIONS. Each applicant for examination to obtain a broker's or salesperson's license shall read and write a comprehensive examination in English. testing that person's competency to transact the business of a real estate broker or salesperson. The examination shall be in conformity with **s.** 452.09 (3), Stats., and may consist of one or 2 parts. If the examination consists of 2 parts, they shall be designated as the uniform part and the state part, and are described as follows:

(a) Uniform part measures knowledge and skills relevant to the general practices and principles of real estate that are common to or "uniform" among all licensing jurisdictions.

(b) State part contains questions dealing with real estate laws, rules, and regulations, and other aspects of real estate practices appropriate to the state of Wisconsin.

(2) COMPETENCY. (a) The score required to pass an examination, or each part of a 2–part examination, shall be based on the department's determination of the level of examination performance required for minimum acceptable competence in the profession. The department shall make the determination after consultation with subject matter experts who have received a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession.

(b) A first–time applicant who passes one part of a 2–part examination shall be conditionally credited with the part on which the passing grade was received, and may, upon application, be reexamined on the part failed at any examination administered during the 12 months following the first examination. A person who does not pass the part retaken at one of the examinations administered during the **12** months following the first examination shall revert to the status of a new applicant, and shall rewrite both parts, if application is made. In addition to a passing grade, the department may require further supplemental proof of competency. In all cases, a failing grade received on the written examination shall be controlling on the question of competency.

(3) EXAMINATION REQUIREMENTS **FOR** APPLICANTS LICENSED IN ANOTHER STATE. (a) An applicant for a license as a salesperson who submits proof to the department that he or she held a salesperson's license in another state at any time during the 2 years immediately preceding the date of application in Wisconsin is required to take and pass either a single–part salesperson's examination or only the state part of a 2–part salesperson's examination, depending on whether a single–part or a 2–part examination **is** made available by the department.

(b) **An** applicant for a license **as** a broker who does not hold a salesperson's license in Wisconsin and who submits proof to the department that he or she held a broker's license in another state

within 2 years prior to the date of application in Wisconsin is required to complete the education requirement in s. RL 25.02 (1) and take and pass only a single–part salesperson's examination or only the state part of a 2–part salesperson's examination, depending on whether a single–part or a 2–part examination is made available by the department, and either a single–part broker's examination or only the state part of a 2–part broker's examination, depending on whether a single–part or a 2–part examination is made available by the department.

(c) An applicant for a license as a broker who holds a salesperson's license in Wisconsin and who submits proof to the department that he or she holds a broker's license in another state within 2 years prior to the date of application in Wisconsin is required to take and pass either a single–part broker's examination or only the state part of a 2–part broker's examination, depending on whether a single–part or a 2–part examination is made available by the department.

Note: An otherwise qualified applicant with a disability shall be provided with reasonable accommodations.

History: Cr. Register, April, 1972, No. 196. 5–1–72; r. (4) renum. *(5)* to be (4), Register, November, 1974. No. 227, eff. 12–1–74. emerg. cr. *(5)*. eff. 5–1–75; cr. (5), Register, June, 1975, No. 234, eff. 7–1–75; am. (1) and (2), Register, June, 1979, No. 282, eff. **7–1–79:** renum. from REB 2.03, am. (2), (4) (a) and *(5)*(g). Register, February, 1981. No. 302. eff. 3–1–81; r. (4) (b), renum. (4) (c) to be (4) (b), Register, December, 1981, No. 312. eff. 1–1-82; renum. from REB 2.02 and am. (1) (intro.) and (2) to (5), Register, February. 1983, No. 326, eff. 3–1–83; r. and recr. (3), Register. August, 1983, No. 332. eff. 9–1–83; r. (4) (a), Register, November, 1985. No. 359, eff. 12–1–85; am. (1) and (2), r. and recr. (3), Register, January, 1992, No. 433, eff. 2–1–92; am. (1) (intro.), r. and recr. (2), r. *(4) and (5)*, Register. July, 1998, No. 511, eff. 8–1–98.

RL 12.025 Review of examinations and examination results. (1) REVIEW. All applicants shall be offered the opportunity to review their examinations and make written comments and objections at the time and place that they take the examination.

(2) REPORTS. **All** applicants who obtain a failing grade shall receive, for facilitating further study, a report detailing the results in the major content areas of the examination.

Note: This section interprets or implements s. 452.09 (3), Stats.

History: Cr. Register, December. 1976, No. 252, eff. 1–1–77; r. and recr. Register, December, 1978, No. 276, eff. 1–1–79; renum. from REB 2.035. Register, February, 1981. No. 302. eff. 3–1–51; renum. from REB 2.025, Register, February. 1983. No. 326, eff. 3–1–83; r. (3), Register, **July,** 1998, No. 511, eff. 8–1–98.

RL 12.026 Cheating on examination. An applicant may not give or receive unauthorized assistance during an examination, violate the rules of conduct of the examination, or otherwise act dishonestly. The action taken by the department for a violation of this section shall be related to the seriousness of the offense. An action may include withholding the score of the applicant. entering a failing grade for the applicant, and suspending the ability of the applicant to sit for the next scheduled examination after the examination **at** which the conduct occurred.

History: Cr. Register, July, 1998, No. 511, eff. 8–1–98.

RL 12.03 Time for completing licensure requirements. An applicant for a broker's or salesperson's license who successfully completes both the uniform and state parts of the examination, as provided in this chapter, has one year following the date of examination to complete all other requirements for licensure. No license shall be granted until all requirements are met. If the applicant fails **to** complete the requirements within the one–year period, he or she shall reapply and successfully complete the examination before a license may be granted.

History: Cr. Register, June, 1982, No. 318, eff. 7–1–82; renum. From REB 2.03, Register, February, 1983, No. 326, eff. 3–1–83.

RL 12.04 Renewal after license expiration. (1) LESS THAN 5 YEARS. If an applicant files an application for renewal of the applicant's real estate license with the department less than 5 years after the renewal date, as defined in s. 440.01 (1) (dm), Stats., and the applicant is not registered as an inactive licensee, the applicant shall pay the applicable renewal fee and penalty fee specified in s. 440.08, Stats., and provide evidence of having satisficd the continuing education required by s. 452.12 (5), Stats., in one of the following manners:

(a) The applicant shall either provide proof of having successfully completed the classroom education which was required during the biennium preceding the date of renewal of the applicant's license, provide proof of having successfully passed the test–out examination which was administered during the biennium preceding the date of renewal of the applicant's license, or provide proof of having successfully completed any 8 of the 15 hours of education in s. RL 25.03 (3) (h) and the 4 hours of education in s. RL 25.03 (3) (m). or of having successfully completed the educational program in s. RL 25.035 (2). In this paragraph "successfully completed" means passing an examination pursuant to s. RL 25.066 (6) (d).

(c) The applicant shall also before the next renewal date satisfy the continuing education required of all licensees during the biennium in which the applicant renews his or her license.

(2) MORE THAN 5 YEARS. If an applicant files an application for renewal of a real cstatc liccnse 5 or more years after the renewal date and the applicant is not registered as an inactive licensee, the applicant shall pay the late renewal fee specified in s. 440.08 (3), Stats., the examination fee specified in s. 440.05 (1) (b), Stats., and satisfy education and examination requirements, as follows:

(a) ***Education requirements.*** 1. Except as provided in subd. 3., an applicant for a broker's license shall satisfy requirements specified in any one of the following: s. RL. 25.02 (1) (b), (c), or (2). An applicant who obtains classroom education pursuant to s. RL 25.02 (2) must complete the education within 5 years preceding the date of the application for license.

2. Except as provided in subd. 3., an applicant for a salesperson's license shall satisfy requirements in s. RL 25.03. An applicant must complete the education within 5 years preceding the date of application for license.

3. An applicant who has held a real estate license in another licensing jurisdiction within the 2 years prior to filing an application for renewal is not required to obtain any education described in subds. 1. and 2.

4. An applicant completing the education described in subds. 1. and 2. satisfies the requirements in s. 452.12 *(5)* (c), Stats.

(b) ***Examination requirements.*** 1. An applicant for a broker's license shall successfully pass both the salesperson's and the broker's examination pursuant to s. RL 12.02.

2. An applicant for a salespcrson's license shall successfully pass the salesperson's examination pursuant to s. RL 12.02.

Note: The applicant shall apply to and pay the cost of the examination directly to the testing agency under contract with the department for administration of the examination pursuant to s. 440.07 (2), Stats.

History: Emerg. cr. 6 16–87; cr. Register, December, 1987, No. 384, eff. 1–1–88; r. and recr. Register, March, 1990, No. **411**, eff. 4–1–90; r. and recr., Register, September, 1993. No. 453, eff. 10–1–93; am. (2) (intro.), cr. (2) (a) 4., Register, July, 1998, No. 511, eff. 8–1–98; **am. (1) (a), r.** (1) (b), Register, August, **1999, No.** 524. **eff. 9–1–99.**

Chapter RL 15

BROKER S OBLIGATIO J TO FURNISH COPIES AND MAINTAIN RECORDS

RL 15.01 Authority.
RL 15.02 Copies ofdocuments.
RL 15.03 Copies ofclosing statements
RL 15.04 Retention of records.

History: Chapter REB 6 as it existed on **April** 30, 1972 was repealed and a new chapter REB 6 was created, Register, April. 1972, No. 196, effective May 1, 1972. Renumbered to **be** ch. RL 15. effective March 1, 1983. Chapter RL **15** as it existed on November 30, 1985 was repealed and a new chapter RL 15 was created effective December 1, 1985.

RL 15.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 452.07 and 452.14 **(3)** (h) and (i), Stats.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85; correction made under s. 13.93(2m) (b) 7.. Stats., Register, May. 1988, No. **389.**

RL 15.02 Copies of documents. (1) **A** broker or salesperson shall promptly provide an exact and complete copy of any document utilized 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 which has been accepted and signed by all parties to the tenant when the tenant leases the property and to the landlord upon the landlord's request.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85.

RL 15.03 Copies of closing statements. (1) At the time of closing a real estate transaction, the listing broker or the broker's designee shall ensure that a complete copy of the seller's portion of the closing Statement is delivered to the seller and a complete copy of the buyer's portion of the closing statement is delivered to the buyer. These closing statements shall accurately account for all funds received and paid by the broker in connection with the transaction.

(2) If a transaction is handled through escrow and the escrow holder renders a closing statement, the broker shall assure that funds which the broker has received or paid as part of the transaction are properly accounted for.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85.

RL 15.04 Retention of records. **A** broker shall retain for at least 3 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. 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 listing. The broker shall make these records available for inspection and copying by the department. If the records are retained outside this state, the broker shall, upon request of the department, promptly send exact and complete copies to the department.

History: Cr. Register, November. 1985, No. 359, eff. **12–1–85.**

Chapter RL 16

APPROVED FORMS AND LEGAL ADVICE

RL 16.01 Authority.
RL 16.02 Definitions.
RL 16.03 Approved forms.
RL 16.04 When to utilize approved forms
RL 16.05 Legal advice and practice of law
RL 16.06 How to use approved forms.
RL 16.07 Violation of this chapter.

Note: Chapter RL 16 as it existed on March 31, 1986 was repealed and a new chapter RL 16 was created, effective April 1, 1986

RL 16.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 452.05 (1) (b), 452.07, and 452.14 (3) (m), Stats.

History: Cr. Register, March, 1986, No. 363, eff. 4–1–86; correction made under s. 13.93 (2m) (b) 7, Stats., Register. May, 1988, No. 389.

RL 16.02 Definitions. (1) "Approved form" means a contractual or conveyance form which is either prepared and approved by the department, pursuant to s. 452.05 (1) (b), Stats., or approved in s. RL 16.03.

(2) "Exclusive agency listing" means a written listing agreement containing all of the elements of an exclusive right to sell listing, except that the owner retains the right to sell the property himself or herself without owing the listing broker a commission.

(3) "Exclusive right to sell listing" means a written listing agreement appointing a broker the exclusive agent for the sale of property for a specific period of time, and which entitles the listing broker to a commission if the property is sold by the owner, by the broker or by anyone else.

(4) "Open listing" means a written listing agreement, which may be given to any number of brokers, with the first broker to secure a buyer under the terms of the listing agreement earning the commission.

(5) "Use a form" means to complete a contractual or conveyance form by filling in the blanks or modifying printed provisions on a form for the purpose of accomplishing the intent of a party in a specific real estate transaction.

History: Cr. Register, March, 1986, No. 363, eff. 4-1–86: **r. (2), renum. (3) to be (5). cr. (2) to (4), Register,** July, 1998, **No. 511, eff. 8–1–98.**

RL 16.03 Approved forms. (1) In addition to forms prepared and approved by the department pursuant to s. 452.05 (1) (b), Stats., the department approves the following for use by brokers:

(a) Forms prepared and approved by the state bar of Wisconsin for deeds, mortgages, mortgage notes, truth–in–lending disclosures, land contracts, release of mortgage, satisfaction of mortgage, assignment of mortgage and assignment of land contract;

(b) Uniform commercial code forms: 1, 2, 3, 4, 11, 410, 411, 430, 445, 450 and 451;

(c) Contractual forms for the sale, purchase or rental of real estate or a business opportunity located in another state, if the contractual forms are those which licensees may legally and customarily use for such transactions in the state where the real estate or business opportunity is located.

(d) Forms prepared by governmental agencies for use in programs administered by them under authority provided by law.

(e) Forms to be used for a property management agreement between a broker and a landlord, prepared by the broker entering into the agreement, the broker's attorney, or the landlord, that contain provisions relating to leasing, managing, marketing and overall management of the landlord's property.

(2) In addition to forms prepared and approved by the department pursuant to s. 452.05 (1) (b), Stats., the department grants approval of the forms in sub. (1) (c), (d) and (e) for use by salespersons.

Note: Copies of most approved forms are available from various business supply stores and forms printers throughout the state of Wisconsin. Forms prepared by governmental agencies for use in programs administered by those agencies, and approved by the department, are available from those agencies. Contractual forms which have been prepared by the department and are currently approved by the department are the following: WB–1 Residential Listing Contract – Exclusive Right To Sell WB–2 Farm Listing Contract – Exclusive Right To Sell WR-3 Vacant Land Listing Contract -.Exclusive Right to Sell WE3 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–I 1 Residential Offer To Purchase WB–12 Farm Offer To Purchase WK–I3 Vacant Land Offer To Purchase WB–14 Residential Condominium Offer To Purchase WB–15 Commercial Offer To Purchase WB–16 Business Offer To Purchase WB–24 Option To Purchase WB–25 Kill of Sale WR–26 Timeshare Contract (Sale by Developer) WB–27 Timeshare Contract (Resale by Non–Developer) WB–36 Buyer Agency Agreement WB–37 Exclusive Listing Contract For Lease of Residential Property W E 4 2 Amendment To Listing Contract WB–43 Amendment To Contract of Sale/Notice Relating to Contract of Sale WB–44 Counter–Offer WB–45 Cancellation Agreement and Mutual Release WB 46 Multiple Counter–Offer WB–47 Amendment to Buyer Agency Contract

History: Cr. Register, March, 1986, No. 363, eff. 4–1–86; cr. (1)(d), am. (2), Register, June. 1988, No. 390, eff. 7–1–88; cr. (1) (e), am. (2), Register, January, 1992, No. 433, eff. 2–1–92; **am.** (1) (a), Register, July. 1992, No. 439, eff. 8–1–92.

RL 16.04 When to utilize approved forms. (1) Except as provided in subs. (2) and (3), a licensee shall use approved forms when acting as an agent or a party in a real estate or business opportunity transaction.

(2) For those kinds of real estate or business opportunity transactions for which the department 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. For the purpose of this subsection, a listing broker is a party to the listing contract transaction.

(3) A licensee may in any transaction where the licensee is acting as an agent, negotiate an agreement and permit the parties or an attorney for one or other of the parties to draft or prepare a contractual agreement which embodies all of the negotiated terms and conditions.

History: Cr. Register, March, 1986, No. 363, eff. 4–1–86; am. (1) to (3), cr. (2m) and (3m), Register, July, 1992, No. 439. eff. 8- 1–92; am. (1) and (2), r. (2m) to (3m), renum. (4) to be (3) and am.. Register, July, 1993, No. 451, eff. 8–1–93.

RL 16.05 Legal advice and practice of law. (1) A licensee may not give advice or opinions concerning the legal rights or obligations of parties to a transaction, the legal effect of a specific contract or conveyance, or the state of title to real estate.

(2) Notwithstanding sub. (1), a licensee may give a general explanation of the provisions in an approved form to the parties to a transaction at the time of completing the form or when delivering an approved form for the seller's or buyer's acceptance.

(3) A licensee may use approved forms only in those transactions in which the licensee is acting in a capacity as licensee or in which the licensee is a principal, and in either case the use of such forms is incidental to the real estate practice of the licensee.

(4) A licensee may not make a separate charge for completing an approved form in connection with a transaction.

History: Cr. Register, March, 1986, No. 363, eff. 4–1–86.

RL 16.06 How to use approved *forms.* (1) A licensee who reproduces or arranges for printing a contractual form prepared and approved by the department pursuant to s. 452.05 (1) (b), Stats.:

(a) Shall assure that the numbering of lines and line contents are identical to those on the department's form.

(b) May not reproduce the form in such a manner that optional provisions are left out and blank spaces are filled in without any indication of whcrc the optional provisions and blanks occur on the department's form.

(c) Shall indicate that the form is reproduced by the licensee's firm, stating its address and telephone number at an appropriate place on the form.

(d) May add additional blank lines, provided that such lines remain unnumbered and the contents and line numbers on the department's form are not altered.

(e) Shall retain the department's approval statement and date in the upper left corner exactly as these appear on the department's form.

(f) Shall assure that the formatting of the form is substantially identical to that on the department's fonn.

(2) A licensee who reproduces or arranges for printing a form under s. RL 16.03 (1) (a) or (b) may not modify the form in any way.

(3) A licensee may cross out provisions on approved forms to reflect the agreement of a party to a transaction, provided that the deleted provisions remain legible.

(4) Except as provided in sub. (5), a licensee may use a pre-prepared addendum form and attach it to an approved form under the following circumstances:

(a) The addendum has been prepared by the broker or the broker's attorney; and

(b) The addendum is incorporated by reference into the approved form and the approved form and the addendum are properly related to one another; and

(c) The addendum relates to the blanks on an approved form; or alters or supplants optional provisions within an approved form.

(5) A licensee may use a pre-prepared addendum which supplants or alters the printed provisions of an approved form only if:

(a) The addendum has been drafted by an attorney who is identified on the addendum;

(b) There are no optional or multiple choice provisions in the addendum;

(c) There are no blanks or fill-in provisions in the addendum except for spaces for the signatures of the parties and those items required under par. (d); and,

(d) The addendum is incorporated by reference into the approved form and the approved form and the addendum are properly related to one another.

(6) A licensee may alter an approved exclusive-riglit-to-sell listing contract to create an exclusive agency listing or an open listing.

(7) A licensee shall use the latest approved version of an approved form.

(8) A licensee shall use approved forms and prepare addenda in such a manner as to adequately accomplish the contractual intent of the person for whom the licensee uses the forms and prepares the addenda.

History: Cr. Register, March, 1986, No. *363*, eff. 4-1-86; am. (4), Register, June, 1988. No. 390, eff. 7-1-88; am. (4), Register, July, 1993, No. 451, eff. 8-1-93; cr. (1)(f), Register. August, 1994, No. 464, eff. **9-1-94; r. and recr. (4), Register, duly, 1998, ho. 511, cff. 8-1-98.**

RL 16.07 Violation of this chapter. A licensee who violates this chapter demonstrates, for purposes of s. 452.14 (3) (i), Stats., incompetency to act as a real estate licensee in a manner that safeguards the interests of the public and violates s. 452.14 (3) (m), Stats.

History: Cr. **Register,** March, 1986, No. 363, eff. **4-1-86; am. Register, July, 1998, No. 511, cff. 8-1-98.**

Chapter RL 17

LICENSURE AND SUPERVISION OF EMPLOYEES

RL 17.01 Authority.
RL 17.02 Definitions.
RL 17.025 Applicability.
RL 17.03 Limitations on employees of a broker.
RL 17.04 Notice of employment.
RL 17.05 Transfer of employment.
RL 17.06 Termination of employment.
RL 17.07 Broker-employer's duty to check licensure of employees
RL 17.08 Supervision of employees.
RL 17.09 Supervision of principal offices.
RL 17.10 Supervision of branch offices.
RL 17.11 Supervision outside of principal or branch office.
RL 17.12 Unlicensed personal assistants.

History: Chapter REB 8 as it existed on April 30, 1972 was repealed and a new chapter REB 8 was created, Register, April, 1972, No. 196, effective May 1, 1972. Renumbered to be chapter RL 17, effective March 1, 1983. Chapter RL 17 as it existed on November 30, 1985 was repealed and a new chapter RL 17 was created effective December 1, 1985.

RL 17.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 452.07, 452.10 (4), 452.12 (2) and (3), and 452.14 (3), Stats.

History: Cr. Register, November, 1985, No. 359. eff. 12–1–85; correction made under s. 13.93 (2m) (b)7., Stats.. Register, May, 1988, No. 389.

RL 17.02 Definitions. (1) "Branch office" means a location, in addition to a principal office, at which a broker or a broker's licensed employee conducts activities which require licensure and which is advertised or otherwise represented as a business location. "Branch office" does not include:

(a) An office established solely for the initial sale of subdivision lots or condominium units and located in the immediate proximity of the lots or units.

(b) The home of a licensed employee of a broker who uses a home telephone number in advertising and does not otherwise advertise or represent that the home is a business location.

(2) "Branch office manager" means a broker who supervises a branch office for a broker–employer.

(2m) "Broker–employe" means a broker who is employed to provide services for another broker.

(3) "Broker–employer" means a sole proprietor or business entity that employs another licensee to provide services to the broker.

(3g) "Immediate family'' means any of the following:

(a) Parents, stepparents, grandparents, foster parents. children, stepchildren, grandchildren, foster children, brothers and their spouses, sisters and their spouses, of a licensee or a licensee's spouse.

(b) The spouse of a licensee.

(c) Aunts and uncles, sons–in law or daughters–in–law of a licensee or a licensee's spouse.

(3k) "Licensee" has the meaning under s. 452.01 (5), Stats.

(3m) "Open house" means a showing of real estate open to the public for viewing without an individual appointment.

(4) "Principal office" means that office of a broker–employer located at the address on record at the department for the licensee.

(5) "Unlicensed personal assistant" means a person not licensed under ch. 452, Stats., or a person who is licensed but not employed for the purpose of providing services for which a license is required under ch. 452, Stats., who on behalf of and under the direction of a licensee, provides the licensee with administrative, clerical or personal services for which a license under ch. 452, Stats., is not required.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85; cr. (2m), (3m), and (5), am. (3), Register, January, 1998, No. 505, eff. 2–1–98; **am. (3) and (5), cr. (3g) and (3k), Register, January, 2001, No. 541, eff. 2–1–01.**

RL 17.025 Applicability. For the purposes of this chapter, a business representative is not an employee of the business entity.

History: Cr. Register, November, 1985. No. 359, eff. 12–1–85; **am.** Register, July, 1998, No. 511, eff. 8–1–98.

RL 17.03 Limitations on employees of a broker. (1) A broker who is employed by a broker–employer may also engage in real estate practice in his or her own name, if the broker obtains written approval from the broker–employer and avoids conflicts of interest with his or her employment by the broker–employer.

(2) A licensee who is employed by a broker–employer may personally employ licensed persons only as unlicensed personal assistants within the meaning of s. RL 17.02 (5), subject to the provisions in s. RL 17.12.

(3) A licensee may be employed by only one broker–employer at any time.

(4) A salesperson or time–share salesperson may engage in real estate practice only when employed by a broker.

History: Cr. Register, November, 1985, No. 359, eff. 12–1–85; am. (2), Register, January, 1998, No. 505, eff. 2–1–98; **am. (2) to (4), Register, January, 2001, No. 541, eff. 2–1–01.**

RL 17.04 Notice of employment. A licensee who wishes to engage in real estate practice as an employe of a broker–employer shall notify the department of the name of the broker–employer on forms prescribed by the departmcnt. If this notice is provided at the time of application for original licensure, the department may not charge a fee in addition to the fee specified in s. 440.05 (1), Stats. If the notice is provided other than at the time of application for original licensure, the licensee shall pay the fee specified in s. 440.05 (7), Stats.

History: Cr. Register. November, 1985, No. 359, eff. 11–1–85; **am., Register, January, 2001, No. 541, eff. 2–1–01.**

RL 17.05 Transfer of employment. (1) A licensee who wishes to transfer employment from one broker–employer to another shall submit to the department a transfer application accompanied by the fee specified in s. 440.05 (7), Stats.

(2) A licensee who transfers employment to another broker–employer may not engage in real estate practice for the new employer until the licensee has delivered or mailed a completed transfer application and the required fee to the department.

History: Cr. Register, November. 1985, No. 359, eff. 12–1–85; **am., Register, January, 2001, No. 541, eff. 2–1–01.**

RL 17.06 Termination of employment. A licensee who terminates employment with a broker–employer shall send written notice to the department within 10 days after the termination.

History: Cr. Register. November, 1985. No. 359, eff. 12–1–85; **am., Register, January, 2001, No. 541, eff. 2–1–01.**

RL 17.07 Broker-employer's duty to check licensure of employees. A broker-employer shall, prior to employing a licensee and at the beginning of each biennial licen-

sure period, determine that each licensee employed by the brokcr is properly licensed. A broker-employer may not employ an unlicensed person or a person who has failed to file the notice of employment required under s. RL 17.04 or the transfer application required by s. RL 17.05 to engage in real estate practice for the broker- employer.

History: Cr. Register, November, 1985. No. 359, eff. 12-1-85.

RL 17.08 Supervision of employees. (1) A broker-employer shall supervise the activities of any licensee employed by the broker--employer. Supervision includes but is not limited to reviewing all listing contracts, offers to purchase, trust account records and other documents related to transactions. A broker employer may delegate this responsibility to other brokers. Broker-employers shall provide all licensed employees with a written statement of procedures under which the office and employees shall operate with respect to handling leases, listing contracts, offers to purchase and other documents relating to transactions.

(2) A broker-employer shall be responsible for the preparation, custody, safety and correctness of all entries on real estate fonns, closing statements and other records even though another person may be assigned these duties by the broker-employer.

History: Cr. Register, November, 1985, No. 359. **eff.** 12-1-85; **am. (1), Register,** January, **2001, No. 541. eff. 2-1-01.**

RL 17.09 Supervision of principal offices. (1) A broker--employer shall either personally supervise licensed employees working in the principal office or delegate the supervisory responsibility in writing to any licensed broker.

(2) During an extended absence of the broker-employer from a principal office, the broker-employer shall delegate the supervisory responsibility to another broker in writing.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

RL 17.10 Supervision of branch offices. (1) A branch office manager shall supervise licensees employed at a branch office.

(2) A broker-employer shall:

(a) Designate supervisory authority to a branch office managcr in writing.

(b) Maintain a list of all licensed employees and the branch office location to which each licensed employee is assigned.

(c) Display on or about a branch office a conspicuous sign as required in s. 100.18(5), Stats.

(d) Delegate supervisory responsibility for the branch office in writing to any licensed broker during an extended temporary absence of a branch office manager.

(3) Only a broker-employer may execute a transfer application for licensees at a branch office.

History: Cr. Register, November, 1985, No. 359, eff. 12-1-85.

RL 17.11 Supervision outside of principal or branch office. The broker-employer or the manager of the branch office located nearest to an office established solely for the initial sale of subdivision lots or condominium units shall supervise licensees who engage in real estate activities at this office.

History: Cr. Register. November. 1985, No. **359,** eff. 12-1-85.

RL 17.12 Unlicensed personal assistants. (1) A licensed employe, prior to employing an unlicensed personal assistant, shall enter into a written agreement with his or her broker-employer, setting forth the duties of the unlicensed personal assistant. the manner in which the personal assistant will be compensated for his or her services and the responsibilities between the licensed employe and broker-employer for supervision of the personal assistant's activities.

(2) An unlicensed personal assistant may not assist a licensee at an open house for the sale of real estate or a business without the direct, on-premises supervision and presence of a real estate licensee, and may not provide any services at an open house for which a license under ch. 452, Stats., is required.

Note: This **rule** does not prevent an owner from showing or holding an open house regarding his or her own residence, **for** example. or from permitting a non-compensation person. such as a relative or neighbor, from showing or holding an open house on the owner's behalf.

History: Cr. Register, **January,** 1998, No. 505, eff. 2-1-98; **am. (1), Register, January, 2001, No. 541, eff. 2-1-01.**

Chapter RL 18

TRUST ACCOUNTS

RL 18.01 Authorization.
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RL 18.14 Violation of rules.

Note: Chapter REB 9 **as** it existed on February **28, 1983 was** renumbered to he chapter RL 18, effective March 1, **1983.**

RL 18.01 Authorization. The following rules are adopted pursuant to ss. 227.11, 452.07 and 452.13, Stats.

History: Cr. Register, April, 1981, No. 304, eff. 5–1–81; renum. from REB 9.01 and am. Register, February, 1983, No. **326. eff. 3-1-83.**

RL 18.02 Definitions. In this chapter:

(1) "Client funds" has that meaning given in s. 452.13 (1) (a), Stats.

(2) "Cooperating broker" means a broker who is assisting a buyer or a tenant in negotiations with a seller or landlord who is represented by a listing broker. **A** "cooperating broker" may be the agent of the buyer, the tenant, the seller, or the landlord.

(4) "Depository institution" has that meaning given in s. 452.13 (1) (b), Stats.

(5) "Real estate trust account" means an account for real estate trust funds maintained at a depository instihition from which withdrawals or transfers can be made without delay, subject to any notice period that the depository institution is required to observe by law, and includes:

(a) Interest–bearing common trust accounts established for client funds;

(b) Non–interest bearing real estate trust accounts maintained for real estate trust funds other than client funds; and

(c) Interest-bearing real estate trust accounts maintained for real estate trust funds other than client funds.

(6) "Real estate trust funds" means any cash, checks, share drafts, drafts or notes, other than promissory notes, received by a broker or a broker's salespersons or time–share salespersons on behalf of a principal or any other person including, but not limited to:

(a) Payments on land contracts, mortgage payments and any other receipts pertaining to mortgages;

(b) Tax and insurance payments held in escrow;

(c) Advance fees and finder's fees, unless non–refundable;

(d) Rental application deposits and rents, but only when received while acting as an agent for another;

(e) Payments received for subsequent repayment to a third party;

(f) Security deposits on rental property, except as provided in **s.** RL 18.031 (4); and

(g) Initial and additional earnest money downpayments and other monies received in connection with offers to purchase, options and exchanges, even if the broker, salesperson or time--share salesperson receives the downpayments or monies when negotiating the sale of real estate or a business opportunity which the broker, salesperson or time–share salesperson owns in whole or in part, or when negotiating the purchase of real estate or a business opportunity for ownership in whole or in part by the broker, salesperson or time share salesperson.

History: Cr. Register, April, **1981,** No. **304,** eff. 5–1–81; r. and recr. (3), Register, April, 1982, No. 316, eff. 5–1–82; renum. from REB 9.02 and am. (1), Register, February, 1983, No. 326, eff. 3–1–83; cr. (2m), am. (3) (a) (intro.), renum. (3) (c) and (d) to be (3) (a) 4. and 5. and am. 5., Register, June, 1984, No. 342, eff. 7–1–84; r. and recr. Register, August, **1994,** No. **464,** eff. **9-1-94; r. (3), am. (5) (intro.), Register. July, 1998, No. 511, eff. 8–1–98.**

RL 18.031 Deposits and types *of* accounts. (1) TIME OF DEPOSIT. **A** broker shall deposit all real estate trust funds received by the broker or broker's salespersons or time–share salespersons in a real estate trust account within 48 hours of receipt of the trust funds. If fiinds are received on a day prior to a holiday or other day when the depository institution is closed, the broker shall deposit the funds within the next 2 business days of the depository institution. If a broker receives funds which cannot be deposited by the broker, the broker shall, no later than one business day after receipt, either:

(a) Forward the funds to the payee, if someone other than the broker; or

(b) Return the funds to the payor.

(2) DUTY OF SALESPERSON. A salesperson or time–share salesperson who receives real estate trust funds shall promptly submit the funds to the employer–broker of the salesperson or time–share salesperson.

(3) INTEREST-BEARING ACCOUNTS. (a) Client funds shall be deposited in an interest–bearing common trust account and the department of administration shall be the beneficial owner of the interest accruing to the account, minus any service charges. **At** no time may the broker remove or use the interest earned on such accounts.

(b) Real estate trust funds, other than client fiinds, may be deposited in an interest–bearing account if the broker obtains from the persons for whom the funds are being held written authorization to deposit the funds in an interest–bearing account and if the authorization specifies how and to whom the interest will be disbursed. None of the interest earned on the funds deposited into an interest–bearing account may inure to the benefit of the broker.

(4) SECURITY DEPOSITS. **A** licensee having an ownership interest in a rental property shall either place security deposits related to that property in a real estate trust account or shall provide in a lease for security deposits to be held in an account maintained in the name of the owner or owners.

(5) RENTAL OWNER'S ACCOUNT. (a) In this subsection, "owner's account" means an account maintained by an owner of rental property for depositing and disbursing any funds payable to or by the owner.

(b) **A** broker may directly deposit into an owner's account rental application deposits, rents and security deposits which may have been made payable to one or more owners. The broker may be designated as a signatory on the owner's account and may make

disbursements from that account to the extent authorized by the owner in writing.

History: Cr. Register. August, 1994, No. 464, eff. 9–1–94.

RL 18.032 Number of real estate trust accounts. A broker may maintain more than one real estate trust account, including more than one interest–bearing common trust account for client funds, if the broker notifies the department of these accounts, as required in s. RL 18.035.

History: Cr. Register. August, 1994, No. 464, eff. 9–1–94.

RL 18.033 Time when real estate trust account shall be opened or may be closed. (1) OPENING AN ACCOUNT. **A** broker shall open a real estate trust account if the broker receives real estate trust funds.

(2) CLOSING AN ACCOUNT. **A** broker may close a real estate trust account if no real estate trust funds remain in the account.

History: Cr. Register. August, 1994, No. 464, eff. 9–1–94.

RL 18.034 Account designation. (1) A broker shall name the broker's real estate trust account with the name appearing on the broker's license or with a trade name submitted to the department under s. RL 23.03 and shalt include the words "trust account" in the name of the account.

(2) NAME ON CHECKS. **A** broker shall imprint the name of the real estate trust account on real estate trust account checks, share drafts or drafts.

History: Cr. Register, August, 1994, No. 464. eff. 9–1–94.

RL 18.035 Duty to notify the department. (1) OPENING AN ACCOUNT. No later than 10 days after opening any real estate trust account a broker shall provide the department with the name and number of the account, with the name of the depository institution in which the broker holds the account and with information concerning whether the account is for client funds or for real estate trust funds other than client funds. The information shall be provided on a form, as required in s. RL 18.037.

(2) CHANGING OR CLOSING AN ACCOUNT. **A** broker shall notify the department no later than 10 days after a broker changes a real estate trust account name or number, changes the real estate trust account from one depository institution to another, closes a real estate trust account or changes a real estate trust account to or from an interest–bearing common trust account established for client's funds. The notification shall be provided on a form, as required in s. RL 18.037.

History: Cr. Register, August, 1994, No. 464. eff. 9–1–94.

RL 18.036 Authorization to examine real estate trust accounts and records. (1) BROKER'S AUTHORIZATION. No later than 10 days after opening a real estate trust account a broker shall furnish the department authorization for the department to examine and audit all of the broker's real estate trust account records and authorization for the department of administration to examine all of the broker's interest–bearing common trust accounts maintained for client funds. The authorization shall be provided on a form, as required in s. **RL** 18.037.

(2) DEPOSITORY INSTITUTION'S CERTIFICATION. NO later than 10 days after opening a real estate trust account a broker shall obtain the certification of every depository institution in which the broker maintains a real estate trust account attesting to the existence of the account and consenting to the examination and audit of the account by a duly authorized representative of the department or, in the case of interest--bearing common trust accounts maintained for client funds, the department of administration. The certification shall be provided to the department on a form, as required in s. RL 18.037.

History: Cr. Register, August, 1994, No. 464, eff. 9–1–94.

RL 18.037 Form for notification and authorization. **A** broker shall provide the information and authorization in ss. RL 18.035 and 18.036 on a form provided by the department. This form shall be designated "consent to examine and audit trust account." However, when closing a real estate trust account, a broker may inform the board by letter only.

Note: Note: A copy of this form may he obtained from the Department of Regulation and Licensing. Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, August, 1994, No. 464, eff. 9–1–94.

RL 18.04 Authorization to sign trust account checks. **A** broker may authorize other persons to sign real estate trust account checks, share drafts or drafts drawn on the broker's real estate trust account if the person is at least 18 years of age.

History: Cr. Register, April, 1981, No. 304, eff. **5–1–81;** renum. from REB 9.04 and am. (1), (2), (4) **and** (5), Register, February, 1983, No. 326, eff. 3–1–83; **am.** (1), (2), (3) (intro.) and (4), Register,. June, 1984, No. 342. eff. 7–1–84; am. (1), r. (2) (a), renum. (2) (b) to be (2) (a) and am., Register, June. 1988, No. 390, eff. 7–1–88; **am.** (1), r. (2) to (5). Register, August, 1994, No. 464, eff. 9–1–94.

RL 18.05 Receipt for earnest money received by the broker. **A** broker shall indicate on the offer to purchase the receipt of earnest money received from a buyer at the time the offer is drafted.

History: Cr. Register, April, 1981, No. 304. eff. 5–1–81; renum. from REB 9.05, Register, February, 1983, No. 326, eff. 3–1–83; am. Register, August, 1994, No. 464, eff. 9–1–94.

RL 18.06 Escrow agreement for earnest money not held by the broker. If the parties to a transaction do not desire that the broker hold the earnest money in the broker's real estate trust account, and wish to designate an escrow agent other than the broker, the broker may not draft the escrow agreement. The escrow agreement shall be drafted by the parties or an attorney. The broker may not hold the funds in the broker's real estate trust account, nor may the broker act in any way as custodian of the funds for the parties: The funds, pursuant to the escrow agreement, shall be held by some other party, such as a bank, a savings and loan association, a credit union or an attorney.

History: Cr. Register, April, 1981, No. 304, eff. 5–1–81; renum. from REB 9.06, Register, February, 1983, No. 326. eff. 3–1–83; **am.** Register. June, 1984, No. 342, eff. 7–1–84; **am.** Register, August, 1994, No. 464, eff. 9–1–94.

RL 18.07 After closing escrow agreements. (1) BY SEPARATE AGREEMENT. If the parties to a contract wish, or are required, to place funds in escrow which are to be held after closing by the broker in the broker's trust account or by another person until some future occurrence, an agreement to that effect shall be prepared by the parties or an attorney. If the broker holds these funds, the broker shall place them in the broker's real estate trust account. The broker may draft the escrow agreement if a form for this purpose has been approved by the department for use by licensees pursuant to s. RL 16.03.

(2) ON CLOSING STATEMENT. **A** broker may hold in the broker's trust account without a separate escrow agreement occupancy or possession escrows, escrows for final proration of taxes, and escrows for charges incurred by a seller but not yet billed, provided that the closing statement shows that the broker is holding the funds.

History: Cr. Register, April, 1981, No. 304. **eff.** 5–1–81; **am.**, Register, April, 1982, No. 316, eff. 5–1–82; renum. from REB 9.07, Register, February, 1983, No. 326, eff. 3–1–83; renum. to be (1) and am., cr. (2), Register, June, 1984, No. 342, eff. 7–1–84; am. Register, August, 1994, No. 464. eff. Y–1–94.

RL 18.08 Real estate trust funds and cooperating brokers. If a transaction involves a cooperating broker and the parties have not agreed otherwise, the cooperating broker shall transfer any trust funds received to the listing broker or other person designated by the parties to hold the trust funds within **24** hours of the deadline stated in the offer, option, exchange agreement or lease for transfer of the funds. If the trust funds are received in the form of a personal check, share draft or draft, the cooperating broker may withhold transfer of the payment pending evidence of clearance from the payor's depository institution. In any case, the cooperating broker shall transfer the trust funds to the listing broker within 30 days after receipt, unless the cooperating broker has obtained definitive information from the de-

pository institution that the personal check, share draft or draft has not cleared.

History: Cr. Register, April, 1981, No. 304, eff. **5–1–81;** am., Register. April, 1982, No. 316. eff. 5–1–82; renum. from REB 9.08, Register. February, 1983, No. 326, eff. 3–1–83; renum. to be (1) and am., cr. (2), Register, June: 1984. No. 342, eff. 7–1–84; r. and recr. Register, August, 1994, No. 464, eff. 9–1–94.

RL 18.09 Disbursement of trust funds. (1) PROPER DISBURSEMENT. **A** broker who disburses trust funds from his or her real estate trust account under the following circumstances shall not be deemed to have violated s. 452.14 (3) (i), Stats.:

(a) To the payor upon the rejection, expiration or withdrawal prior to binding acceptance of an offer to purchase, lease, exchange agreement or option on real estate or a business opportunity;

(b) As directed in a written earnest money disbursement agreement signed by all parties having an interest in the trust funds. A closing statement is a written earnest money disbursement agreement for the purposes of this subsection. An offer to purchase, lease, exchange agreement or option is not a written earnest money disbursement agreement for the purpose of this subsection.

(c) To a court having jurisdiction over a civil action involving all parties having an interest in the trust funds;

(d) As directed by order of a court;

(e) Upon a good faith decision based upon advice of an attorney not representing any party to the contract;

(f) Upon authorization granted within the contract; or

(g) As otherwise provided by law.

(2) NOTIFICATION OF DISBURSEMENT. Prior to making a disbursement of trust funds under sub. (1) (a) whcrc the broker has knowledge that not all parties agree that the rejection or withdrawal occurred prior to binding acceptance, and prior to making a disbursement under sub. (1) (e), (f) and (g) where the broker has knowledge that either party disagrees with the disbursement, the broker shall attempt to notify all parties in writing of the intent to disburse. The notice shall be delivered by certified mail to the parties' last known addresses and shall state to whom and when the disbursement will be made. The disbursement may not occur until 30 days after the date on which the notice is sent.

(3) WITHDRAWAL OF COMMISSIONS. (a) A broker shall withdraw commissions or fees earned by the broker from real estate trust accounts maintained by the broker within 24 hours after transactions are consummated or tenninated, or after the commissions or fees are earned in accordance with the contract involved.

(b) **A** broker providing property management services shall disburse the fee earned for providing property management services as a regular monthly basis unless otherwise agreed in a written property management agreement signed by the parties to that agreement.

History: Cr. Register, April, 1981, No. 304, eff. 5–1–81; renum. from REB 9.09 and am. (3) (intro.), Register: February, 1983, No. 326, eff. 3–1–83; am. (2), (3) (a) and (b) and (4), Register, June. 1984, No. 342, eff. 7–1–84; r. and recr., Register, July, 1993, No. 451, eff. 8–1–93; renum. (3) to be (3) (a), cr. (3) (b), Register, August, 1994, No. 464. eff. 9–1–94.

RL 18.10 Commingling prohibited. **A** broker shall **deposit** only real estate trust funds in the broker's real estate trust account and shall not commingle the broker's personal funds or other funds in the trust account except that a broker may deposit and keep a sum not to exceed $300.00 from the broker's personal funds in any real estate trust account, which sum shall be specifically identified and deposited to cover service charges relating to the trust account. **A** broker shall deposit additional personal funds in the broker's real estate trust account within 10 business days following receipt of a statement or other notification from a depository institution that a service charge has been made against the account for which insufficient personal funds are available in the account.

History: Cr. Register, April, 1981, No. 304, eff. 5–1–81; renum. from REB 9.10, Register, February, 1983, No. 326, eff. 3–1–83; am. Register, July, 1984, No. 342, eff. 7–1–84; am. Register. January. 1992, No. 433, eff. 2–1–92; am. Register, August, 1994, No. 464, eff. 9–1–94.

RL 18.11 Non–depositable items. (1) OTHER THAN PROMISSORY NOTES. With the exception of promissory notes, a broker shall not hold any instrument, equity or thing of value which is not depositable in a real estate trust account. Non–depositable items other than promissory notes shall be held by one of the parties to a transaction or some other party, subject to an escrow agreement prepared by the parties or an attorney.

(2) PROMISSORY NOTES. **A** broker may accept and hold earnest money downpayments in the form of promissory notes received from the parties to a transaction, if the broker, the parties or the parties' attorney or attorneys:

(a) Delete or modify the earnest money provisions in a form approved pursuant to s. RL 16.03 to show receipt of a promissory note;

(b) Grant the broker the authority to hold the note; and

(c) Provide appropriate disbursement directions for the broker.

History Cr. Register, April, 1981, No. 304. eff. 5–1–81; renum. from REB 9.11, Register, February, 1983. No. 326, eff. 3–1–83; am. Register, August, 1994, No. 464, eff. 9–1–94.

RL 18.12 Branch office trust account. In the event a branch office, as defined in s. RL 19.01, maintains one or more real estate trust accounts, separate from any trust account at the broker's main office, a separate bookkeeping system shall be maintained in that branch office.

History: Cr. Register, April, 1981, No. 304. eff. 5–1–81; renum. from REB 9.12 and am. Register, February, 1983, No. 326, eff. 3–1–83; am. Register, August, 1994, No. 464. eff. 9–1–94.

RL 18.13 Bookkeeping system. Each broker shall maintain and be responsible for a bookkeeping system in the broker's office consisting of at least the following:

(1) CASH JOURNAL. **A** broker shall maintain a record, called a journal, which shall show the chronological sequence in which real estate trust funds are received and disbursed as follows:

(a) For funds received, the journal shall include the date, the name of the party who is giving the money, and the amount.

(b) For disbursements, the journal shall include the date, the payee, the number of the check, share draft or draft and the amount.

(c) The journal shall identify each transaction by including the name of the principal, an identification number or other means of identification which will link the journal to the transactions and the ledger described in sub. *(2)*.

(d) The journal shall show a running balance for each day on which receipts or disbursements are entered.

(2) LEDGER. A broker shall maintain a record which shows the receipts and the disbursements as they affect each particular transaction e.g., transactions between buyer and seller, landlord and tenant, etc. The ledger entry shall include the names of both parties to a transaction, the dates and the amounts received and the name of the party giving the money if different from the buyer. The ledger entry shall include the date, payee, number of the check, share draft or draft and amount when funds are disbursed. The ledger shall show a running balance and segregate each transaction. The broker shall maintain a separate ledger or separate section of the ledger for each of the various kinds of real estate transactions, e.g., sales, rental collections or mortgage and land contract collections.

(3) ACCOUNT RECONCILIATION. The broker or a person designated by the broker shall reconcile the real estate trust account in writing each month except in the case where there has been no ac-

tivity during the month. The written reconciliation shall include the ending account statement balance, the date and amounts of the deposits in transit, the number of the check. share draft or draft and amount of checks, share drafts or drafts written but not paid by the depository institution as of the ending date shown on the account statement to be reconciled, and the reconciled account statement ending balance.

(4) TRIAL BALANCE. The broker shall prepare or have prepared, in conjunction with sub. (3), a written listing, "trial balance", of all open items in the real estate trust account. The list must show the names of the parties to the transaction and the amount held in trust for the parties at the time corresponding to the account reconciliation. The broker may in lieu of the names of the parties to the transaction substitute the ledger page number or other means of identification from the ledger to label the funds in the trial balance.

(5) VALIDATION. The broker or a person designated by the broker shall review the reconciled account Statement balance, the open ledger account listing, and the journal running balance to ensure that all of these records are valid and in agreement as of the date the account statement has been reconciled.

(6) USE OF COMPUTERS. **A** computerized system may be used to maintain the broker's bookkeeping system if:

(a) The system complies fully with subs. (1) to *(5)*.

(b) All bookkeeping entries required by this chapter are made in the computerized system, even if other records are being simultaneously maintained.

(c) **A** backup copy of the bookkeeping records required under subs. (1) to (2) is made on any day on which entries are made in the computerized bookkeeping system. The backup copy shall be made on a disk or other medium which *is* separate and distinct from that on which the source documents reside.

(d) After complying with subs. (3) to (5), the document which records the account reconciliation, trial balance and validation is immediately copied to a backup medium and maintained by the broker.

(e) **All** records which are not maintained as written paper records are capable of being immediately converted to written paper records and immediately made available without charge to the department for the purposes of department audit or investigation.

(f) All computerized trust account records are retained pursuant to s. RL 15.04.

History: Cr. Register, April, 1981, No. 304. eff. 5–1–81; renum. from RER 9.13, Register, February, 1983, No. 326, eff. 3–1–83; am. (intro.), (1) (b), (2) to *(5)*. Register. June, 1984, No. 342. eff. 7–1–84; am. (1) (intro.), (a) and (b). (2) and (4), renum. (1) (c) to be (1) (d), cr. (1) (c) and (f), Register, August, 1994, No. 464, eff. 9–1–94.

RL 18.14 Violation of rules. **A** broker who fails to comply with the rules in this chapter shall be considered to have demonstrated incompetency to act as a real estate broker in a manner as to safeguard the interests of the public, as specified in s. 452.14 (3), Stats.

History: Cr. Register, April, 1981, No. 304, eff. 5–1–81; renum. from REB 9.14 and am. Register, February, 1983, No. 326, eff. 3–1–83; am. Register, June, 1984, No. 342, eff. 7–1–84.

Chapter RL 22

APPRENTICES

RL 22.005 Authority. RL 22.01 Apprentices.

RL 22.005 Authority. The following rules arc adopted pursuant to ss. 227.11 (2) and 452.09 (5), Stats.

History: Cr. Register, July, 1998, No. 511, eff. 8–1–98.

RL22.01 Apprentices. (1) REQUIREMENTS. (a) **A** broker may employ a person as an apprentice under a temporary salesperson's permit.

(b) A person desiring to act as an apprentice real estate salesperson shall file with the department an application for a temporary salesperson's permit. The application shall be in the form prescribed by the department and in accordance with ss. 452.09 and 452.10, Stats.

(c) Only persons who are a resident of this state and 18 years of age or over, may apply for a temporary salesperson's permit.

(e) Before the application for an apprentice permit may be accepted by the department, an applicant for a permit shall be indentured to a licensed real estate broker of the department in good standing, who has agreed, in writing, to an indenture agreement according to the rules of the department.

Note: Applications are available upon request to the department offices located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) NUMBER. Only one apprentice may be employed for each individual holding a broker's license unless the broker employs full time salespersons, in which case an additional apprentice shall be allowed for each 5 full time salespersons employed. However, in no case may an individual or business entity broker employ more than 3 apprentice salespersons.

(3) FEE. Each application for an apprentice permit shall be accompanied by the fee specified in s. 440.05 (6), Stats.

(4) PERIOD. An apprentice permit may not be granted for a period to exceed one year from the date of issuance by the department and may not be renewed.

(6) TERMINATION. An apprentice who leaves the employ of the sponsoring broker for any reason 'shall surrender the apprentice permit to the broker immediately upon the termination of the apprenticeship by the apprentice, the broker or the department.

(7) SCOPE OF EMPLOYMENT. (a) An apprentice may not close a real estate sale.

(b) An apprentice may not advertise in newspapers or telephone directories or by signs or any other means, nor may the broker advertise the name of the apprentice in any manner.

(c) An apprentice may use business cards if the business cards clearly state "Apprentice Salcspcrson" in type as large as the type used for the apprentice's name.

(d) An apprentice may not be paid a portion of a commission based upon sales or on listings secured nor may he or she be paid on a percentage basis for any other services performed.

(e) An apprentice may be paid on an hourly basis only and the rate of pay shall be included in the apprenticeship contract.

(f) An apprentice shall spend a minimum of 20 hours work each week, to be spent in *no* less than 3 days each week, performing apprenticeship duties. A minimum of 6 hours of the *20* hours work each week shall be spent pursuing a course of study of real estate laws and procedures.

(h) Enrollment in a real estate course at a school approved by the department pursuant to s. RL 25.05 or *25.06* meets the requirement of a course of study for a maximum of 4 hours per week.

(i) Further shidy for the apprentice shall be conducted by the broker or by an instructor hired by the broker and approved in writing by the department.

(j) During the first *6* months of the apprenticeship, the apprentice may not secure listing contracts, offers to purchase or any other contracts unless accompanied by a fully licensed real estate salesperson or broker.

(k) During the first month of the apprenticeship, the apprentice may not negotiate with the public, but shall spend the apprenticcship time becoming acquainted with the operation of the real estate office.

(L) After the first month of the apprenticeship, the apprentice may handle open houses andrentals, but may not draft or negotiate offers to purchase or earnest money receipts.

(m) After 6 months of the apprenticeship, the apprentice may secure listing contracts if the listing contracts are reviewed and approved by the broker within 24 hours after they are secured and if the listing contracts contain the following clause:

"This listing contract has been secured by an apprentice salesperson and shall not be binding upon either party until approved by the broker. If the broker does not notify the seller that he or she is not approving this listing contract within *2* days from the date of this contract, then this contract shall be binding upon both parties.

Approved this ____ day of _____, 19____.

_____
Broker

(n) The apprentice may not execute or have executed any rental agreement until the broker has approved the rental agreement in writing on the face of the contract.

(8) BROKER'S DUTIES. (a) The broker shall at all times be responsible for the acts of the apprentice and shall properly supervise the apprentice.

(b) The broker shall make available suitable instructions and a course of study for the apprentice, including real estate procedures, real estate law, office procedures and sales techniques.

(c) The broker shall pay the apprentice an hourly rate of pay which may not be less than the minimum wage required by state and federal law.

(d) The broker shall prepare and execute an apprenticeship contract which shall include the rate of pay, the hours to be spent by the apprentice, the instructions or course of study that will be offered *to* the apprentice and a schedule of commissions to be paid after the apprentice has obtained a salesperson's or broker's license. **A** copy of the contract shall be filed with the department.

(e) The broker may include in the apprenticeship contract, reasonable employment requirements after termination of the apprenticeship, but in no case may the employment right extend beyond 2 years after the termination of the apprenticeship.

(f) The broker will furnish the apprentice with a written copy of the rules of the office.

(9) APPRENTICES' DUTIES. (a) The apprentice shall punctually attend all courses of instruction offered by the broker or by schools he or she shall attend unless excused for reasonable cause by the broker.

(b) The apprentice shall obey all office rules of the broker and any other rules set forth in the apprentice contract.

(c) The apprentice may not engage in any real estate activities outside of the scope of his or her apprenticeship employment.

(d) The apprentice shall be punctual on all appointments and shall fully inform his or her broker concerning all of his or her activities.

(e) The apprentice shall keep and maintain a record in the broker's office, containing the date, activity and work hours, including time spent at school or attending a course of instruction. The entries in the record shall be thoroughly reviewed, and be noted as having been reviewed, by the broker.

(10) GENERAL. (a) An apprenticeship contract may be canceled on the mutual consent of both parties.

(b) Upon informal written complaint filed with the department by either the broker or apprentice, the board may hold a formal or informal hearing to review an apprentice permit or apprenticeship program.

(c) The department may suspend or revoke an apprentice permit if the apprentice has violated any of the rules in this chapter.

(d) The department may suspend or revoke a broker's license if the broker has violated any of the rules in this chapter.

(e) A broker may at any time cancel an apprenticeship contract for just cause provided the broker furnishes the apprentice with a written statement within 5 days of the cancellation setting forth in detail the reasons for the cancellation of the apprenticeship contract.

History: Cr. Resister, April, 1972, No. 196, eff. 5–1–72; am. (1) [d], Register, **July,** 1972, No. **199,** eff. 8–1–72; am. (1) (a), Register, **July,** 1976, No. 247, **eff.** 8–1–76: renum. from REB 13.01 and am. Register. February, 1983, No. 326, eff. 3 1 -83; ***renum.*** **(1) (intro.) and (a) to be (1) (a) and (c) and** am., am. **(1)** (b), (e), **(2) to [4], (6), (7) [a] to (f), (h), (j) to [l.], [m] [intro.], (n), [5] [a] to [c], (9) (b), [c],** (e) and (10) **(b)** to **(d), r.** (1) **(c),** (d), **(5) and** (7)**(g), Register, July, 1998, Nu. 511, eff. 8–1–98.**

Chapter RL 23

CHANGE OF NAME OR ADDRESS ON LICENSE, TRADE NAME OR FORM OF ORGANIZATION

RL 23.01 Authority.
RL 23.02 Change of name or address.
RL 23.03 Trade name.
RL 23.04 Change of form of business organization.

Note: Chapter REN 14 as it existed on December 31, 1981 was repealed and a new chapter RER 14 was created effective January 1, 1982 Renumbered to be chapter RL 23, effective March 1. 1983

RL 23.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11, 452.07, 452.09, 452.10 and 452.12, Stats.

Cr. Register. December, 1981. No. 312, eff. 1–1–82; renum. from REB 14.01 and am. Register, February, 1983. No. 326, eff. 3–1–83; correction made under s. 13.93 (2m) (b) ?., Stats., Register, May, 1988, No. 389.

RL 23.02 Change of name or address. Any person licensed under ch. 452, Stats., who changes the name appearing on a current license or moves from the last address provided to the department shall notify the department in writing of the new name or address within 30 days of the change.

Cr. Register, December, 1981, No. 312, eff. 1–1–82; renum. from REB 14.02 and am. Register, February, 1983, No. 326, eff. 1–1–83; **am. Register, July, 1998, No. 511, eff. 8–1–98.**

RL 23.03 Trade name. (1) DEFINITION. "Trade name" means the name other than the name appearing on the broker's license, under which the broker advertises or does business.

(2) NOTIFICATION. A licensed broker, before doing business under any trade name, shall notify the department in writing of the trade name.

Cr. Register. December, 1981, No. 312, eff. 1–1–82; renum. from REB 14.03 and am. (2), Register, February, 1983, No. 326, eff. 3–1–83.

RL 23.04 Change of form of business organization. (1) APPLICATION. A licensed broker who intends to conduct business under a different form of business entity, shall apply for a new license. Upon payment of the fee specified in s. 440.05 (1), Stats., the department shall issue to the applicant, without examination, a license under the new form of entity.

(2) NEW LICENSE REQUIRED. A broker shall not engage in real estate activities under a different form of business entity until a new license is issued.

Note: Applications are available upon request to the department offices located at 1400 East Washington Avenue. P.O. Box 8935. Madison, Wisconsin 53708.

Cr. Register, December. 1981, No. 312, eff. 1–1–82; renum. from REB 14.04 and am. (1), Register, February, 1983, No. 326, eff. 3–1–83; **am. Register, July, 1998, No. 511. eff. 8–1–98.**

RL 23.05 Change of address. History: Cr. Register, December, 1981, No. 312, eff. 1 1 ·82; renum. from REB 14.05 and am. Register, February, 1983, No. 326, eff. 3–1–83; **r. Register, July, 1998, No. 511, eff. 8–1–98**.

Chapter RL 24

CONDUCT: AND ETHICAL PRACTICES FOR REAL ESTATE LICENSEES

RL 24.01 Authority and intent.
RL 24.02 Definitions.
RL 24.025 Agency.
RL 24.03 Competent services.
RL 24.04 Advertising.
RL 24.05 Self-dealing.
RL 24.06 Unauthorized practice of law.
RL 24.07 Inspection and disclosure duties
RL 24.075 Tie-in arrangements.
RL 24.08 Agreements to be in writing.
RL 24.085 False portrayal of interest, prohibited
RL 24.09 Securing agency agreements.
RL24.10 Net listing prohibited.
RL24.12 Confidentiality of offers.
RL24.13 Drafting and submission of offers.
RL24.15 Adequate funds required.
RL24.16 Availability of rules.
RL24.17 Miscellaneous requirements.

Note: Chapter REB 15 as it evicted on February 29, 1980 was repealed and a neu chapter REB 15 was created effective March 1, 1980 Renumbered from chapter REB 15. effective March I, 1983

RL 24.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to ss. 227.11, 452.01, 452.07, 452.133, 452.138, 452.139 and 452.14, Stats.

(2) The intent of the department in adopting the rules in this chapter is to establish minimum standards of conduct for real estate licensees and to define that conduct which may result in board discipline pursuant to s. 452.14, Stats.

(3) If a licensee violates rules in this chapter, the licensee has demonstrated incompetency to act as a broker, salesperson or time-share salesperson in such manner as to safeguard the interests of the public under s. 452.14 (3) (i), Stats. However, the term "incompetency" is not limited in its meaning to violations of this chapter.

(4) If a licensee violates the rules set forth in s. RL 24.075, the licensee has engaged in improper, fraudulent or dishonest dealing as used in s. 452.14 (3) (k), Stats. However, the terms "improper, fraudulent or dishonest dealing" are not limited in their meaning to violations of s. RL 24.075.

History: Cr. Register, February, 1980. No. 290, eff. 3-1-80; renum. (3) to be (5), (3) rennm. from REB 15.02 (2) and cr. (4), Register, December, 1980, No. 300, eff. 1-1-81; renum. from REB 15.01 and am. (2) to (4), Register, February, 1983, No. 326, eff. 3-1-83: am. (1) and (3), r. (5) (intro.) and (d), renum. (5) (a) to (c) to be RL 24.025. RL 24.03 (2) (b) and (c), Register, January, 1987, No. 373, eff. 2-1-87; correction in (4) made under s. 13.93(2m) fb) 4., Stats., Register, May, 1988, No. 389; am. Register, April, 1995, No. 472, eff. 5-1-95.

RL 24.02 Definitions. (1) "Adverse fact" means any of the following:

(a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

1. Significantly and adversely affecting the value of the property.

2. Significantly reducing the structural integrity of improvements to real estate.

3. Presenting a significant health risk to occupants of the property.

(b) Information that indicates that a party to a transaction is not able to or docs not intend to meet his or her obligations under a contract or agreement made concerning the transaction.

(2) "Agency agreement" means a written agreement between a broker and a client under s. 452.135 (1), Stats.

(3) "Brokerage service" means any service described under s. 452.01 (2) (a) to (g), Stats., provided by a broker to another person.

(4) "Builder" means any person engaged in the business of constructing speculation homes or contract homes.

(5) "Buyer broker" means a licensee having an agency relationship with a buyer in relation to a particular transaction.

(6) "Client" means a party to a transaction who has an agency agreement with a broker for brokerage services.

(7) "Commonly controlled corporation" means one of 2 or more corporations in which the same person or persons own stock in each of the corporations, possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of the corporations.

(8) "Contract home" means a home built by a builder under contract with a buyer.

(9) "Customer" means a party to a transaction who is provided brokerage services by a broker but who is not a client.

(10) "Effectively controlled" means having the power or authority to cause the transfer of an interest in real estate for oneself or another but does not include the authority conferred by a real estate listing contract.

(12) "Material adverse fact" means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects or would affect the party's decision about the terms of such a contract or agreement.

(13) "Party" means a person seeking to sell, exchange, buy or rent an interest in real estate, a business or a business opportunity. "Party" includes a person who seeks to grant or accept an option to buy, sell or rent an interest in real estate, a business or a business opportunity.

(14) "Qualified third party" means a federal, state or local governmental agency, or any person whom the broker, salesperson or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the third party in order to prepare the written report described in s. 452.23 (2) (b), Stats.

(15) "Secured lender" means an individual or organization originating a loan in a real estate or business opportunity transaction secured by real estate or by the assets of a business or a business opportunity.

(16) "Real estate practice" means engaging in conduct which requires a license under ch. 452, Stats.

(17) "Speculation home" means a home built by a builder to be placed on the market without a prior contract with a buyer.

(18) "Transaction" means the sale, exchange, purchase or rental of, or the granting or acceptance of an option to sell, exchange, purchase or rent, an interest in real estate, a business or a business opportunity.

History: Cr. Register, February. 1980. No. 290, eff. 3-1-80; renum. (1) to be (5), renum. (2) to be REB 15.01 (3). cr. (1) to (4) and (6), Register, December. 1980, No. 300, eff. 1-1-81; renum. from REB 15.02, Register, February, 1983, No. 326, eff. 3-1-83; renum. (4) to (6) to be (7) to (9) under s. 13.93(2m) (b) 1., Stats., Register, September, 1990, No. 417: renum. (1) to (3) to be (2), (4) and (6), cr. (1), (3) and (5).

Register. September, 1990, No. 417, eff. 10–1–90; **am.** (1), Register, January, 1992, No. 433, eff. 2–1–92; am. (1), Register, July, 1993, No. 451, eff. 8–1–93; r. andrecr. (1), renum. (2) to (4) to be (4), (5), (7), (6) and (7) to be (8) and (10), (8) to be (11) and am., fa) *to* he (17). r. (5). cr. (2). (3). (6), (9), (12) to (16), (IS), Register, April, 1995. No. **472,** eff. **5–1–95**; am. (7), r. (11), Register, July, 1998, No. 511, eff. **8–1–98.**

RL 24.025 Agency. *(1)* RESPONSIBILITIES RELATING TO A CLIENT AND OTHERS. Licensees shall represent the interests of their client as an agent. Licensees owe all parties the duties under s. 452.133 (1), Stats.

Note: Section 452.133, Stats., establishes a duty owed by licensees to all parties to **keep** confidential any information obtained by the licensee that he or **she** knows a reasonable party would want to be kept confidential, unless the information must be disclosed by law **or** disclosure is authorized by the affected party.

(2) AGREEMENTS. Licensees may not provide brokerage services to a client or a customer without an agency agreement authorizing those brokerage services. **A** licensee who acts as a subagent may do so under the agency agreement of the principal agent and the subagent is not required to have a separate agreement.

History: Renum. from RL 24.01 *(5)* (a) and am., Register January. 1987, No. 373, eff. 2–1–87; *r.* and recr. Register. April, 1995, No. 472, eff. 5–1–95.

RL 24.03 Competent services. **(1)** DISCRIMINATION PROHIBITED. Licensees may not discriminate against, nor deny equal services to, nor be a party to any plan or agreement to discriminate against any person in any manner unlawful under applicable federal, state or local fair housing law.

Note: The primary references for federal and state fair housing laws *are* the 1988 amendments to the Federal Housing Act (Title VII of the Civil Rights Act **of** 1968) and Chapter 106, Subchapter II, Stats.

(2) COMPETENCE REQUIRED. (a) Liccnsces shall not provide services which the licensee is not competent to provide unless the licensee engages the assistance of one who is competent. Any person engaged to provide such assistance shall be identified and that person's contribution shall be described.

(b) Licensees shall act to protect the public against fraud, misrepresentation and unethical practices.

(c) Licensees shall be knowledgeable regarding laws, public policies and current market conditions on real estate matters and assist, guide and advise the buying or selling public based upon these factors.

(d) Licensees are not required to have the technical knowledge, **skills** or training possessed by competent third party inspectors and investigators of real estate and related areas.

Note: Paragraph (d) recognizes that licensees are not required to have the **knowledge,** skills or training possessed by, for example, persons such as home inspectors, plumbers, electricians or land surveyors.

History: Cr. Register. February, 1980, No. 290, eff. 3–1–80; am. (1), Register, March. 1981. No. 303, eff. 4–1–81; renum. from REB 15.03, Register, February, 1983, No. 326, eff. 3–1–83; am. (1), renum. (2) to be *(2)* (a), (2) (b) and (c) renum. from RL 24.01 (5) (b) and (c) and am.. Register, January, 1987, No. 373, eff. 2–1–87; **am.** (1), cr. (2) (d), Register, **July,** 1993, No. 451, eff. 8–1–93.

RL 24.04 Advertising. *(1)* FALSE ADVERTISING. Licensees shall not advertise in a manner which is false, deceptive, or misleading.

(2) DISCLOSURE OF NAME. (a) Except for advertisements for the rental of real estate owned by the broker, a broker shall in all advertising disclose the broker's name exactly as printed on the broker's license or disclose a trade name previously filed with the department, as required by s. RL 23.03, and in either case clearly indicate that the broker is a business concern and not a private party.

(b) Except for advertisements for the rental of real estate owned by the licensee, a licensee employed by a broker shall advertise under the supervision of and in the name of the employing broker.

(c) A licensee may advertise the occasional sale of real estate owned by the licensee or the solicitation of real estate for purchase by the licensee without complying with pars. (a) and (b), provided that the licensee clearly identifies himself, herself or itself as a real estate licensee in the advertisement.

(3) ADVERTISING WITHOUT AUTHORITY PROHIBITED. Brokers shall not advertise property without the consent of the owner.

(4) ADVERTISED PRICE. Brokers shall not advertise property at a price other than that agreed upon with the owner; however, the price may be stated as a range or in general terms if it reflects the agreed upon price.

History: Cr. Register, February, 1980, No. 290, eff. 3–1–80; am. (4). Register. March, 1981, No. 303, eff. 4–1–81; renuin. from REB 15.04 and am. (2), Register. February, 1983. No. 326, eff. 3–1–83; renum. (2) to be (2) (a) and am. cr. (2) (b) and (c), Register, January, 1987, No. 373, eff. 2–1–87: am. (2) (c), Register, April, 1995. No. 472. eff. **5–1–95.**

RL 24.05 Self–dealing. **(1)** DUAL COMPENSATION. **A** licensee acting as an agent in a real estate or business opportunity transaction may not accept any fee or coinpensation related to the transaction from any person, other than the licensee's client, without prior written consent from all parties to the transaction.

(2) DISCLOSURE OF INTEREST. **A** licensee acting as an agent in a real estate or business opportunity transaction may not act in the transaction on the licensee's own behalf, on behalf of the licensee's immediate family or firm, or on behalf of any other organization or business entity in which the licensee has an interest without the prior written consent of all parties to the transaction. For the purpose of this subsection, a licensee may obtain the written consent in the offer to purchase, option, lease or other transaction contract.

(3) REFERRAL OF SERVICES. A licensee acting as an agent in a real estate or business opportunity transaction may not recommend or suggest to a party to the transaction the services of another individual or entity from which the licensee may receive compensation for a referral or in which the licensee has an interest, other than referrals to other licensees for real estate services under s. 452.19, Stats., unless the licensee, prior to or at the time of the referral, discloses the fact that he or she may receive compensation for the referral or that he or she has an interest in the individual or entity providing the services.

(4) DISCLOSURE OF PROFITS. A licensee acting as a principal in a real estate or business opportunity transaction shall not accept any commission, rebate, or profit on cxpcnditures made by any other party to the transaction without the written consent of the party. The written consent shall be provided no later than the party's execution of the offer to purchase, option, exchange agreement, lease or other contract creating an interest in the real estate or business opportunity.

(5) DISCLOSURE OF LICENSURE. (a) A licensee acting as a principal in a real estate or business opportunity transaction shall disclose his, her, or its license status and intent to act in the transaction as a principal at the earliest of all of the following:

1. The first contact with the other party or an agent representing the other party where information regarding the other party or the transaction is being exchanged.

2. A showing of the property.

3. Any other negotiation with the seller or the listing broker.

(b) The disclosure under this subsection shall be made to the other party in a transaction or to an agent representing the other party.

History: Cr. Register, February, 1980. No. 290, eff. 3–1–80; renum. (3) and (4) to be (4) and (5), cr. (3), Register, December, 1980, No. 300. eff. I–1–81; am. *(5).* Register, March, 1981, No. 303, eff. 4–1–81; renum. from RER **15.05.** Register, February. 1983, No. 326, eff. 3–1–83; am. (1) and (5), Register, June, 1988, No. 390, eff. 7–1–88; r. and recr. Register, July. 1993. No. 451. eff. 8–1–93; am. (1), (2), (3), (5). Register, April. 1995, No. 472. eff. 5–1–95; **renum. (5) tn be (5) (a) (intro.), cr. (5) (a) 1. to 3., and (b), Register. January, 2001, No. 541, eff. 2–1–01.**

RL 24.06 Unauthorized practice of law. **(1)** UNAUTHORIZED PRACTICE OF LAW PROHIBITED. Licensees shall not engage in activities that constitute the unauthorized practice of law.

(2) LEGAL COUNSEL NOT TO BE DISCOURAGED. Licensees shall not discourage any person from retaining an attorney.

History: **Cr.** Register, February, 1980, No. 290, eff. 3–1–80: renum. from REB 15.06, Register, February, 1983. No. 326, eff. 3–1–83.

RL 24.07 Inspection and disclosure duties. **(1)** INSPECTION OF REAL ESTATE. (a) *General requirement.* **A** licensee, when engaging in real estate practice which involves real estate improved with a structure, shall conduct a reasonably competent and diligent inspection of accessible areas of the structure and immediately surrounding areas of the propcrty to detect observable, material adverse facts. **A** licensee, when engaging in real estate practice which involves vacant land. shall, if the vacant land is accessible, conduct a reasonably competent and diligent inspection of the vacant land to detect observable material adverse facts.

(b) *Listing broker* When listing real estate and prior to execution of the listing contract, a licensee shall inspect the real estate as required by sub. (1), and shall make inquiries of the seller on the Condition of the structure, mechanical systems and other relevant aspects of the property as applicable. The licensee shall request that the seller provide a written response to the licensee's inquiry.

(c) *Other licensees.* Licensees, other than listing brokers, shall inspect the real estate as required by sub. (1) prior to or during the showing of the property, unless the licensee is not given access for a showing.

(d) *Specific conduct regarding inspections.* **A** reasonably competent and diligent inspection of real estate improved with a structure does not require the operation of mechanical equipment; the opening of panels, doors or covers for access to mechanical systems; or the moving of furniture, boxes or other property; nor does it require a licensee to observe areas of the property for which entry presents an unreasonable risk of injury or areas accessible only by ladder, by crawling or other equivalent means of access. **A** licensee is not required to retain third party inspectors or investigators to complete a reasonably competent and diligent inspection. **A** reasonably competent and diligent inspcction of vacant land does not require an observation of the entire property, but shall include, if given access, an observation of the propcrty from at least one point on or adjacent to the propcrty.

(2) DISCLOSURE OF MATERIAL ADVERSE FACTS. A licensee may not exaggerate or misrepresent facts in the practice of real estate. **A** licensee, when engaging in real estate practice, shall disclose to each party, in writing and in a timely fashion, all material adverse facts that the licensee knows and that the party does not know or cannot discover through a reasonably vigilant observation, unless the disclosure of the material adverse fact is prohibited by law. This provision is not limited to the condition of the propcrty, but includes other material adverse facts in the transaction.

Note: Certain "material adverse facts", as defined in **s.** RL *23.02* (12), may not be disclosed by **law.** For example, unless specifically authorized by a seller, a licensee may not disclose to a potential buyer the actual minimum sales price the seller will accept. **Sees.** 452.133 (1) (d), **Stats.**

(3) DISCLOSURE OF INFORMATION SUGGESTING MATERIAL ADVERSE FACTS. **A** licensee, when engaging in real estate practice, who becomes aware of information suggesting the possibility of material adverse facts to the transaction. shall be practicing competently if the licensee discloses to the parties the information suggesting the possibility of material adverse facts to the transaction in writing and in a timely fashion, recommends the parties obtain expert assistance to inspect or investigate for possible material adverse facts to the transaction, and, if directed by the parties, drafts appropriate inspection or investigation contingencies. This provision is not limited to the condition of the property, but includes other material adverse facts to the transaction, including but not limited to defects and conditions included within the report form under s. 709.03, Stats. A licensee is not required to retain third party inspectors or investigators to perform investigations of information suggesting the possibility of a material adverse fact to the transaction.

(4) DISCLOSURE OF SIDE AGREEMENTS. A licensee, when engaging in real estate practice, who becomes aware of the fact that a party to the transaction has not disclosed that party's entire agreement regarding the transaction to that party's secured lender, shall disclose this fact, in writing and in a timely manner, to the party's secured lender.

(5) RELIANCE UPON THIRD PARTY INSPECTIONS AND INVESTIGATIONS. If a licensee or a party in a transaction engages the services of a qualified third party to conduct a property inspection or investigation of material facts, the licensee may rely on the results of the inspection or investigation providing the licensee obtains a written report of the inspection or investigation and delivers a copy of the report to all interested parties in a timely manner.

(6) INCONSISTENCIES. If a licensee's reasonably competent and diligent inspection reveals facts materially inconsistent with or materially contradictory to the seller's statements provided under sub. (1) (a), or the inspection or investigation report of a third party, the inconsistency shall be disclosed in writing and in a timely manner to the parties.

(7) FALSE INFORMATION. Licensees shall not knowingly give false information about another licensec or property listed with another licensee.

(8) DISCLOSURE OF AGENCY. (a) *General requirements.* 1. Prior to providing brokerage services to a party, each licensee shall provide a copy of the agency disclosure form required under s. 452.135, Stats. If the services are for the sale of real estate used or intended to be used principally for one to 4 family residential purposes, the licensee shall, at the time the disclosure is provided, request the party to acknowledge in writing the receipt of a copy of the disclosure form.

2. Licensees acting as agents of potential buyers of real estate used or intended to be used principally for one to 4 family residential purposes, who are negotiating directly with the seller or who are aware that the owner of the real estate has granted another licensee the exclusive right to sell, shall notify the seller or the listing broker, as applicable, of the licensee's buyer agency relationship at the earlier of all of the following:

a. The first contact with the seller or the listing broker where information regarding the seller or transaction is being exchanged.

b. A showing of the property.

c. Any other negotiation with the seller or the listing broker.

3. **A** change in a licensee's representation that makes the initial disclosure incomplete, misleading or inaccurate requires that a new disclosure be given, as in s. 452.135, Stats.

4. Prior to offering subagency listing brokers or their salespeople shall request the seller's authorization to permit other brokers to act as subagents in the sale of property or business opportunity. This authorization shall be stated in the listing contract.

(b) ***Listing*** *contracts.* 1. Listing brokers or their salespeople shall explain the responsibilities of seller's agents, buyer's agents and subagents to the seller before entering into a listing contract.

2. No listing broker or listing broker's salesperson may permit other brokers to act as subagents in the sale of a property or business opportunity unless the listing broker or salesperson has received the seller's authorization in the listing contract.

(c) *Offers to purchase and option contracts.* Licensees shall reconfirm, in the offer to purchase or option contract, whom the licensee represents as **an** agent in a real estate or business opportunity transaction.

(d) *Subagency arrangements.* A listing broker shall provide an agency disclosure to the seller and to buyers if negotiations are being conducted directly with the buyer and not through a subagent or buyer's agent. Buyer's brokers shall provide an agency

disclosure to the buyer and to the seller if negotiations are being conducted directly with the seller and not through a subagent or listing broker. Subagents of listing brokers and buyer's agents shall provide an agency disclosure to the customer they are working with but not to their client. Listing brokers and buyer's brokers are not required to provide an agency disclosure to the customers of their subagents.

(e) *Listings for lease nnd property management contracts.* Licensees entering into listings for lease or property management contracts with property owners shall provide to their clients the disclosure form required under s. 452.135, Stats. A licensee shall also provide an agency disclosure form to prospcctivc tenants when the licensee is actually negotiating the terms of a lease on behalf of the owner. A licensee is not required to provide an agency disclosure form to a prospective tenant in situations when the licensee docs not negotiate the terms of a lease, such as when the rental unit is only being shown to the prospective tenant or a completed and "non-negotiable" lease is presented to a prospective tenant.

History: Cr. Register, February, 1980, No. 290, eff. 3–1–80; emerg. r. (2), eff. 10–14–80; cr. (3), Register, December, 1980. No. 300, eff. 1–1–81; r. (2), Register, March. 1981, No. 303, eff. 4–1–81; renum. from RER 15.07, Register. February, 1983, No. 326, eff. 3–1–83; cr. (2), Register. January. 1987, No. 373, eff. 2–1–87; am. (1), r. and recr. (2), cr. (4), Register, **June,** 1988, No. 390, eff. 7–1–88; am. (1), cr. (1) (a) to (c) and (4) (d), r. andrecr, (2), Register, September, 1990, No. 417, eff. 10–1–90; r. andrecr. (1), renum. **(21,** (3), (4) to be (5), (6), (7), cr. (2), (3), (4), Register. July, 1993, No. 451, eff. 8-1–93; **am.** (1) (a), (d), (2), (3), (5), renum. (1) (a). (b) to be (1) (b), (c) and am., (6) to be (7). r. (1) **(c),** (7), r. and recr. (4), cr. (6), (8), Register, **April,** 1995. No. 472, eff. 5–1–95; am. (8) (a) **2.** (intro.), **a.** and **c.,** Register, January, **2001,** No. 541, **eff. 2–1–01.**

RL 24.075 Tie–in arrangements. Licensees shall not:

(1) Condition the sale of real estate owned by the licensee or whose sale is effectively controlled by the licensee to a buyer upon the buyer's agreement to purchase another parcel or real estate.

(2) Condition the sale of real estate owned by the licensee or whose sale is effectively controlled by the licensee upon the buyer's agreement to list the real estate or other real estate owned by the buyer with the licensee.

Note: The following are 2 common examples of activities which **would** violate this subsection: (1) requiring a builder to list a speculation home with the licensee; and (2) requiring a buyer to list a present home with the licensee.

(3) Condition the sale of vacant real estate owned by the licensee or whose sale is effectively controlled by the licensee upon the buyer's agreement to employ one or more specific builders to make improvements on the real estate unless:

(a) The builder owns a bona fide interest in the real estate; and there is full disclosure as specified in s. RL 24.05 (3).

(b) The builder and the licensee or the builder and the owner of the real estate are the same person or are commonly controlled corporations and whose business is selling improved property and not vacant land; and there is full disclosure as in s. RL 24.05 (3).

(c) The agreement **is** a bona fide effort to maintain development quality or architectural uniformity and no consideration passes from contractor to licensee for soliciting this agreement.

History: Cr. Register, December, 1980, No. 300, eff. 1–1–81; renum. from REB 15.075 and am. (3) (a) and (b), Register, February, 1983. No. 326, eff. 3–1–83.

RL 24.08 Agreements to be in writing, A licensee shall put in writing all listing contracts, guaranteed sales agreements, buyer agency agreements, offers to purchase, property management agreements, option contracts, financial obligations and any other commitments regarding transactions, expressing the exact agreement of the parties unless the writing is completed by the parties or their attorneys or the writing is outside the scope of the licensee's authority under ch. RL 16.

History: Cr. Register, February, 1980. No. 290, eff. 3–1–80; renum. from REB 15.08. Register, February, 1983, No. 326, eff. 3–1–83; am. Register, January, 1987, No. 373, eff. 2–1–87; am. Register, June, 1988, No. 390, eff. 7–1–88; am. 24.08, Register, July, 1993, No. 451, eff. 8-1–93.

RL 24.085 False portrayal of interest, prohibited. No licensee shall draft or use any document which the licensee knows falsely portrays an interest in real estate.

History: Cr. Register, December, 1980, No. 300, eff. 1–1–81; rcnum. from REB 15.085, Register. February, 1983, No. 326, eff. 3–1–83.

RL 24.09 Securing agency agreements. Licensees may not mislead a potential client regarding the benefits which might be realized through the use of the licensee's services or the market value of real estate or a business opportunity to he leased or sold under a listing contract.

History: Cr. Register, February, 1980, No. 290, eff. 3–1–80: renum. from REB 15.09, Register, February, 1983, No. 326, eff. 3–1–83; r. and recr. Register, April, 1995. No. 472, eff. 5–1–95.

RL 24.10 Net listing prohibited. Licensees shall not obtain, negotiate or attempt to obtain or negotiate any listing contract providing for a stipulated net price to the owner with the excess over the stipulated net price to be received by the broker as commission.

History: Cr. Register. February, 1980, No. 290, eff. 3–1–80; renum. from REB 15.10. Register, February, 1983, No. 326, eff. 3–1–83.

RL 24.12 Confidentiality of offers. (1) Except as provided in sub. (2), a licensee acting as a principal or an agent in a real estate or business opportunity transaction shall not disclose any of the terms of one prospective buyer's offer to purchase; exchange agreement or option contract proposal to any other prospective buyer or to any person with the intent that this information be disclosed to any other prospective buyer. Licensees shall encourage all prospective buyers to submit their best offers. A licensee may, but is not required to, disclose information known by the licensee regarding the existence of other offers on the property, the fact that a seller has accepted an offer, that the offer is subject to contingencies and that the offer is subject to a clause requiring removal of certain contingencies upon the occurrence of an event such as receipt, acceptance or conditional acceptance of another offer.

(2) As used in this subsection, "right of first refusal" means the right of a person to have the first opportunity to purchase or lcasc real property. "Right of first refusal" does not mean a so-called "bump clause" which is a contingency provision in a **purchase** agreement that requires the prospective buyer to remove certain contingencies in the buyer's purchase agreement or to relinquish the buyer's primary status to a secondary offer. If a licensee is providing brokerage services in a transaction and the licensee has knowledge that the property is subject to a right of first refusal, the licensee shall disclose the right of first refusal, in writing and in a timely manner, to all persons seeking to acquire an interest subject to the right of first refusal. **After** disclosure of the right of first refusal to a party seeking to acquire an interest in the property, the licensee may deliver a copy of that party's subsequent offer to purchase, exchange agreement, option contract or lease proposal to the **party** holding the right of first refusal.

History: Cr. Register, February, 1980, No. 290, eff. 3–1–80; am. Register, March, 1981, *No.* 303, *eff.* 4–1–81; renum. *from* REB 15.12, Register. February, 1983, No. 326, eff. 3–1–83; am. Register, July, 1993, No. 451. eff. 8–1–93; renum. RL 24.12 to **be** (1), **cr. (2),** Register, January, **2001, No. 541, eff. 2–1–01.**

RL 24.13 Drafting and submission of offers. (1) REFUSAL PROHIBITED. Licensees shall not refuse to draft or submit any offer to purchase, exchange agreement or option contract proposal to the owner unless the terms of the offer, exchange agreement or option would be contrary to specific instructions of the owner.

(2) WITHHOLDING OFFERS PROHIBITED. (a) Listing brokers shall permit access to listed property for showing purposes, to all buyers and persons assisting or advising buyers, without unreasonable delay, unless the buyer's or other person's access is contrary to specific written instructions of the seller.

(b) Licensees shall present promptly all offers received to the seller or seller's agent for consideration. Licensees shall not withhold any offer from presentation pending the seller's action on an offer previously presented.

(3) FAJR PRESENTATION OF OFFERS. (a) Licensees shall present all written proposals in an objective and unbiased manner to their principals. Licensees shall inform their principals of the advantages and disadvantages of all submitted written proposals.

(b) **A** listing broker or the listing broker's employee may not submit his or her own offer to purchase a property which the broker has listed if the broker or broker's employee has knowledge of the terms of any pending offer, except that a broker may arrange for a guaranteed sale at the time of listing.

(4) NOTIFICATION OF ACTION TO BUYERS. Licensees shall promptly inform prospective buyers whether the seller has accepted, rejected or countered their written offer to purchase, and shall immediately provide a written statement concerning the date and time when an offer was rejected or that an offer had expired without acceptance when such a statement is requested by a prospective buyer, a buyer's agent or a selling broker.

(5) NEGOTIATION THROUGH BROKER. **A** licensee may not negotiate a sale or lease of real estate directly with a party if the licensee knows that the party has an unexpired written contract in connection with the real estate which grants to another licensee an exclusive right to sell, lease or negotiate. All negotiations shall be conducted with the broker holding the exclusive right to sell, and not with the party, except with the consent of the broker or where the absence of the broker, or other similar circumstances, reasonably compels direct negotiation with the party. **A** listing broker has no duty to investigate whether a buyer has granted a buyer's agent an exclusive right to negotiate.

Note: The Department of Regulation and Licensing's approved **form,** WB–38, does not grant the buyer's agent an exclusive right *to* negotiate.

History: Cr. Register, February, 1980, No. 290. eff. 3–1–80; cr. (5), Register, March, 1981. No. 303, eff. 4–1–81; renum. from REB 15.13, Register, February, 1933, No. 326, eff. 3–1–83; renum. (3) to be (3) (a), cr. (3) (b), am. (4), Register, January. 1987, No. 373. eff. 2–1–87; **am.** (3) (a), Register, June, 1988, No. 390, eff. 7–1–88; am. (3) (b), r. and recr. (2), Register, July, 1993, No. 451, eff. 8–1–93: **am. (3) (b) and (5), Register, January, 2001, No. 541, eff. 2–1–01.**

RL 24.15 Adequate funds required. Licensees shall not issue checks upon business or trust accounts which contain insufficient funds

History: Cr Register February, 1980 No 290, eff 3–1–80, renum from REB 15 15, Register, February, 1983, *No* 326, eff 3–1 83

RL 24.16 Availability of rules. Brokers shall maintain a copy of the rules of the department on file in all offices for the use of all licensees

History: Cr. Register. February, 1980. No. 290, eff. 3–1–80: renum. from REB 15.16, Register. February, 1983, No. 326, eff. 3–1–83; am. Register, January, 1987, No. 373. eff. **2–1–87.**

RL 24.17 Miscellaneous requirements. (1) VIOLATIONS OF LAW. Licensees may not violate, or aid or abet the violation of, any law the circumstances of which substantially relate *to* the practices of a real estate broker or salesperson. **A** licensee who has been convicted of a crime, except motor vehicle offenses under chs. 341 to 349, Stats., shall send to the department within 30 days after the judgment of conviction a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction in order that the department may determine whether the circumstances of the crime of which the licensee was convicted are substantially related to the practice of a real estate broker or salesperson, pursuant to s. **111.335** (1) (e), Stats.

(2) COWICTION. The board may discipline a licensee on the basis of a conviction of any crime, the circumstances of which substantially relate to the practice of real estate. A certified copy of a judgment of a court of record showing such conviction, within this state or without, shall be presumptive evidence of conviction.

(3) VIOLATION OF STATUTES, ADMINISTRATIVE CODE AND DISCIPLINARY ORDERS. Licensees shall not violate any provisions or terms or conditions of, or aid or abet the violation of ch. 452, Stats., chs. RL 11 to ***26*** or any disciplinary order of, the real estate board.

(4) IMPAIRED PRACTICE. Licensees shall not render services while the ability of the licensee to competently perform duties is impaired by mental or emotional disorder, drugs or alcohol.

History: Cr. Register, February, 1980, No. 290, eff. 3–1–80; am. (2), Register, December, 1980. No. 300. eff. 1–1–81; renum. from REB 15.17 and am. (2), Register, February, 1983. No. 326, eff. 3–1–83; am. (1), Register, January, 1986, No. 373, eff. 2–1–87; renum. (2) and (3) to be (3) and (4), cr. (2), Register, June. 1988, No. 390, eff. 7–1–88; am. (3), Register, **July,** 1998, No. **511,** eff. 8–1–98.

Chapter RL 25

EDUCATION

RL 25 005 Authority.
RL 25 01 Definitions.
RL 25 02 Educational requirements of applicant for an original real estate broker's license.
RL 25 025 Satisfaction of broker's educational requirements by out-of-state applicants.
RL 25 03 Educational requirements of applicant for an original real estate salesperson's license.
RL 25 035 Satisfaction of salesperson's educational requirements by out-of-state applicants.
RL 25 05 Requirements for approval of pre-license education courses taken for academic credit at an accredited institution of higher education.
RL 25.06 Requirements for approval of pre-license noncredit prograins and instructors.
RL 25.065 Continuing education requirements for brokers and salespersons.
RL 35.066 Requirements for approval of continuing education schools, courses and instructors.
RL 25.07 Certification of attendance at pre-license and continuing education programs and courses.
RL 25.075 Continuing education examination conducted by the department.
RL 25.08 Investigation and review.

Note: Chapter REB 16 as it existed on October 31, 1979, was repealed and a new Chapter REB 16 was created effective November 1, 1979. Renumbered chapter RL 25, effective March 1, 1983.

RL 25.005 Authority. The following rules are adopted pursuant to ss. 227.11 (2), 452.05, 452.07, 452.09 (2) and (3) and 452.12 (5) (c), Stats.

History: Cr. Register, October 1979, No. 286, eff. 11–1–79; renum. from RED 16.005 and am. Register, February, 1983, No. 326, eff. 3–1–83; **am.** Register, January. 1992, No. 433, eff. 2–1–92.

RL 25.01 Definitions. As used in this chapter, unless the context otherwise specifically requires:

(1) "Accredited institution of higher education" means a law school accredited by the American bar association or other schools accredited by one of the regional institutional accrediting commissions or associations which have been recognized by the U.S. department of education.

(2) "Board" means the real estate board.

(2m) "Classroom education" means the provision of educational programs or courses to one or more students in a setting in which either an instructor is physically present with the students or a representative of an approved school is physically present with the students for the purpose of taking attendance and providing instruction by audiotape, cable television, satellite line or other similar method and the instructor is available for student questions by telephone or E–mail, or by a continuous 2–way audio or audiovisual connection.

(3) "Continuing education course" means an approved segment of a continuing education program required by the department pursuant to s. 452.05 (1) (d), Stats.

(4) "Continuing education program" means the total number of continuing education hours or subjects required by the department pursuant to s. 452.05 (1) (d), Stats.

(5) "Credit course" means a course which can be applied toward an associate degree or higher degree at an accredited institution of higher education.

(5m) "Distance education" means the provision of educational programs or courses without an instructor or a representative of an approved school physically present with the students. "Distance education" includes, but is not limited to, the delivery of educational programs and courses on CD–ROM, computer disk, or the Internet.

(6) "Evidence of attendance" means an official transcript, student grade report, or department--approved certificate showing satisfactory completion of educational programs or courses.

(7) "Hour" means a period of 50 minutes of actual instruction and shall not include time spent in writing tests or examinations given by the school.

(8) "Noncredit program" means an educational program which does not satisfy requirements for an associate degree or higher degree at the school offering the educational program.

History: Cr. Register, October, 1979, No. 286, eff. **11–1–79; renum.** from RED 16.01 and am. (1) and (6), Register, February. 1983. No. 326. eff. 3–1–83; renum. (1) to (5) to be (2), (7), (5), (8), (1) and am. (8), cr. (3) and (4), am. (6), Register, January, 1992, No. 433. eff. 2–1–92; am. (1), Register, July, 1998, No. 511, eff. 8–1–98; **cr. (2m), (5m),** am. **(3),** (4) and **(7), Register,** August, **1999, No. 524, eff. 9–1–99.**

RL 25.02 Educational requirements of applicant for an original real estate broker's license. (1) EDUCATIONAL REQUIREMENTS. Each applicant for an original real estate broker's license shall satisfy any one of the following requirements:

(a) Present evidence satisfactory to the department of successful completion, within 5 years before application for a license, of the educational program in sub. (2), which has been approved in accordance with this chapter, and either satisfy the salesperson's educational requirements in s. RL 25.03 **(3)** or present evidence satisfactory to the department of licensure as a salesperson.

(b) Submit proof that the applicant has received 20 semester hour credits in real estate or real estate related law courses from an accredited institution of higher education. **A** quarter hour credit equals *2/3* of a semester hour credit.

(c) Submit proof that the applicant is licensed to practice law in Wisconsin.

(2) BROKER'S PRE-LICENSE PROGRAM. The educational program for applicants for an original real estate broker's license shall cover all of the following topics and shall be designed so that if the educational program were presented as classroom education, it would be presented in no less than *36* hours:

(a) *Contracts.*

1. Definition of a contract.
a. Contract versus agreement.
2. Elements of a contract.
a. Offer.
b. Acceptance.
c. Consideration.
d. Competent parties.
3. Time is of the essence.
4. Acceptance versus counteroffers.
5. The law of conveyances.
a. Conveyance defined.
b. Requirements for a valid conveyance.
6. Agreement to arbitrate real estate transaction disputes – s. 788.015. Stats.
7. Commercial real estate commission lien – s. 779.32, Stats.

(b) *Approved forms.*
1. The forms approval process.
a. Forms committee.
b. Real estate board.
c. Department of regulation and licensing.
2. The authorized practice of law.
a. Reynolds v. Dinger, 14 Wis. 2d, 193.
b. Chapter RL 16.
3. Review of forms.
a. Listing contract.
b. Offer.
c. Counteroffer.
d. Amendment.
e. Buyer agency agreement.
f. Lease.
g. Grant of option.
h. Bill of sale.
i. Offer to exchange property with acceptance.
j. Cancellation and mutual release.
k. State bar fonns – s. RL 16.03(1).
L. Uniform commercial code forms.
m. Forms used in other states.
4. Developing a fonn and contingency manual.
5. Supervising salesperson's use of approved forms.
(c) *Trust accounts, escrow, closing statement.*
1. Trust accounts ch. RL 18.
a. Trust account definition.
b. Trust funds definition.
c. When is a trust account required.
d. Procedure to open a trust account.
e. Procedure to open an interest bearing trust account.
f. Authorization to sign trust account checks.
g. Deposit of trust funds.
h. Disbursement of trust funds.
i. Bookkeeping system.
2. Escrow agreement procedures.
a. Escrow-s requiring separate escrow agreements.
b. Pre-closing earnest money escrows.
c. Post closing escrows.
d. Escrows not requiring separate escrow agreements.
e. Drafting escrow agreements.
3. Closing procedures.
a. Licensees are not required by license law to perform closings.
b. Choosing a closing statement.
c. Closing preparation procedures.
d. Setting a closing date.
e. Preparing closing documentation.
f. Closing procedures.
g. Post closing procedures.
(d) *Business management and marketing.*
1. The legal environment.
a. Licensure.
b. Legal concerns.
c. Policy manual – s. RL 17.08.
2. The business plan.
a. Form of ownership.
b. Startup.
c. Capital budget.
d. Operation budget.
e. Marketing strategies.
3. Professional services.
a. Attorneys
b. Accountants.
4. Operational policies
a. Policy and procedures manual.
b. Independent contractors agreement.
(e) *Financial and office management.*
1. Financial management.
a. System of income and expense accounting.
b. Forms used in all systems.
c. Accounting for deposits.
d. Accounting for payroll.
e. General disbursements.
f. Accounts used for handling funds.
g. Bank reconciliations.
h. Financial reports.
2. Budgeting.
a. Definition of a budget.
b. Purpose of the budget.
c. Comparison of budget income and expenses.
d. Preparing the budget.
3. Office management – ch. RL 15.
a. Retention of records.
(f) *Personnel.*
1. Hiring.
a. General criteria.
b. Determining needs
c. Personnel selection.
d. Equal opportunity.
e. Workers' compensation.
2. Contracts.
a. Employee.
b. Independent contractor.
3. Policy manual.
a. Purpose.
b. Company history and philosophy.
c. Development and implementation.
d. Termination.
4. Training.
5. Licensure and supervision of employees – ch. RL 17.
(g) *Business ethics.*
1. Dealing with the public.
a. Principal and agent relationship – s. RL 24.025.
b. Treating all parties fairly – s. RL 24.025.
c. Avoid discrimination – s. RL 24.03 (1).
d. Competence in area of service – s. RL 24.03 (2).
e. Legal counsel not to bc discouraged – s. RL 24.06.
f. Tie–ins – s. RL 24.075.
g. Agreements in writing – s. RL 24.08.
h. Misleading market values – s. RL 24.09.
i. No net listings – s. RL 24.10.
2. Advertising – s. RL 24.04.
a. False ads.
b. Disclosure to the public.
c. Obtain permission.
d. Advertised price.
3. Offers – ss. RL 24.12, 24.13.
a. Confidentiality.
b. Draft and submit all offers.
c. Submit promptly.

d. Present fairly.
e. Prompt notification.
4. Self–dealing – s. RL 24.05.
a. Disclosure of profits.
b. Disclosure of intent.
c. Property owned by licensee.
d. Referral of service.
e. Compensation from more than one party.
5. Disclosure – s. RL 24.07.
a. Material facts.
b. Property inspection.
c. Agency.
6. Dealings with fellow licensees.
a. Negotiations through listing broker – s. RL 24.13 *(5)*.
b. Obtain seller's permission for subagent s. RL 24.07 (8) (b) 2.
c. Confidentiality of offer – s. RL 24.12.
d. Disclose material facts – s. RL 24.07 (2).
e. False information – s. RL 24.07 (3).
f. Disclose buyer agent and seller subagent – s. RL 24.07 (8).
g. Timely transfer of earnest money – s. RL 18.08.
7. Dealings with licensee and salespeople.
a. Licensee supervision – s. RL 17.08.
b. Office supervision – s. RL 17.09.
(h) *Consumer protection.*
1. Disclosure.
a. Property inspections – s. RL 24.07 (1) (a).
b. Investigation of other facts – s. RL 24.07 (1) (b).
c. Use of third party inspectors – s. RL 24.07 (2).
d. Wisconsin statutes s. 452.23, Stats.
e. Civil liability for misrepresentation.
f. Seller's disclosure duties – ch. 709, Stats.
g. Buyer's inspection obligation.
2. Fair housing.
a. Federal law.
b. State of Wisconsin law.
c. Local fair housing law.
d. Sanctions for violations.
e. Testers and fair housing organizations.
f. Conduct prohibited by fair housing law.
g. Responding to fair housing questions.
h. Instituting equal professional service procedures.
3. Antitrust: conspiracy and group boycotts.
a. Section 1 of the Sherman Act.
b. "Conspiracy" requirement.
c. "Restraint of trade" requirement.
d. Compensation and "prices" which have been fixed.
e. Situations creating inferences of price fixing.
f. How to respond to antitrust situations.
g. Elements same as price fixing – conspiracy and restraint of trade.
h. Situations creating inference of boycott.
i. Good boycotts: sanctions necessary to enforce reasonable industry self regulation.
4. Complaint handling procedures.
a. Consumer satisfaction.
b. Liability avoidance.
c. Feedback on fair housing or other law violations.
d. Prevent complaint through education.
e. Document the complaint handling program in policy and procedures manual.
f. Inform the parties of the complaint handling program.
g. Dispute resolution systems.
5. Environmental factors.
a. Underground storage tanks: registration and closure.
b. Asbestos.
c. Radon.
cm. Lead–based paint.
d. Procedures for "high risk" properties.
e. Wetlands and floodplain.
6. Education buyers and sellers.
a. Property inspection and disclosure of defects.
b. Earnest money procedures.
c. Licensees' responsibilities and expertise.
d. Utilizing third party experts.
(i) *Specialty areas.*
1. Property management.
a. Management contracts.
b. Insurance liability.
c. Security deposits.
d. Breach of lease.
e. Property inspections.
f. Tenant and landlord rights and obligations – ch. ATCP 134.
g. Rules regarding negotiating leases.
2. Business opportunities.
a. Special expertise and licensing requirements – s. RL 24.03.
b. Approved fonns.
c. Bulk sales law.
3. Selling specialized properties as a brokerage activity.
4. Alternative marketing methods.
a. Exchanges.
b. Installment sales.
c. Syndication.
d. Cooperatives.
5. Mortgage banking.
a. Definition of mortgage banker, loan originator, loan solicitor.
b. When separate registration is needed.
c. Legality of referral fees, "Real Estate Settlement Procedures Act."
6. Real estate appraisal.
a. Definition.
b. When separate certification is needed.
7. Farms.
a. Specialized forms.
8. Auctions.
a. Auctioneer requires real estate license to call auction of real estate.
9. Mobile homes.
a. When a real estate license or separate license is required.
10. Time–share.
a. Familiarity with ch. 707, Stats., when selling time–shares.

History: Cr. Register, October, 1979, No. **286,** eff. 11–1–79; cr. (4), Register, April, 1981, No. 304, eff. 5–1–81; am. (1), (4) (intro.) and (b), Register, June, 1982, No. 318, eff. 7–1–82; renum. from REB 16.02 and am. (1) and (4) (intm.). Register, February, 1983, No. **326.** eff. 3–1–83; am. (1). **(3)** (intro.), **(a)** (intro.), (b) (intro.) and (c) (intro.), r. and recr. **(2),** cr. (5), Register, February. 1987, No. 374, eff. 6–1–87; r. and recr. Register, January 1992, No. 433, eff. 2–1–92; am. (1) (a), (2) (h), 1. f., **(3), cr. (2)** (a) **6.,** Register, September, 1993, No. 453, eff. 10–1–93; cr. **(2)** (h) 5. cm., r. (3), Register, July, 1997, No. 499, eff. 8–1–97; am. (1) (intro.), (a) and (b), Register. July, 1998, No. 511, eff. 8–1–98; **am. (1) (intro.), (a), (2) (intro.) to (g) (intro.), 2. to 5, (h) and (i), cr. (2) (a) 7., *Register,* August, 1999, No. 524, eff. 9–1–99.**

RL 25.025 Satisfaction of broker's educational requirements by out-of–state applicants. (1) An applicant who has held an active real estate broker's liccnsc in another licensing jurisdiction within the 2 year period prior to filing an application for an original real estate broker's license in Wisconsin may satisfy the broker's educational requirements of s. RL 25.02 (1) by submitting evidence of one of the following:

(a) Completion of the educational programs under sub. *(2)* and **s.** RL 25.035 (2) at a school approvcd by the department under s. RL 25.05 or 25.06.

(b) Satisfaction of the requirements in **s.** RL 25.02 (1) (b) or (c).

(2) The contents of the educational program under this subsection shall include all of the following and shall be designed so that if the educational program were presented as classroom education, it would be presented in no less than 3 hours:

(a) *Broker only contracts and contract issues.*

1. Reynolds v. Dinger, 14 Wis. 2d, 193.
2. State bar forms – s. RL 16.03 (1).
3. Uniform commercial code forms – **s.** RL 16.03 (1).
4. Forms used in other states.
5. Developing forms and contingency manual.
6. Supervising salespersons' use of approved forms.
7. Commercial real estate broker's commission lien s. 779.32, Stats.

(b) *Miscellaneous Wisconsin laws.*

1. Change of name, address or trade name – ch. RL 23.
2. Trust accounts – **s.** 452.13, Stats., and ch. RL 18.

a. Procedure to open trust account.
b. Authorization to sign trust account checks.
c. Bookkeeping system.

3. Policy manual – **s.** RL 17.08.

(c) Review, update or more in–depth coverage of any of the contents of the salesperson's educational course in s. RL 25.035 (2).

History: Cr. Register, **July,** 1997, No. 499, eff. 8–1–97; am. (1) (intro.), (a), @), (2) (intro.), (a), **(b)** (intro.) and **(c), cr.** (2) (a) 7., Register, August, 1999, **No. 524, eff.** 9–1–99.

RL 25.03 Educational requirements of applicant for an original real estate salesperson's license. (1) GENERAL REQUIREMENTS. Each applicant for an original real estate salesperson's license shall present evidence of attendance, within 5 years before application for a license. at the educational program in sub. (3), which has been approvcd by the department in accordance with s. RL 25.05 or 25.06.

(2) TEN SEMESTER–HOUR WAIVER. The educational requirement in sub. (1j is not required of an applicant who submits proof that the applicant has received 10 semester hour credits in real estate or real estate related law courses at an accredited institution of higher education. A quarter hour credit equals 2/3 of a semester hour credit.

(3) SALESPERSON'S PRE–LICENSE PROGRAM. The educational program for applicants for an original real estate salesperson's license shall cover all of the following topics and shall be designed so that if the educational program were presented as classroom education, it would be presented in no less than 72 hours:

(a) *Real property.*

1. Land, real estate and real property.
2. Real property versus personal property.
3. Classification of fixtures.
4. Characteristics of real estate
5. Types of home ownership.
6. Mobile homes – **s.** 70.043, Stats.
7. Ownership expenses.
8. Property features.
9. Investment considerations.
10. Tax benefits for home ownership.
11. Homeowner's insurance.

(b) *The real estate business.*

1. Real estate specialties.
2. The real estate market.
3. Factors affecting supply and demand.
4. Business cycles.
5. Real estate practice – ch. 452, Stats.

(c) *Real estate brokerage.*

1. Law of agency.
2. Creation and termination of agency.
3. Fiduciary duties.
4. Responsibilities to third parties.
5. Broker's and salesperson's compensation.
6. Antitrust laws.
7. Independent contractor versus employee.
8. Broker–to–broker relationships.
9. Sales associate–to--sales associate relationships.

(d) *Listing agreements.*

1. Listing property.
2. Listing agreements – ch. RL 16.
3. Special listing provisions.
4. Termination of listings.
5. Obtaining listings.
6. Pricing the property.
7. Disclosures.
8. Home warranties.

(e) *Interests in real estate.*

1. Government powers.
2. Estates in land.
3. Encumbrances.
4. Water rights.
5. Forms of ownership.
6. Trusts.
7. Ownership by business organizations.
8. Cooperatives.
9. Time–shares – **ss.** 70.095, 707.02, 707.05, 707.40, 707.47, 707.49, Stats.
10. Condominiums – ss. 703.08, 703.21, 703.33, Stats
11. Homestead – ss. 706.01 (7), 766.605, Stats.

(f) *Legal descriptions.*

1. Methods of describing real estate.
2. Land units and measurements.
3. Measuring elevations.

(g) *Taxes and other liens.*

1. Liens and their effects on title.
2. Tax liens.
3. General tax assessment, equalization. tax bills.
4. Mortgage liens.
5. Mechanics liens.
6. Judgments.
7. Estate and inheritance tax liens.
8. Other liens.
9. Taxes – ss. 74.15, 74.47 (1) and (2). Stats.
10. Taxation and transfer fee – **ss.** 77.22, 77.27, Stats.

(h) *Real estate contracts.*

1. Contract law.
2. Elements of a valid contract.

3. Performance of contract.
4. Discharge of contract.
5. Default or breach of contract.
6. Forms used in real estate – ch. RL 16.
a. Listing agreements – s. 240.10, Stats.
b. Offers to purchase.
c. Buyer agency agreements.
d. Counteroffers.
e. Amendments.
f. Understanding closing statements.
g. Disclosure forms: seller condition report; agency; buyer and seller disclosure.
h. Addendums.
i. Cancellation and mutual release agreements.
7. Agreement to arbitrate real estate transaction disputes s. 788.015, Stats.
(i) *Title records and transfers of title.*
1. Requirements of a valid conveyance – ss. 240.10, 706.02, 706.03, Stats.
2. Types of deeds.
3. Involuntary alienation.
4. Probate.
5. Transfer of title by will and descent.
6. Public records and recording.
7. Evidence of title.
8. Uniform commercial code.
9. Other conveyances.
(j) *Real estate finance and basic math.*
1. Buyer qualification.
2. Mortgage instruments.
3. Payment plans.
4. Provisions for default: assignment; release; subject to.
5. Land contracts.
6. Secondary mortgage market.
(k) *Appraisal – market analysis.*
1. Basic principles of value.
2. Direct market comparison approach.
3. Cost approach.
4. Income approach.
5. Appraisal process.
(L) *Fair housing laws.*
1. Equal opportunity in housing.
2. Federal fair housing law.
3. Blockbusting, steering, redlining.
4. Equal rights – s. 106.50, Stats.
5. Equal opportunity – s. 66.1011, Stats.
6. Organizations.
(m) *Ethical real estate practices.*
1. Chapter RL 24.
2. Ethical business conduct.
(n) *Leases.*
1. Leasehold estates.
2. Standard lease provisions.
3. Lease documents.
4. Legal principles of leases.
5. Assignment and subleasing.
6. Improvements.
7. Maintenance.
8. Breach.
9. Residential rental practices – ss. ATCP 134.02, 134.06, 134.09, and 134.09.
(o) *Property management.*
1. Functions of property manager.
2. Management agreement.
3. Management considerations.
4. Renting and maintaining the property.
5. Risk management.
(p) *Land use control and development.*
1. Public controls.
2. The master plan.
3. Zoning.
4. Subdivision regulations.
5. Private land–use controls.
6. Building codes.
7. Land development.
8. Subdividing.
9. Interstate land sales full disclosure act.
10. Platting and subdivisions – ss. 236.01, 236.02, 236.03, 236.31, 236.33, 236.335, 236.35, Stats.
(q) *Environmental concerns.*
1. Radon.
2. Asbestos.
2m. Lead–based paint.
3. Toxic waste.
4. Underground storage tanks – ss. Comm 10.74 to 10.805.
5. Floodplains – **s.** 87.30, Stats. and ss. NR 116.01, 116.06.
6. Flood insurance.
7. Wetlands – **s.** 23.32, Stats.
8. Farmland preservation – ss. 91.01, 91.17, 91.19, 91.21, Stats.
9. Rental unit energy efficiency standards – **ss.** Comm 67.03, 67.08.
10. Disclosure documents – s. 452.23, Stats.: and ch. 709, Stats. and s. RL 24.07.
11. Other.
(r) *Miscellaneous Wisconsin license laws.*
1. Chapter RL 15 – documents and records.
2. Chapter RL 16 – contractual forms.
3. Chapter RL 17 – licensure and supervision of employees.
4. Chapter RL 18 – trust accounts.
5. Chapter RL 23 – change of name, address, trade names.
6. Commercial bulk sales – ss. 406.101, 406.102, 406.103, 406.104, 406.105, 406.107, 406.108, Stats.
7. Property provisions for aliens and corporations – ss. 710.01, 710.02, Stats.
8. Property rights of married persons – ss. 766.31. 766.51, 766.60, 766.63, Stats.
9. Mortgage banking – **s.** 224.71, Stats., and **s.** DFI–Bkg 40.03 (4) (b).

History: Cr. Register, October, 1979, No. 286, eff. 11–1–79; am. (2) (intro.) and r. and recr. (2) @), Register, April, 1981, No. 304, eff. 5–1–81; **am.** (2) (b), Register, June. 1982, No. 318, eff. **7–1–82;** renum. from REB 16.03 and am. (2), Register, February, 1983, No. 326, eff. 3-1-83; r. and recr. Register. Februaq, 1987, No. 374. eff. 6–1–87; r. and recr. Register, January, 1992, No. 433. eff. 2–1–92; am. (I). (3) (q) 10., (4), cr. (3) (h) 7., Register, September, 1993, *No.* **453,** eff. 10–1–93; cr. (3) (q) 2m., r. **(4).** Register, July, 1997, No. 499, eff. 8–1–97; am. **(3)** (r) 9., Register, July, 1998, No. 511, eff. 8–1–98; **am.** (I), (3) (intro.), (a) (intro.), 6., **(b)** to (L) (intro.), 4. and (m) to **(r),** Register, **August,** 1999, No. 524, eff. 9–1–99; **correction in (3) (L) 4. and 5. made under s. 13.93 (2m) (b) 7., Stats.**

RL 25.035 Satisfaction of salesperson's educational requirements by out–of–state applicants. (1) An applicant who has held an active real estate salesperson's license in another licensing jurisdiction within the 2–year period prior to filing an application for an original real estate

salesperson's license in Wisconsin may satisfy the educational requirements of s. RL 25.03 (3) if the applicant submits cvidcnce of one of the following:

(a) Completion of the educational program in sub. (2) at a school approved by the department under s. RL 25.05 or 25.06.

(b) Satisfaction of the 10 semester–hour waiver in s. RL 25.03 (2).

(2) The contents of the educational program under this subsection shall include all of the following and shall be designed so that if the educational program were presented as classroom education, it would be presented in no less than 13 hours:

(a) *Contracts.*

1. The law of conveyances.

a. Conveyance defined – s. 706.01, Stats.

b. Requirements for a void conveyance – ss. 706.02, 706.03, Stats.

2. Chapter RL 16.

3. Review of forms approved by the department.

a. Listing contracts.

b. Offers to purchase.

c. Counteroffer and multiple counteroffer.

d. Amendment/notice.

e. Buyer agency agreement.

f. Grant of option.

g. Bill of sale.

h. Exchange agreement.

i. Cancellation and mutual release.

j. Other approved forms.

(b) *Agency.*

1. Duties owed to parties and clients. – s. 452.133, Stats.

2. Requirement for an agency agreement and disclosure of agency – s. 452.135, Stats.

3. Multiple representation – s. 452.137, Stats.

4. Revisions to common law duties and responsibilities – s. 452.139, Stats.

(c) *Business conduct.*

1. Direct contact with the public.

a. Competence in area of service – s. RL 24.03.

b. Tie–ins – s. RL 24.075.

c. Agreements in writing – s. RL 24.08.

d. Misleading market values – s. RL 24.09.

e. Net listings – s. RL 24.10.

2. Advertising – s. RL 24.04.

3. Completing and presenting offers – ss. RL 24.12, 24.13.

a. Confidentiality.

b. Drafting and submitting offers.

c. Prompt delivery to buyer.

d. Fair presentation of offers.

e. Prompt notification.

4. Self–dealing – s. RL 24.05.

a. Dual compensation.

b. Disclosure of interest.

c. Referral services.

d. Disclosure of profits.

e. Disclosure of licensure.

(d) *Consumer protection.*

1. Property inspections – s. RL 24.07 (1) (a).

2. Inquiry by listing broker – s. RL 24.07 (1) (b).

3. Disclosure of material adverse facts – s. RL 24.07 (2).

4. Disclosure of material suggesting adverse material facts – s. RL 24.07 (3).

5. Disclosure of side agreements – s. RL 24.07 (4).

6. Reliance upon third parties – s. RL 24.07 (5).

7. Investigations and inspections – s. 452.23, Stats.

8. Civil liability for misrepresentation.

9. Seller's disclosure duties – ch. 709. Stats.

(e) *Fair housing.* Wisconsin law – s. RL 24.03 (1), ss. 66.1011, 106.50, Stats.

(f) *Environmental factors.*

1. Underground storage tanks – ss. Comm 10.74 to 10.805.

2. Floodplains - s. 87.30, Stats., ss. NR 116.01, 116.06.

3. Wetland – s. 23.32, Stats.

4. Farmland preservation– ss. 91.01 to 91.21, Stats.

5. Rental unit energy efficiency standards – ss. Comm 67.03, 67.08.

(g) *Trust accounts and escrows.*

1. Trust accounts – s. 452.13, Stats., ch. RL 18.

a. Definition of trust account.

b. Interest bearing and non–interest–bearing accounts.

C. Definition of trust funds.

d. When a trust account is required.

e. Deposit of trust funds.

2. Escrow agreement procedures.

a. Escrows requiring separate escrow agreements.

b. Pre–closing earnest money escrows.

C. Post–closing escrows.

d. Escrows not requiring separate escrow agreement.

e. Drafting escrow agreements.

(h) *Miscellaneous issues.*

1. Condominiums – ss. 703.08, 703.21, 703.33, Stats.

2. Homestead – ss. 706.01 (7), 766.605, Stats.

3. Taxes – ss. 74.15, 74.47 (1) and (2), Stats.

4. Taxation and transfer fee – ss. 77.22, 71.27, Stats.

5. Residential rental practices – ss. ATCP 134.02, 134.06, 134.09.

6. Platting and subdivisions – ss. 236.01 to 236.03 and 236.31 to 236.35, Stats.

7. Documents and records – ch. RL 15.

8. Licensure and supervision of employees – ch. RL 17.

9. Commercial bulk sales – ss. 406.101 to 406.108, Stats.

10. Property provision for aliens and corporations - ss. 710.01, 710.02, Stats.

11. Property rights of married persons – ss. 766.31, 766.51, 766.60, 766.63, Stats.

12. Mortgage banking – s. 224.71, Stats., s. DFI–Bkg 40.03 (4) (b).

History: **Cr.** Register, **July,** 1997, No. 499, eff. 8–1–97; **rn. (1) to be (1)** (intro.) and **am. cr.** (1) (a) **and** (b), Register, **July,** 1998, No. **511, eff.** 8–1–98; **am.** (1), *(2)* (intro.). (a) to (h), Register, August, 1999, No. **524, eff.** 9–1–99: **corrections in (2) (e) made under s. 13.93 (2m) (b) 7., Stats.**

RL 25.05 Requirements for approval of pre–license education courses taken for academic credit at an accredited institution of higher education. (1) A school seeking initial approval of pre–license credit courses in real estate shall submit its application on a form provided by the department. The department may require the following information and materials:

(a) The department in the school which is offering the courses.

(b) The method of instruction for each course.

(c) The course number and title.

(d) Detailed outlines of each course with specific allocations of classroom hours to each topic.

(e) A current school bulletin.

Note: An applicant may obtain a copy of the Application for Approval of Pre–license Credit Courses, Form #828, from the Wisconsin Department of Regulation and Licensing, 1400 East Washington Avenue, Room 281, P.O. Box 8935, Madison, Wisconsin 53708.

(2) The department may approve a pre–license credit course if it alone or in conjunction with one or more other courses covers all of the contents and the required number of hours, as provided in s. RL 25.02 (2) or 25.03 (3).

(3) When approving one or more pre–license credit courses, the department shall specify the single course or combination of courses which cover cithcr the topics in s. RL 25.02 (2) or the topics in s. RL 25.03 (3).

(4) A school shall inform the department of any changes in the information it submitted in an application form within 10 days following the date of the change.

(5) A school may not discriminate against anyone on the basis of sex, race, color, sexual orientation as defined in s. 111.32 (13m), Stats., handicap, religion, age, physical disability, or national origin in their educational programs.

History: Cr. Register. October, 1979, No. 286, **eff.** 11–1–79; renum. from REB 16.055 and am. Register, February, 1983, No. 326, eff. 3–1–83; renum. from RL 35.055, Register, Febiuaiy, 1987, No. 374, eff. 6–1–87; r. and recr. Register. January, 1992, **Yo.** 433. eff. 2–1–92; **am. (3), r. (6), Register, August, 1999, No.** 524, **eff. 9–1–99.**

RL 25.06 Requirements for approval of pre–license noncredit programs and instructors. (1) APPROVAL OF PROGRAMS. (a) A school seeking initial approval from the department of pre–license educational noncredit programs or courses shall submit its application on a form provided by the department.

Note: An applicant may *obtain* a copy of the Application for Approval of Pre–license Noncredit Programs, Form #830, from the Wisconsin Department of Regulation and Licensing, 1400 East Washington Avenue, Room 281. P.O. **Box** 8935. Madison. Wisconsin 53708.

(b) The department may require a school seeking initial approval and reapproval of pre–license noncredit programs or courses to describe or furnish its organizational structure, registration policies, fee schedules, promotional materials, detailed outlines of each program or course with specific allocations of classroom hours to each topic presented as classroom education, student records system, the names and qualifications of instructors, the method of instruction, the method for evaluating instructors and a summary of evaluations conducted, and the time. date and location of each program.

(c) A school shall inform the department of any changes in the information it submitted in an application form within 10 days following the date of the change.

(d) A school may not discriminate against anyone on the basis of sex, race, color, sexual orientation as defined in s. 111.32 (13m), Stats., handicap, religion, age, physical disability, or national origin in their educational programs.

(e) A school seeking the approval of pre–license noncredit programs or courses presented as distance education *is* not required to designate the number of hours of instruction. However, it shall describe to the department how it will do all of the following:

1. Ensure that instructors approved by the department under sub. (2) are available to the students at reasonable times and by reasonable means.

2. Ensure that the distance education programs and courses will sufficiently cover the required subjects.

3. Provide reasonable oversight to ensure that students who complete the distance education program are the enrolled students.

4. Ensure that the school's distance education program and courses will provide a reasonable opportunity for student self–evaluation of mastery.

(2) (a) Instructors of pre–license educational noncredit programs shall be approved by the department. Instructors shall be knowledgeable in the subject which they are teaching. The department may limit its approval to specific content areas set forth in ss. RL 25.02 (2) and 25.03 (3). Instructors shall possess at least one of the following minimum qualifications:

1. Be an instructor of real estate courses who is or has been engaged in the practice of teaching at an accredited institution of higher education.

2. Be a properly licensed or certified person by the department or other governmental agency who is engaged in the real estate aspects of appraising, financing, marketing, brokerage management, real property management, real estate counseling, real property law. or other related subjects and has been for at least 5 years continuously engaged in such practice.

3. Be a member of the state bar of Wisconsin who is engaged in the field of real estate–related law.

4. Be a person who, in the judgment of the department, is qualified by experience or education, or both, to supervise a course of study.

Note: An applicant may ohtain a copy of the Application for Approval of Instructor, Form #831. from the Wisconsin Department of Regulation and Licensing. 1400 East Washington Avenue, Room 281, P.O. Box 8935, Madison, Wisconsin 53708.

(b) An instructor whose real estate license has been limited, suspended or revoked may not instruct in approved programs while the disciplinary action is in effect.

(c) A school shall make arrangements so that when instruction is provided by some means without the instructor physically present in the classroom and the students are unable to interact with the person doing the instructing another approved instructor will be prcscnt in the classroom. If the students are able to interact with the person doing the instructing a monitor, but not necessarily an approved instructor, shall be present.

History: Cr. Register. October, 1979, No. 286, eff. 11–1–79; renum. from REB 16.06 and am. Register. February, 1983, No. 326, eff. 3–1–83; am. (1) (a) 1., r. (2) (d) to (f), Register, February. 1987, No. 374, eff. 6–1–87; r. and recr. Register, **January**, 1992, No. 433, eff. 2–1–92; correction in (2) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1997, No. 499; am. (2) (a) 2., Register. **July,** 1998, No. 511, eff. 8–1–98; am. **(1) (a) and (b), r. and recr. (1) *(e)*. Register, August, 1999, No. 524, eff. 9–1–99.**

RL 25.065 Continuing education requirements for brokers and salespersons. (1) Each licensed broker and salesperson, except an inactive licensee under s. 452.12 (6), Stats., shall satisfy the continuing education requirement specified in s. 452.12 (5) (c), Stats., during each licensing biennium.

Note: The contents of the continuing education programs and courses are not designated in the Wisconsin administrative code, pursuant to an exemption under s. 227.01 (13) (zj), Stats. This information may be obtained from the Wisconsin Department of Regulation and Licensing. 1400 East Washington Avenue. Room 281, P.O. **Box** 8935, Madison, Wisconsin 53708.

(2) A licensee may only satisfy the continuing education requirement by successfully completing the continuing education program or courses which are approved by the department before the programs or courses are conducted, except that pursuant to s. 332.12 (5) (c) 2., Stats., the licensee may take the continuing education examination conducted by the department in lieu of the education.

(3) A licensee shall submit evidence of completion of the continuing education requirement when applying for renewal of license. The department shall withhold issuance of the renewal license until such evidence is submitted and the licensee may not engage in the practice of real estate until having submitted such evidence and having received the license.

(5) A person who receives an original salesperson's or broker's license during a licensing biennium is not required to satisfy the continuing education requirement during the biennium in which the person receives that license.

(6) A licensee may attend more than one school in order to complete approved courses which are part of the continuing education program designated by the department under s. 452.05 (1) (d) and (g), Stats.

(6m) A licensee who attends an approved continuing education course and fails the examination given by the school at the

end of the course shall retake the course and pass the course examination before being eligible to take the continuing education examination conducted by the dcpartment pursuant to s. RL 25.075.

(7) A licensee may complete less than the complete continuing education program designated by the department under s. 452.05 (1) (d) and (g), Stats., and subsequently take the continuing education cxarnination conducted by the department.

(8) A licensee who acts as an instructor of an approved continuing education program or course may receive credit toward satisfaction of the licensee's continuing education requirement, provided the licensee successfully completes the program or course examination, as specified in s. RL 25.05. The licensee may not receive credit for teaching a specific course more than one time.

(9) The department may grant an extension of time for completion of the continuing education requirement by a licensee and the licensee may obtain a renewal license for the cxtcnsion period for one of the following reasons:

(a) Health reasons which prevented attendance at continuing education courses or the continuing education examination;

(b) Active duty in the military service with assignment to a duty station outside Wisconsin; or

(c) Other compelling reasons beyond the control of the applicant while engaged in the real estate business.

History: Cr. Register, January. 1992, No. 433, eff. 2–1–92; am. (6m), r. (4). r. and recr. (5), Register. September, 1993, No. 453, eff. 10–1–93; am. (7), Register, July, 1998, No. 511, eff. 8–1–98; **am. (5), Register, August, 1999, No. 524, eff. 9–1–99.**

RL 25.066 Requirements for approval of continuing education schools, courses and instructors. (1) A school seeking approval from the department of a continuing education program or course shall submit its application on a form provided by the dcpartment. A school shall submit an application for approval of a continuing education program or course to the department before conducting the continuing education program or course which the department has prescribed for a licensing biennium.

Note: An applicant may obtain a copy of the Request For Approval of Real Estate Continuing Education Program *or* Courses, Fonn #1747, from the Wisconsin Department of Regulation and Licensing, 1400 East Washington Avenue, Room 281, P.O. Box 8935. Madison, Wisconsin 53708.

(2) Instructors of continuing education programs and courses shall be approved by the department. Instructors shall be knowledgeable in the subject which they are teaching and shall possess at least one of the following minimum qualifications:

(a) Be an instructor of real estate courses who is or has been engaged in the practice of teaching at an accredited institution of higher education.

(b) Be a properly licensed or certified person by the department or other governmental agency who engaged in the real estate aspects of appraising, financing, marketing, brokerage management>real property management, real estate counseling, real property law, or othcr related subjects and has been for at least 5 years continuously engaged in such practice.

(c) Bc a member of the state bar of Wisconsin who is engaged in the field of real estate–related law.

(d) Be a person who, in the judgment of the department, is qualified by experience or education, or both, to supervise a course of study.

Note: An applicant may obtain a copy of the Application for Approval of Instructor. Form #831, from the Wisconsin Department of Regulation and Licensing, 1400 East Washington Avenue, Room 281, P.O. **Box** 8935, Madison, Wisconsin 53708.

(3) An instructor whose real estate license has been limited, suspended or revoked may not instruct in approved programs while the disciplinary action is in effect.

(4) The department may require a school seeking initial approval and reapproval of continuing education programs and courses to describe or furnish its organizational structure, registration policies, fee schedules, promotional materials, detailed outlines of each program with specific allocations of hours to each topic presented as classroom instruction, student records system, the names and qualifications of administrators and instructors, the method of instruction, a summary of evaluations conducted, information about the school's response to complaints concerning an instructor.

(5) A school shall inform the department of any changes in the information which it provided to the department in an application form within 10 days following the date of the change.

(6) The following arc additional criteria for approval of continuing education programs or courses:

(a) Applicants for approval of continuing education programs or courses may not discriminate against anyone on the basis of sex, race, color, sexual orientation as defined in s. 111.32 (13m), Stats., handicap, religion, age, physical disability, or national origin in their educational programs.

(c) A school shall submit to the department with the application for approval at least 15 multiple–choice questions for each course. The school shall clearly indicate the answer to each question and the portion of the course outline to which the question relates. The questions shall comply with reasonable standards of test development and shall relate to the substantive contents of the continuing education program or course. The questions shall be the original work of the writer and not be published. A school may only make questions available to school personnel.

Note: An applicant may obtain a copy of the Continuing Education Question Development Form. Form #1746, and the Instructions for Submitting Continuing Education Questions, Form #1745. from the Wisconsin Department of Regulation and Licensing, 1400 East Washington Avenue, Room 281, P.O. **Box** 8935, Madison. Wisconsin 53708.

(d) A school shall agree to conduct an examination at the end of each continuing education program or course. The examination shall contain at least 15 multiple-choice questions for each course. The passing score shall be no less than 70%, unless the school provides substantial justification to the department for a lower score and the department approves the lower passing score.

(e) A school shall agree not to make available to students before the students take a specific examination the questions or answers to the questions. A school shall keep tests and answer sheets in a secure location at all times before and after administration of the examination.

(f) A school shall agree to infonn students about the number of points of credit for each question in the examination and the passing score. It shall also provide clear instructions *to* students for recording their responses to the questions.

(g) A school shall agree to provide each student with a certificate of attendance at a program or course. The certificate shall comply with the requirements in s. RL 25.07.

(j) A school may not count examination time as part of the classroom hours required in a classroom education course.

(k) A school seeking the approval of continuing education programs and courses presented as distance education is not required to designate the number of hours of instruction. However, it shall describe to the department how it will do all of the following:

1. Ensure that instructors approved by the department under sub. (2) arc available to the students at reasonable times and by reasonable means.

2. Provide a reasonable level of examination security for the examination given at the end of each distance education continuing education course.

3. Sufficiently cover the subjects specified for continuing education courses.

4. Provide reasonable oversight to ensure that the students who take the examination are the cnrollcd students.

5. Provide a reasonable opportunity for student self–evaluation of mastery.

History: Cr. Register. January, 1992. No. 433, eff. 2–1–92: am. (2) (intro.), (4), Register. September, 1993, No. 453, eff. 10·1·93; am. (1), r. (6) (h), Register, July, 1997, No. 499. eff. 5-1–97; am. (2) (b), Register, July, 1998, No. 511, eff. 8–1–98; **am. (1), (4), and (6) (c) tu (f), (j), r. (6) (b),** (i). **cr. (6) (k), Register, August, 1999, No. 524, eff. 9–1–99.**

RL 25.07 Certification of attendance at pre–license and continuing education programs and courses. (1) ATTENDANCE REQUIREMENTS. **A** student shall attend all the required hours of a classroom education course and receive all the required contents of a classroom education course or a distance education course before a school may give a certificate of attendance to the student. In addition, for continuing education programs and courses, a student shall also satisfactorily complete the course examination administered by the school, as provided in s. RL 25.066 (6) (d).

(2) CERTIFICATION OF ATTENDANCE. (a) Schools shall provide an individual certificate of attendance to all students upon satisfactory completion of education programs and courses.

(b) The department may accept an official transcript or student grade report as evidence of satisfactory completion of credit courses.

(c) Certificates for prc–license noncredit programs and all continuing education programs and courses shall meet the following criteria:

1. Clearly state the name of the school.

2. Clearly state the name of the student.

3. Clearly state the name of the program or course and whether it satisfies prelicense or continuing education requirements.

4. Clearly state the number of hours the student has successfully completed in an educational program presented as classroom education.

5. Clearly state the date of completion of the program or course.

6. Be signed by an authorized person at the school.

(d) **A** school shall maintain attendance records for at least 5 years after a program or course has been conducted.

History: Cr. Register, October, 1979. No. 286, eff. 11–1–79; renum. from REB 16.07 and am. (1) (a). (b) and (e) and (2), Register, February. 1983, No. 326, eff. 3–1–83; r. (1) (d) and (e) and (2), renuin. *(3)* to be (2) and am. Register. February, 1987, No. 374, eff. 6–1–87; r. and recr. Register, January. 1992, No. 433, eff. 2–1–92: **am. (1) and (2) (c) 4., Register, August, 1999, No. 524, eff. 9–1–99.**

RL 25.075 Continuing education examination conducted by the department. (1) The department shall conduct a continuing education examination pursuant to s. 452.12 *(5)* (c) 2., Stats.

(2) The departmcnt shall conduct the continuing education examination during each biennial licensure period, but not from July 1 to December 31 of each even–numbered year.

(3) The continuing education examination shall cover the subjects required for continuing education approved by the department under s. 452.05 (1) (d) and (g), Stats., and shall have no less than 5 questions for each hour of instruction in classroom education courses or 5 questions for each hour of instruction if the topics presented in a distance education course were presented as a classroom education course or courses in the approved continuing education program or courses.

(5) The department shall require a minimum passing score of 70 on the continuing education examination.

(6) The department shall permit licensees who take the continuing education examination to review the examination and the examination results, as provided in s. RL 12.025.

History: Cr. Register, October, 1979, No. 286. eff. 11–1–79; renuin. from REB 16.075 and am. (l). Register, February, 1983, No. 326. eff. 3–1–83; r. (2), renum. (1) and am. Register. February, 1987, No. 374, eff. 6–1–87: r. and recr. Register. January, 1992, No. 433. eff. 2–1–92; **am. (3), r. (4), Register, August, 1999. Nu. 524, eff. 9–1–99.**

RL 25.076 Correspondence courses. History: Cr. Register. June, 1982, No. 318, eff. 7–1–82; renum. from REB 16.076. and am. Register, February, 1983. No. 326, eff. 3–1–83; am. Register, February, 1987. No. 374, eff. 6–1–87; am. Register, January. 1992. No. 433. eff. 2–1–92; **r., Register, August, 1999, No. 524, eff. 9–1–99.**

RL 25.08 Investigation and review. (1) PERIODIC REVIEW. The department, or its duly authorized representative, shall investigate and review all approved educational programs, courses, and instructors. The method of review shall be determined by the department in each case and will generally consist of the following:

(a) Consideration of information available from federal, state, or local agencies, private organizations or agencies, or interested persons.

(b) Conferences with officials or representatives of the school involved or with former students of the school.

(c) Public hearing respecting the educational program, course, or instructor involved, with adequate written notice to the school and/or instructor.

(d) Investigation by visitation to the school.

(2) UPON COMPLAINT. In addition to investigation upon its own initiation, the department may investigate any school or instructor upon receipt of a complaint from an interested person.

(3) DENIAL OR WITHDRAWAL OF APPROVAL. (a) The department may limit, suspend or revoke the approval of a school or instructor to conduct any program or course which had been approved pursuant to this chapter when the school or instructor:

1. Has falsified information on any application or certificate of attendance submitted to the department;

2. Has not complied with the conditions for approval;

3. Has given credit to students for an amount of time present in class when the actual amount was less than the credited amount;

4. Has divulged to students before administration of a continuing education course examination questions which will be used in the examination when administered;

5. Has not followed the course outline approved by the department;

6. Has provided instruction on several occasions when not adequately prepared to teach; or

7. Has violated any provisions in this chapter. Violation of subds. 1. to 4. may also be cause for disciplinary action against a licensee, pursuant to s. 452.14, Stats.

(b) If, after investigation, the department deems it proper to deny or withdraw its approval of any school, educational program, course, or instructor. the department shall follow the procedures in ch. RL 1 for denial of approval and the procedures in ch. RL 2 for limiting, suspending or revoking approval.

History: Cr. Register. October, 1979, No. 286. eff. 11–1–79; renum. from REB 16.08 and am. (1) (intro.), (2) and (3), Register, February, 1983, No. 326, eff. 3–1–83; am. (3), Register, January, 1992. No. 433, eff. 2–1–92; am. (3) (a), (b), Register, September, 1993, No. 453, eff. 10–1–93.

Chapter RL 26

INACTIVE LICENSES

RL 26.01 Authority.
RL 26.02 Inactive licensees prohibited to practice real estate
RL 26.03 Reinstatement of active license

RL 26.01 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2), 452.07 and 452.12 (6), Stats.

History: Cr. Register, February, 1987, No. 374, eff. 6-1-87; r. and recr. Register, July, 1998, No. 511, eff. 8-1-98.

RL 26.02 Inactive licensees prohibited to practice real estate. (1) An inactive licensee may not engage in any conduct which requires a license under ch. 452, Stats.

(2) Inactive licensees are not considered to be licensees within the meaning of s. 452.01 (5), Stats.

(3) Inactive licensees may be investigated and disciplined for conduct which occurred when the licensee held an active license.

History: Cr. Register, February, 1987, No. 374, eff. 6-1-87.

RL 26.03 Reinstatement of active license. An inactive licensee may be reinstated to active licensure by satisfaction of the requirements in s. RL 12.04, except that the licensee shall pay the fee specified in s. 440.08, Stats., and the department may not require the licensee to pay a late renewal penalty fee.

History: Cr. Register, February, 1987, No. 374, eff. 6-1-87; am. (2), Register, March, 1990, No. 411, eff. 4-1-90; r. and recr., Register, September, 1993, No. 453, eff. 10-1-93.

Chapter RL 127

SALE OF REAL ESTATE AT AUCTION

RL 127.01 Authority.
RL 127.02 Auction of real estate
RL 127.03 Limitations.
RL 127.04 Contract.
RL 127.05 Real estate subject to exclusive listing contract.
RL 127.06 Solicitation of owners with exclusive listing contract prohibited.

RL 127.01 Authority. The rules in this chapter are adopted under authority in ss. 227.11 (2), 480.01, 480.14 and 480.16, Stats.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

RL 127.02 Auction of real estate. (1) AUCTIONEER. An auctioneer may engage in, or advertise or otherwise hold himself or herself out as being available to engage in, the calling for and the recognition and acceptance of offers for the purchase of real estate at an auction, and may handle sales proceeds, down payments, earnest money deposits or other trust fiinds received by the auctioneer on behalf of the auctioneer's principal or any other person at or as a result of an auction of real estate.

(2) AUCTION COMPANY. An auction company may manage an auction of real estate and may have primary responsibility for handling sales proceeds, down payments, earnest money deposits or other trust funds received by the auction company on behalf of the auction company's principal or any other person at or as a result of an auction of real estate.

Nistow: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

RL 127.03 Limitations. (1) REGISTRANT LICENSED AS A REAL ESTATE BROKER OR SALESPERSON. A registrant who is licensed as a real estate broker and who conducts an auction of real estate listed for sale with the registrant, or a registrant who is licensed as a real estate broker or salesperson and who conducts an auction of real estate listed for sale with the registrant's real estate broker–employer, may prepare contracts or other documents necessary to transfer title to the real estate or conduct any other activities requiring a real estate license under ch. 452, Stats., and chs. RL 11 to 26.

(2) REGISTRANT NOT LICENSED AS A REAL ESTATE BROKER OR SALESPERSON. (a) A registrant who is not licensed as a real estate broker or salesperson may, in connection with an auction of real estate:

1. Distribute written information describing real estate or the condition of the real estate to be auctioned, if the information has been made available by the owner of the real estate or a real estate licensee.

2. Provide access to real estate for the purpose of permitting prospective buyers to view the real estate.

3. Conduct inquiries in person, by telephone or by other media to determine whether the person being contacted is interested in bidding upon the real estate to be auctioned.

4. Perform other tasks relating to conducting an auction which do not require a real estate license under ch. 452, Stats.

(b) A registrant who is not licensed as a real estate broker or salesperson may not perform activities which require a real estate license under ch. 452, Stats., including but not limited to:

1. Preparing any contracts or other documents necessary to transfer title to real estate.

2. Distributing to prospective buyers written information about the real estate or conditions affecting the real estate which has not been provided by the owner of the real estate or the owner's agent.

3. Negotiating with a prospective buyer within the meaning of s. 452.01 (5m), Stats., other than by conducting an auction.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

RL 127.04 Contract. A registrant shall have a written contract with the owner of real estate to be sold at an auction, or the owner's agent, which specifies the terms and conditions upon which the auctioneer or auction company accepts the real estate for sale at auction. The following conditions apply to the contract:

(1) A registrant who is licensed as a real estate broker under ch. 452, Stats., shall use the appropriate approved listing contract form required under s. RL. 16.03, when contracting with the owner to conduct an auction of real estate, and shall include provisions which comply with s. RL 124.02.

(2) A registrant who is licensed as a real estate salesperson shall use the appropriate approved listing contract form required under ch. RL 16, when contracting with the owner to conduct an auction of real estate if the salesperson is employed by a real estate broker, and shall include provisions which comply with s. RL 124.02.

(3) A registrant who is not licensed as a real estate broker or salesperson under ch. 452, Stats., shall use a contract that complies with s. RL 124.02.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

RL 127.05 Real estate subject to exclusive listing contract. Prior to entering into any contract for the sale of real estate at an auction, the registrant shall determine whether the real estate is subject to an exclusive real estate listing contract. If the real estate to be sold at an auction is subject to an exclusive real estate listing contract between the seller and a real estate broker other than the registrant, the registrant:

(1) May only enter into a contract under s. RL. 127.04, with the real estate broker holding the exclusive real estate listing contract on the real estate.

(2) May not receive any sales proceeds, down payments, earnest money deposits or other trust funds as a result of an auction of the real estate, unless the contract under sub. (1) authorizes the registrant to do so.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

RL 127.06 Solicitation of owners with exclusive listing contract prohibited. A registrant may not solicit an owner of real estate to sell the real estate at an auction if the registrant knows that the real estate is subject to an exclusive real estate listing contract.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

Chapter ATCP 114

REAL ESTATE ADVERTISING, ADVANCE FEES

ATCP 114.01 Definitions.
ATCP 114.02 Misrepresentations.
ATCP 114.03 Contracts

Note: Chapter Ag 114 was renumbered chapter ATCP 114 under s. 13.93(2m) (b) 1., Stats., Register. April. 1993. No. 448.

Note: This chapter is adopted under authority of s. 100.20 (2). Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6), 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats.. and may recover twice the amount of the loss. together with costs and reasonable attorneys' fees.

ATCP 114.01 Definitions. As used herein:

(1) "Advance fee" means a payment for listing or advertising. in any manner, the sale or lease of property.

(2) "Property" means any interest or estate in real estate or in a business.

(3) "Person" shall include a corporation.

History: Cr Register. November. 1958, No. 35, eff. 12–1–58.

ATCP 114.02 Misrepresentations. No person in soliciting advance fees or contracts therefor shall **make** any of the following representations contrary to fact:

(1) That the amount of the advance fees or the time of their payment is other than as provided by written contract.

(2) That advance fees are not payable prior to the sale of property.

(3) That advance fees or any part thereof will be refunded if the property is not sold within a specified time, or that refunds are freely and customarily made if property is not sold.

(4) That the person or any person whom the person represents has or will furnish a list of qualified prospects who are interested in buying the type of property involved.

(5) That the person or any person whom the person represents can secure the sale of the property within a specified period of time.

(6) That the person or any person whom the person represents is affiliated or has any business connection with any real estate or business opportunity brokers.

(7) That the person or any person whom the person represents resides in or maintains an office within the state.

(8) That the person or any person whom the person represents will perform any act or engage in any service beyond the acts or services required by the terms of any written contract between the parties.

(9) That the person is an experienced or qualified appraiser of property.

(10) That the property will sell at a named price or at a price in excess of that named or asked by the owner.

History: Cr. Register, November, 1958, No. 35, eff. 12–1–58; corrections made under s. 13.93 (2m) (b) 5., Stats.. Register, April, 1993, No. 448.

ATCP 114.03 Contracts. No person soliciting advance fees shall fail to furnish the property owner contracting therefor with a true copy of the entire contract, which shall specifically identify each advertising medium to be used and the size and number of advertising insertions to be made therein.

History: Cr. Register. November, 1958, No. 35, eff. 12–1–58.

Chapter ATCP 134

RESIDENTIAL RENTAL PRACTICES

ATCP 134.01 Scope and application.
ATCP 134.02 Definitions
ATCP 134.03 Rental agreements and receipts.
ATCP 134.04 Disclosure requirements.
ATCP 134.05 Earnest money deposits and credit check fees
ATCP 134.06 Security deposits.
ATCP 134.07 Promises to repair.
ATCP 134.08 Prohibited rental agreement provisions.
ATCP 134.09 Prohibited practices.
ATCP 134.10 Effect of rules on local ordinances.

Note: Chapter Ag 134 was renumbered chapter ATCP 134 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

Note: This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6), 100.26 (3) or (6j. Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats.. and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.

ATCP 134.01 Scope and application. This chapter is adopted under authority of s. 100.20, Stats. This chapter applies to the rental of dwelling units located in this state, but does not apply to the rental or occupancy of any of the following:

(1) A dwelling unit operated by a public or private institution if occupancy is incidental to detention or the provision of medical, geriatric, educational. counseling, religious or similar services.

(2) A dwelling unit occupied by a member of a fraternal or social organization which operates that dwelling unit.

(3) A dwelling unit occupied, under a contract of sale, by the purchaser of the dwelling unit or the purchaser's successor in interest.

(4) A dwelling unit, such as a dwelling unit in a hotel, motel or boarding house, that is being rented only by tourist or transient occupants.

(5) A dwelling unit which the landlord provides free of charge to any person, or which the landlord provides as consideration to a person whom the landlord currently employs to operate or maintain the premises.

(6) A dwelling unit occupied by a tenant who is engaged in commercial agricultural operations on the premises.

(7) A dwelling unit owned and operated by government, or a subdivision or agency of govcmment.

History: Cr. Register. February, 1980. No. 290, eff. 5–1–80; **am.** (intro.), (1) to (6), Register, December, 1998, No. 516. eff. 1–1–99; **am. (7), Register, June, 1999, No. 522, eff. 7–1–99.**

ATCP 134.02 Definitions. (1) "Building and housing codes" means laws, ordinances, or governmental regulations concerning the construction, maintenance, habitability, operation, occupancy, use or appearance of any premises or dwelling unit.

(1m) "Consumcr credit report" has the meaning given for "consumer report" in 15 USC 1681a(d).

(1r) "Consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" has the meaning given in 15 USC 1681a(p), and includes the agency's contract affiliates.

(2) "Dwelling unit" means a structure or that part of a structure that is primarily used as a home, residence, or place of abode. The term includes a mobile home or mobile home site as defined in s. ATCP 125.01 (1) and (7).

(3) "Earnest money deposit" means the total of any payments or deposits, however denominated or described, given by a prospective tenant to a landlord in return for the option of entering into a rental agreement in the future, or for having a rental agreement considered by a landlord. "Earnest money deposit" does not include a fee which a landlord charges for a credit check in compliance with s. ATCP 134.05 (3).

(5) "Landlord" means the owner or lessor of a dwelling unit under any rental agreement, and any agent acting on the owner's or lessor's behalf. The term includes sublessors, other than persons subleasing individual units occupied by them.

(6) "Lease" means a lease as defined in s. 704.01 (1), Stats.

(7) "Owner" means one or more persons, jointly or severally, vested with all or part of the legal title to the premises or all or part of the beneficial ownership and right to present use and enjoyment of the premises. The tenn includes a mortgagee in possession.

(8) "Person" means an individual, partnership, corporation, association, estate, trust, and any other legal or business entity.

(9) "Premises" means a dwclling unit and the structure of which it is a part and all appurtenances, grounds, areas, furnishings and facilities held out for the use or enjoyment of the tenant or tenants generally.

(10) "Rental agreement" means an oral or written agreement, for the rental or lease of a specific dwelling unit or premises, in which the landlord and tcnant agree on essential terms of tenancy such as rent. "Rental agreement" includes a lease. "Rental agreement" does not include an agreement to enter into a rental agreement in the future.

Note: By approving an individual as a prospective tenant, a landlord does not necessarily enter into a "rental agreement" with that individual, or vice-versa. A "rental agreement: (creating a tenancy interest in real estate) arises only after the parties agree on the essential terms of tenancy, including the specific dwelling unit which the tenant will occupy and the amount of rent which the tenant will pay for that dwelling unit.

(11) "Security deposit" means the total of all payments and deposits given by a tcnant to the landlord as security for the performance of the tenant's obligations, and includes all rent payments in excess of 1 month's prepaid rent.

(12) "Tenant" means a person occupying, or entitled to present or future occupancy of a dwelling unit under a rental agreement, and includes persons occupying dwelling units under periodic tenancies and tenancies at will. The term applies to persons holding over after termination of tenancy until removed from the dwelling unit by sheriffs execution of a judicial writ of restitution issued under s. 799.44, Stats. It also applies to persons entitled to the return of a security deposit, or an accounting for the security deposit.

(13) "Tcnancy" means occupancy, or a right to present occupancy under a rental agreement, and includes periodic tenancies and tenancies at will. The term does not include the occupancy of a dwelling unit without consent of the landlord after expiration of a lease or termination of tenancy under ch. 704, Stats.

(14) "Tourist or transient occupants" means tourists or other persons who occupy a dwelling unit for less than 60 days while traveling away from their permanent place of residence.

History: Cr. Register, February, 1980, No. 290, eff. 5–1–80; am. (2). Register, February, 1987, No. 374. eff. 3–1–87; correction in (12) made under s. 13.93 (2m) (b) 7, Stats., Register, April, 1993, No. 448; cr. (1m), (1r) and (14), am. (3) and (10), r. (4), Register, December, 1998. No. 516, eff. 1–1–99.

ATCP 134.03 Rental agreements and receipts. (1) COPIES OF RENTAL AGREEMENTS, RULES. Rental agreements and rules and regulations established by the landlord, if in writing, shall be furnished to prospective tenants for their inspection

bcforc a rental agrcemcnt is cntcrcd into, and bcforc any carncst money or security dcposit is acccptcd from the prospcctivc tenant. Copies shall be given to the tenant at the time of agreement.

(2) RECEIPTS FOR TENANT PAYMENTS (a) Immediately upon accepting any earnest money or security deposit, the landlord shall provide the tenant or prospective tenant with a written receipt for the deposit, stating the nature of the deposit and its amount. **A** receipt is not required where payment is made by check bearing a notation describing the purpose for which it was given, unless requested by the tenant.

(b) If a tenant pays rent in cash, the landlord upon receiving the cash payment shall provide the tenant with a written receipt stating the nature and amount of the payment. A landlord is not required to provide a receipt for rent payments made by check.

History Cr. Register. February, 1980, No. 290, eff. 5 1 80: renum. *(2)* to be (21 (a), cr. (2) (b), Register, December, 1998, No. 516, eff 1–1–99.

ATCP 134.04 Disclosure requirements. (1) IDENTIFICATION OF LANDLORD OR AUTHORIZED AGENTS. (a) The landlord shall, except as provided under par. (c), disclose to the tenant in writing, at or before the time a rental agreement is entered into, the name and address of:

1. The person or persons authorized to collect or receive rent and manage and maintain the premises, and who can readily be contacted by the tenant; and

2. The owner of the premises or other person authorized to accept service of legal process and other notices and demands on behalf of the owner. The address disclosed under this subdivision shall be **an** address within the state at which service of process can be made in person.

(b) A landlord shall keep tenants informed of changes, if any, in the information required under par. (a). The landlord shall mail or deliver written notice of each change within 10 business days after the change occurs.

(c) This subsection does not apply to an owner–occupied structure containing no more than 4 dwelling units.

(2) CODE VIOLATIONS AND CONDITIONS AFFECTING HABITABILITY. Before entering into a rental agreement or accepting any earnest money or security deposit from the prospective tcnant, the landlord shall disclose to the prospective tenant:

(a) **All** uncorrected building and housing code violations of which the landlord has received notice from code enforcement authorities, and which affect the individual dwelling unit and common areas of the premises. Disclosure shall be made by exhibiting to the prospective tenant those portions of the building and housing code notices or orders which have not been fully complied with. Code violations shall not be considered corrected until their correction has been reported to code enforcement authorities.

(b) The following conditions affecting habitability, the existence of which the landlord knows or could know on basis of reasonable inspection. whether or not notice has been received from code enforcement authorities:

1. The dwelling unit lacks hot or cold running water.

2. Heating facilities serving the dwelling unit arc not in safe operating condition, or are not capable of maintaining a temperature, in all living areas of the dwelling unit, of at least 67" **F** (19° C) during all seasons of the year in which the dwelling unit may be occupied. Temperatures in living areas shall be measured at the approximate center of the room, midway between floor and ceiling.

3. The dwelling unit is not served by electricity, or the electrical wiring, outlets, fixtures or other components of the electrical system are not in safe operating condition.

4. Any structural or other conditions in the dwelling unit or premises which constitute a substantial hazard to the health or safety of the tcnant, or create an unrcasonablc risk of personal injury as a result of any reasonably forcsccablc use of the premises other than negligent use or abuse of the premises by the tenant.

5. The dwelling unit is not served by plumbing facilities in good operating condition.

6. The dwelling unit is not served by sewage disposal facilities in good operating condition.

(3) UTILITY CHARGES. If charges for water, heat or electricity are not included in the rent, the landlord shall disclose this fact to the tenant before entering into a rental agreement or accepting any earnest money or security deposit from the prospective tenant. If individual dwelling units and common areas are not separately metered, and if the charges are not included in the rent, the landlord shall disclose the basis on which charges for utility services will be allocated among individual dwelling units.

Note: A sample form which landlords may use to make the disclosures required under s. ATCP 134.04 is contained in the department publication, "Landlords and Tenants — The Wisconsin Way." You may obtain a copy of this publication by calling the department's toll–free Consumer Hotline, 1 800 422 7128, or by sending a written request to:

Division of Trdde and Consumer Protection
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. **Box** 8911
Madison, WI 53708–8911

History: Cr. Register, February. 1980, No. 290, eff. 5 -1-80; am. (1) (b), *(2)* (b) 1. and 2.. cr. (2) (b) 5. and 6., Register, December, 1998, No. 5 16. eff. 1–1–99.

ATCP 134.05 Earnest money deposits and credit check fees. (1) ACCEPTING AN EARNEST MONEY DEPOSIT. **A** landlord may not accept an earnest moncy dcposit or security deposit from a rental applicant until the landlord identifies to the applicant the dwelling unit or units for which that applicant is being considered for tenancy.

Note: A credit check fee authorized under sub. **(4)** is not an "earnest money deposit" **or** a "security deposit." See definition of "earnest money deposit" under s. ATCP 134.02(3).

(2) REFUNDING OR CREDITING AN EARNEST MONEY DEPOSIT. (a) A landlord who receives an earnest money deposit from **a** rental applicant shall send the full deposit to the applicant by first.-class mail, or shall deliver the full deposit to the applicant, by the end of the next business day after any of the following occurs:

1. The landlord rejects the rental application or refuses to enter into a rental agreement with the applicant.

2. The applicant withdraws the rental application before the landlord accepts that application.

3. The landlord fails to approve the rental application by the end of the third business day after the landlord accepts the applicant's earnest money deposit, or by a later date to which the tenant agrees in writing. The later date may not be more than 21 calendar days after the landlord accepts the earnest money deposit.

(b) **A** landlord who receives an earnest money deposit from a rental applicant shall do one of the following if the landlord enters into a rental agreement with that applicant:

1. Apply the eamest money deposit as rent or as a security deposit.

2. Return the earnest money deposit to the tenant.

(c) A person giving an earnest money deposit to a landlord does not waive his or her right to the full refund or credit owed under par. (a) or (b) merely by accepting a partial payment or credit of that amount.

(3) WITHHOLDING AN EARNEST MONEY DEPOSIT. (a) A landlord may withhold from a properly accepted earnest money deposit if the prospective tenant fails to enter into a rental agreement after being approved for tenancy, unless the landlord has significantly altered the rental terms previously disclosed to the tenant.

(b) A landlord may withhold from an earnest money deposit, under par. (a), an amount sufficient to compensate the landlord for actual costs and damages incurred because of the prospective tenant's failure to enter into a rental agreement. The landlord may not withhold for lost rents unless the landlord has made a reasonable effort to mitigate those losses, as provided under s. 704.29, Stats.

Note: See Pierce v. Norwick, 302 Wis. 2d 588 (1996), regarding the award of damage claims for failure to comply with provisions of this chapter related to security deposits. The same method of computing a tenant's damages may apply to violations related to earnest money deposits.

(4) CREDIT CHECK FEE. (a) Except as provided under par. (b), a landlord may require a prospective tenant to pay the landlord's actual cost, up to $20, to obtain a consumer credit report on the prospective tenant from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. The landlord shall notify the prospective tenant of the charge before requesting the consumer credit report. and shall provide the prospective tenant with a copy of the report.

(b) A landlord may not require a prospective tenant to pay for a consumer credit report under par. (a) if, before the landlord requests a consumer credit report, the prospective tenant provides the landlord with a consumer credit report, from a consumer credit reporting agency that compiles and maintains files on consumers on a nationwide basis that is less than 30 days old.

Note: Paragraph (b) does not prohibit a landlord from obtaining a more current consumer credit check at the landlord's expense.

History: Cr. Register, February, 1980, No. 290, eff. 5–1–80; reprinted to correct error in (1) (a). Register, March. 1984, No.339; r. and recr., Register, December, 1998, No 516, eff. 1–1–99.

ATCP 134.06 Security deposits. (1) CHECK–IN PROCEDURES; PRE–EXISTING DAMAGES. (a) Before a landlord accepts a security deposit, or converts an earnest money deposit to a security deposit under s. ATCP 134.05, the landlord shall notify the tenant in writing that the tenant may do any of the following by a specified deadline date which is not less than 7 days after the start of tenancy:

1. Inspect the dwelling unit and notify the landlord of any preexisting damages or defects.

2. Request a list of physical damages or defects, if any, charged to the previous tenant's security deposit. The landlord may require the tenant to make this request, if any, in writing.

(b) If a tenant makes a request under par. (a) 2., the landlord shall provide the tenant with a list of all physical damages or defects charged to the previous tenant's security deposit, regardless of whether those damages or defects have been repaired. The landlord shall provide the list within 30 days after the landlord receives the request, or within 7 days after the landlord notifies the previous tenant of the security deposit deductions, whichever occurs later. The landlord may explain that some or all of the listed damages or defects have been repaired, if that is the case. The landlord need not disclose the previous tenant's identity, or the amounts withheld from the previous tenant's security deposit.

(2) RETURNING SECURITY DEPOSITS. (a) Within 21 days after a tenant surrenders the rental premises, the landlord shall deliver or mail to the tenant the full amount of any security deposit held by the landlord, less any amounts properly withheld by the landlord under sub. *(3)*.

Note: A rent payment in excess of one month's prepaid rent is considered a "security deposit" as defined under s. ATCP 134.02 (11). This chapter does not prevent a landlord from collecting more than one month's prepaid rent. However, If the landlord holds any rent prepayment in excess of one month's prepaid rent. However, if the landlord holds any rent prepayment in excess of one month's prepaid rent when the tenant surrenders the premises, the landlord must treat that excess as a "security deposit" under sub. (2).

Note: See Pierce v. Norwick, 202 Wis. 2d 588 (1996), regarding the award of damage claims for failure to comply with provisions of this chapter related to security deposits and earnest money deposits.

(b) A tenant surrenders the premises under par. (a) on the last day of tenancy provided under the rental agreement, except that:

1. If the tenant vacates before the last day of tenancy provided under the rental agreement, and gives the landlord written notice that the tenant has vacated, surrender occurs when the landlord receives the written notice that the tenant has vacated. If the tenant mails the notice to the landlord, the landlord is deemed to receive the notice on the second day after mailing.

2. If the tenant vacates the premises after the last day of tenancy provided under the rental agreement, surrender occurs when the landlord learns that the tenant has vacated.

3. If the tenant is evicted, surrender occurs when a writ of restitution is executed, or the landlord learns that the tenant has vacated, whichever occurs first.

(c) If a tenant surrenders the premises without leaving a forwarding address, the landlord may mail the security deposit to the tenant's last known address.

(d) If a landlord returns a security deposit in the form of a check, draft or money order, the landlord shall make the check, draft or money order payable to all tenants who are parties to the rental agreement, unless the tenants designate a payee in writing.

(e) A tenant does not waive his or her right to the full amount owed under par. (a) merely by accepting a partial payment of that amount.

(3) SECURITY DEPOSIT WITHHOLDING; RESTRICTIONS. (a) A landlord may withhold from a tenant's security deposit only for the following:

1. Tenant damage, waste or neglect of the premises.

2. Unpaid rent for which the tenant is legally responsible, subject to s. 704.29, Stats.

3. Payment which the tenant owes under the rental agreement for utility service provided by the landlord but not included in the rent.

4. Payment which the tenant owes for direct utility service provided by a government–owned utility, to the extent that the landlord becomes liable for the tenant's nonpayment.

5. Unpaid mobile home parking fees which a local unit of government has assessed against the tenant under s. 66.0435 (3), Stats., to the extent that the landlord becomes liable for the tenant's nonpayment.

6. Other reasons authorized in the rental agreement according to par. (b).

(b) A rental agreement may include one or more nonstandard rental provisions which authorize a landlord to withhold from a tenant's security deposit for reasons not identified under par. (a). The landlord shall include the nonstandard provisions, if any. in a separate written document entitled **"NONSTANDARD RENTAL PROVISIONS** which the landlord provides to the tenant. The landlord shall specifically identify and discuss each nonstandard provision with the tenant before the tenant enters into any rental agreement with the landlord. If the tenant signs or initials a nonstandard rental provision, it is rebuttably presumed that the landlord has specifically identified and discussed that nonstandard provision with the tenant, and that the tenant has agreed to it.

Note: The separate written document under par. (b) may be pre–printed.

(c) This subsection does not authorize a landlord to withhold a security deposit for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible under applicable law.

Note: For example, a landlord may not withhold from tenant's security deposit for routine painting or carpet cleaning, where there is no unusual damage caused by tenant abuse.

(4) SECURITY DEPOSIT WITHHOLDING: STATEMENT OF CLAIMS. (a) If any portion of a security deposit is withheld by a landlord, the landlord shall, within the time period and in the manner specified under sub. (2), deliver or mail to the tenant a written statement accounting for all amounts withheld. The statement shall describe each item of physical damages or other claim made against the security deposit, and the amount withheld as reasonable compensation for each item or claim.

(b) No landlord may intentionally misrepresent or falsify any claim against a security deposit, including the cost of repairs, or

withhold any portion of a security deposit pursuant to an intentionally falsified claim.

(5) TENANT FAILURE TO LEAVE FORWARDING ADDRESS. A landlord who has otherwise complied with this section shall not be considered in violation solely because the postal service has been unable to complete mail delivery to the person addressed. This subsection does not affect any other rights that a tenant may have under law to the return of a security deposit.

History: Cr. Register, February. 1980, No. 290, eff. 5–1–80; r. and recr. (1) to *(3)*. Register, December, 1998, No. 516, eff. 1–1–99; correction in (1) (a) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1999. No. 522; **correction in (3) (a) 5. made under s. 13.93 (2m) (b) 7., Stats.**

ATCP 134.07 Promises to repair. (1) DATE OF COMPLETION. Every promise or representation made by a landlord to a tenant or prospective tenant to the effect that the dwelling unit or any other portion of the premises, including furnishings or facilities, will bc cleaned, repaired or otherwise improved by the landlord shall specify the date or time period on or within which the cleaning, repairs or improvements are to be completed.

(2) INITIAL PROMISES IN WRITING. All promises made before the initial rental agreement shall be in writing with a copy furnished to the tenant.

(3) PERFORMANCE; UNAVOIDABLE DELAYS. No landlord shall fail to complete the promised cleaning, repairs or improvements on the date or within the time period represented under sub. (1), unless the delay is for reason of labor stoppage, unavailability of supplies or materials, unavoidable casualties, or other causes beyond the landlord's control. The landlord shall give timely notice to the tenant of reasons beyond the landlord's control for any delay in performance, and stating when the cleaning, repairs or improvements will be completed.

History: Cr. Register, February, 1980, No. 290, eff. 5–1–80.

ATCP 134.08 Prohibited rental agreement provisions. No rental agreement may:

(1) Authorize the eviction or exclusion of a tenant from the premises, other than by judicial eviction procedures as provided under ch. 799, Stats.

(2) Provide for an acceleration of rent payments in the event of tenant default or breach of obligations under the rental agreement, or otherwise purport to waive the landlord's obligation to mitigate damages as provided under s. 704.29, Stats.

(3) Require payment, by the tenant, of attorney's fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement. This does not prevent the recovery of costs or attorney's fees by a landlord or tenant pursuant to a court order under ch. 799 or 814, Stats.

(4) Authorize the landlord or any agent of the landlord to confess judgment against the tenant in any action arising under the rental agreement.

(5) Relieve, or purport to relieve the landlord from liability for property damage or personal injury caused by negligent acts or omissions of the landlord. This does not affect ordinary maintenance obligations assumed by a tenant under a rental agreement, in accordance with sub. **(7)** and s. 704.07, Stats.

(6) Impose, or purport to impose liability on a tenant for:

(a) Personal injury arising from causes clearly beyond the tenant's control.

(b) Property damage caused by natural disasters, or by persons other than the tenant or the tenant's guests or invitees. This does not affect ordinary maintenance obligations assumed by a tenant under the rental agreement, in accordance with sub. (7) and s. 704.07, Stats.

(7) Waive any statutory or other legal obligation on the part of the landlord to deliver the premises in a fit or habitable condition, or maintain the premises during tenancy.

History: Cr. Register, February, 1980, No. 290. eff. 5–1–80; correction in (1) and (3) madeunder s. 13.93 (2m), (b) 7., Stats., Register, August, 1990, No. **416;** am. (7), Register. December, 1998, No. 516, eff. 1–1–99.

ATCP 134.09 Prohibited practices. (1) ADVERTISING OR RENTAL OF CONDEMNED PREMISES. No landlord may rent or advertise for rent any premises which have been placarded and condemned for human habitation, or on which a notice of intent to placard and condemn, or an order to raze, or to rehabilitate or raze, or any similar order has been received under state or local laws or ordinances, until and unless all repairs required to bring the property into compliance with the laws or ordinances have been completed.

(2) UNAUTHORIZED ENTRY. (a) Except as provided under par. (b) or (c), no landlord may do any of the following:

1. Enter a dwelling unit during tenancy except to inspcct the premises, make repairs, or show the premises to prospective tenants or purchasers, as authorized under s. 704.05 (2), Stats. A landlord may enter for the amount of time reasonably required to inspect the premises, make repairs, or show the premises to prospective tenants or purchasers.

2. Enter a dwelling unit during tenancy except upon advance notice and at reasonable times. Advance notice means at least 12 hours advance notice unless the tcnant, upon being notified of the proposed entry, consents to a shorter time period.

(b) Paragraph (a) does not apply to an entry if any of the following applies:

1. The tenant, knowing the proposed time of entry, requests or consents in advance to the entry.

2. A health or safety emergency exists,

3. The tenant is absent and the landlord reasonably believes that entry is necessary to protect the premises from damage.

(c) A rental agreement may include a nonstandard rental provision authorizing a landlord to enter a tenant's dwelling unit at reasonable times, under circumstances not authorized under par. (a) or (b). The landlord shall include the nonstandard provision, if any, in a separate written document entitled **"NONSTANDARD RENTAL PROVISIONS"** which the landlord provides to the tenant. The landlord shall specifically identify and discuss the nonstandard provision with the tenant before the tenant enters into any rental agreement with the landlord. If the tenant signs or initials the nonstandard rental provision, it is rebuttably presumed that the landlord has specifically identified and discussed that nonstandard provision with the tenant, and that the tenant has agreed to it.

Note: The separate written document under par. (b) may be pre–printed.

(d) No landlord may enter a dwelling unit during tenancy without first announcing his or her presence to persons who may be present in the dwelling unit, and identifying himself or herself upon request.

Note: For example, a landlord may announce his or her presence by knocking or ringing the doorbell. If anyone is present in the dwelling unit. the landlord must then identify himself or herself upon request.

(3) AUTOMATIC LEASE RENEWAL WITHOUT NOTICE. No landlord shall enforce, or attempt to enforce, an automatic renewal or extension provision in any lease unless, as provided under s. 704.15, Stats., the tenant was given separate written notice of the pending automatic renewal or extension at least 15 days, but no more than 30 days before its stated effective date.

(4) CONFISCATING PERSONAL PROPERTY. (a) No landlord may seize or hold a tenant's personal property, or prevent the tenant from taking possession of the tenant's personal property, except as authorized under s. 704.05 (5), Stats., or a written lien agreement between the landlord and tenant.

(b) A lien agreement under par. (a), if any, shall be executed in writing at the time of the initial rental agreement. The landlord shall include the lien agreement in a separate written document entitled **"NONSTANDARD RENTAL PROVISIONS"** which the landlord provides to the tenant. The landlord shall specifically identify and discuss the lien agreement with the tenant before the tenant enters into any rental agreement with the landlord. The lien agreement is not effective unless signed or initialed by the tenant.

Note: Sees. 704.11, Stats.

(5) RETALIATORY EVICTION. No landlord shall terminate a tenancy or give notice preventing the automatic renewal of a lease, or constructively evict a tenant by any means including the termination or substantial reduction of heat, water or electricity to the dwelling unit. in retaliation against a tenant because the tenant has:

(a) Reported a violation of this chapter or a building or housing code to any governmental authority, or filed suit alleging such violation; or

(b) Joined or attempted to organize a tenant's union or association; or

(c) Asserted, or attempted to assert any right specifically accorded to tenants under state or local law.

(6) FAILURE TO DELIVER POSSESSION. No landlord shall fail to deliver possession of the dwelling unit to the tenant at the time agreed upon in the rental agreement, except where the landlord is unable to deliver possession because of circumstances beyond the landlord's control.

(7) SELF–HELP EVICTION. No landlord may exclude, forcibly evict or constructively evict a tcnant from a dwelling unit, other than by an eviction procedure specified under ch. 799, Stats.

(8) LATE RENT FEES AND PENALTIES. (a) No landlord may charge a late rent fee or late rent penalty to a tenant, except as specifically provided under the rental agreement.

(b) Before charging a late rent fee or late rent penalty to a tenant, a landlord shall apply all rent prepayments received from that tenant to offset the amount of rent owed by the tcnant.

(c) No landlord may charge any tenant a fee or penalty for nonpayment of a late rent fee or late rent penalty.

(9) MISREPRESENTATIONS. (a) No landlord may do any of the following for the purpose of inducing any person to enter into a rental agreement:

1. Misrepresent the location, characteristics or equivalency of dwelling units owned or offered by the landlord.

2. Misrepresent the amount of rent or non–rent charges to be paid by the tenant.

3. Fail to disclose, in connecfion with any representation of rent amount, the existence of any non–rent charges which will increase the total amount payable by the tenant during tenancy.

(b) No landlord may misrepresent to any person, as part of a plan or scheme to rent a dwelling unit to that person, that the person is being considered as a prospective tenant for a different dwelling unit.

Note: Paragraph (b) pmhibits "bait and switch" rental practices **by** landlords. See also s. 100.18(9), Stats.

History: fr. Register, February, 1980, No. 290, eff. 5–1–80; am. *(2)* and (4), Register, December, 1998, No. 516, eff. 1–1–99.

ATCP 134.10 Effect of rules on **local** ordinances. (1) This chapter does not prohibit or nullify any local government ordinance with which it is not in direct conflict as provided in sub. (2).

(2) In the event of any direct conflict between this chapter and any local government ordinance, such that compliance with one can only be achieved by violating the other, this chapter shall be controlling.

(3) Compliance with local government ordinances shall not relieve any person from the duty of complying with this chapter.

History Cr. Register, February, 1980, No. 290, eff. 5–1–80.

Chapter

Comm 10
FLAMMABLE AND COMBUSTIBLE LIQUIDS

Subchapter VII
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Subchapter VII
Groundwater Protection for Small Farm and Residential Motor Fuel USTs and for Heating Oil USTs

(Farm and Residential Underground Storage Tanks of 1100 Gallons or Less Capacity Used For Storing Motor Fuel for Noncommercial Purposes; Underground Storage Tanks for Storing Heating Oil for Consumptive Purposes on the Premises Where Stored)

Part 1—Program Scope

Cornrn 10.74 Scope. This subchapter applies to the following:

(1) Farm and residential underground storage tank systems of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes; and

(2) Underground storage tank systems used for storing heating oil for consumptive use on the premises.

History: Cr. **Register, April, 1991,** No. **424, eff. 5-1-91.**

Part 2—Notification and Registration

Cornrn 10.75 New and replacement storage tank system registration. The owner of all new and replacement storage tanks within the scope of this subchapter shall register the storage tank as specified in s. Comm 10.13.

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91.

Comm 10.76 Existing storage tank system registration. The owners of existing storage tanks within the scope of this subchapter who have not registered their tanks as of May 1, 1991 shall register the storage tanks as specified in s. Comm 10.13.

History: Cr. **Register, April, 1991,** No. **424, eff. 5-1-91; correction made under s. 13.93(2m) (b) 7., Stats.**

Part 3—UST System Design, Construction, Installation, Release Detection, Maintenance and Repair

Cornm 10.77 Performance standards for new UST systems. New and replacement UST systems included in the scope of this subchapter shall comply with the performance standards of s. Comm 10.51, except that spill and overfill equipment specified under s. Comm 10.51 (3), shall not be required for heating oil UST systems of 4000 gallons or less capacity. Vent whistles shall be provided for heating oil UST systems of 4000 gallons or less capacity.

History: Cr. **Register, April, 1991,** No. **424, eff. 5-1-91.**

Cornm 10.771 Upgrading of existing UST systems.

(1) FARM AND RESIDENTIAL USTS AND HEATING OIL USTS OVER 4,000 GALLONS CAPACITY. No later than 10 years after May 1, 1991 all existing farm and residential motor fuel UST systems and all existing heating oil UST systems greater than 4000 gallons in capacity included in the scope of this subchapter shall comply with the performance standards under s. Comm 10.51 or the upgrading requirements under s. Comm 10.52 (2) and (3) or be permanently closed.

(2) HEATING OIL USTS OF 4000 GALLONS OR LESS CAPACITY. All heating oil UST systems of 4000 gallons or less capacity included in the scope of this subchapter shall no later than 10 years after May 1, 1991 start a release detection program which complies with the minimum standards established in s. Comm 10.773 (2) (a) or be permanently closed or upgraded no later than 15 years after May 1, 1991.

Note: 1999 Wis. **Act 9 exempts tanks with capacities of 1100 gallons or less** from **these requirements..**

History: Cr. Register, April, 1991, No. 424, eff. 5-1-91: corrections made under s. 13.93 (2m) (b) 7., Stats., Register July 2002 No. 559.

Comm 10.772 General operating requirements. All UST systems included in the scope of this subchapter shall comply with the general operating requirements of ss. Comm 10.54 to 10.58.

History: Cr. Register, April, 1991, No. **424, eff. 5-1-91.**

Cornrn 10.773 Release detection. (1) RELEASE DETECTION FOR HEATING OIL UST SYSTEMS OF MORE THAN 4000 GALLONS CAPACITY. Heating oil UST systems that are more than 4000 gallons capacity shall comply with the release detection requirements of ss. Comm 10.59 to 10.625 except that the compliance dates for the installation of required release detection systems shall be those specified in Table 10.773.

(2) RELEASE DETECTION FOR HEATING OIL UST SYSTEMS OF 4000 GALLONS OR LESS CAPACITY. (a) ***Existing systems.*** Existing heating oil UST systems of 4000 gallons or less capacity shall comply with either:

1. No later than 10 years after May 1, 1991, the owner of a heating oil UST system of 4000 gallons or less capacity shall implement a program of tightness testing with testing beginning in the 10th year and every 2 years thereafter; or

2. May implement a release detection program in accordance with ss. Comm 10.59 to 10.625 beginning in the 10th year; or

3. If the owner elects not to conduct release detection specified under subd. 1. or **2.,** all heating oil UST systems of 4000 gallons **or** less capacity shall be permanently closed or upgraded no later than 15 years after May 1, 1991. If the requirement for release detection as specified in subd. 1. or 2. is not met, the system shall be permanently closed or upgraded by the end of the 15th year.

(b) ***New*** *systems.* Heating oil UST systems of 4000 gallons or less capacity that are installed on or after May 1, 1991 shall comply with the release detection requirements of ss. Comm 10.59 to 10.625.

Note: The tightness testing methods used for heating oil UST systems, other than release detection programs specified in ss. Comm 10.59 to 10.625, must **be specifically approved** for **that use in accordance with** s. Comm **10.125** or **10.61** ***(8).***

TABLE 10.773

Schedule for Phase–in of Release Detection of Wisconsin Regulated Tanks

Year System was Installed	When Release Detection is Required (by May 1st of the year indicated)				
	1991	1992	1993	1994	1995
Before 1965 or date unknown	RD	P			
1965-1969		P/RD			
1970-1974		P	RD		
1975-1979		P		RD	
1980-May 1, 1991		P			RD
Tanks Installed After May 1, 1991		Immediately Upon Installation			

P = Shall begin release detection for all pressurized piping in accordance with ss Comm 10 60 (2) (a) and 10 605 (2) (d) ss. 10.60 10.605 d).

RD = Shall begin release detection for tanks and suction piping in accordance with ss. Comm 10.60(1), 10.60(2) (b) and 10.605.

History: Cr. Register, April, 1991, No. 424, eff. 5–1–91; correction in (2) **(a)** 1. made under s. 13.93 (2m) (b) 14., Stats., Register, October, 1994, No. 466; **corrections in (2) (a) 3. made under s. 13.93(2m) (b) 7., Stats., Register July 2002 No. 559.**

Part 4—Suspected Release Investigation and Confirmation

Comm 10.78 General. All owners of new, replacement and existing storage tank systems within the scope of this subchapter shall comply with the rules of Part 5 of subch. VI as they relate to suspected release investigation and confirmation.

History: Cr. Register, **April,** 1991, No. 424, eff. 5–1–91.

Part 5—Emergency Release Response

Comm 10.79 General. All owners of storage tank systems within the scope of this subchapter shall comply with the rules of Part 6 of subch. VI as they relate to emergency release response.

History: Cr. Register, April, 1991, No. 424, eff. 5–1–91.

Part 6—Out–of–service Storage Tank Systems, Closure and Site Assessment

Comm 10.80 Temporary and permanent closure and change–in–service. All owners of storage tank systems within the scope of this subchapter shall comply with ss. Comm 10.73, 10.731, 10.732 and 10.738 as they relate to changes–in– service, out–of–service storage tank systems and closure of storage tank systems.

History: Cr. Register, April, 1991, **No.** 424, eff. 5–1–91.

Comm 10.805 Site assessment. All owners of underground heating oil tanks of more than 4000 gallons capacity shall comply with ss. Comm 10.734 and 10.736 as they relate to site assessment.

History: Cr. Register, April, 1991, No. 424, eff. 5–1–91.

Chapter Comm 67

RENTAL UNIT ENERGY EFFICIENCY STANDARDS

Subchapter I—Purpose and Scope
Comm 67.03 Application.

Subchapter IV—Inspection and Certification of Rental Units
Comm 67.08 Issuance of certificate, waiver or stipulation.

Note: Chapter ILHR 67 was renumbered to be chapter Comm 67 under s. 13.93 (2m) (b) 1., **Stats.,** and corrections made under s. 13.93 (2m) (b) 6. and 7., **Stats.,** Register, October, 1996, No. 490.

Subchapter I—Purpose and Scope

Comm 67.03 Application. (1) RENTAL UNITS COVERED. After January 1, 1985, no owner may transfer a rental unit unless an inspector certified by the department has issued a certificate indicating that the rental unit meets the rental unit energy efficiency standards specified in this chapter; or unless a waiver has been issued as specified in s. Comm 67.08 (3); or unless a stipulation is issued as specified in s. Comm 67.08 (4).

(2) RENTAL UNITS EXCLUDED. All of the following buildings and rental units are excluded from the provisions of this chapter:

(a) Any dwelling unit not rented at any time from November 1 to March 31.

(b) Any building which contains up to 4 rental units and one of the dwelling units will be owner–occupied.

(c) Any building constructed after December 1, 1978, which contains up to 2 dwelling units.

(d) Any building constructed after April 15, 1976, which contains more than 2 dwelling units.

(e) Mobile homes and manufactured homes.

(f) Hotels and motels used primarily for transient residency.

(g) Health care facilities.

(h) Bed and breakfast establishments.

(i) Condominium buildings of three or more dwelling units.

(3) MULTIPLE USE OCCUPANCY. Any building which contains a rental unit, and which is not excluded under sub.(2), and is located in a building with another occupancy shall comply with the following:

(a) If the rental unit comprises more than 50% of the total gross area of the building, the entire building shall be made to conform to the provisions of this chapter.

(b) If the rental unit comprises 50% or less of the total gross area of the building, only items specific or unique to the rental unit portion of the building shall comply with the provisions of this chapter.

(4) RENTAL UNITS IN CONDOMINIUMS. Any condominium unit, as defined under s. 703.02 (15), Stats., which is a rental unit shall, at the time of transfer, be brought into compliance with the provisions of s. Comm 67.05. The provisions of s. Comm 67.05 shall apply to all building elements of the individual unit as defined in s. 703.02 (15), Stats., but not to the common elements which are defined in s. 703.02 (2), Stats., and contained in the condominium declaration as outlined in s. 703.09, Stats.

Note: **The** definitions of s. 703.02, Stats., which are referred to above, are as follows:

"Common elements" means all of a condominium except its units; and "Unit" means a part **of** a condominium intended for any type of independent use, including one or more cubicles of air at one or more levels of space or one or more rooms or enclosed spaces located on one or more floors (or parts thereof) **in** a building. **A unit** may include 2 or more noncontiguous areas.

History: Cr. Register, February, 1983, No. 326, eff. 3–1–83; am. (1), (2) and (h), cr.(3) and (4), Register, December, 1984, No. 348, eff. 1–1–85; am.(2), r. and recr.(4), Register, November, 1985, No. 359, eff. 12–1–85; emerg. am.(2) (intro.) to (f), cr.(2) (h), eff. 6–30–98; am.(1), (2) (intro.) to (f), cr.(2) (h) and (i), Register, February, 1999, No. 518, eff. 3–1–99. Register, September, 1999, No. 525

Subchapter IV—Inspection and Certification of Rental Units

Comm 67.08 Issuance of certificate, waiver or stipulation. (1). No stipulation, waiver or certificate of compliance may be issued using more than one legal description or parcel per document.

(2) CERTIFICATE OF COMPLIANCE. (a) ***General.*** If upon inspection or evaluation, the inspector determines that the building conforms to the energy conservation measures or performance standard specified in this chapter, the inspector shall authorize the certificate of compliance by signing and affixing the Commerce Transfer Authorization label and then issue the certificate prescribed by the department and file a copy of the certificate with the department. The inspector shall issue the certificate within 10 business days of determination that the building conforms to the energy conservation measures or performance standard.

(b) ***Certificate forms and transfer authorization stamps.*** Any certified inspector may obtain certificate forms and transfer authorization stamps from the department.

(c) ***Requests for certificate form.*** All requests for certificate forms shall be made in writing. The fee for the certificate forms shall accompany the request. The department shall respond to all requests for certificate forms within 10 business days of receipt of an application for forms and the required fee.

(d) ***Notice of noncompliance.*** 1. If upon inspection or evaluation, an inspector determines that the rental unit does not conform to the energy measures specified in. this chapter, the inspector shall specify in writing the energy conservation measures necessary to make the rental unit comply with the energy efficiency standards specified in this chapter and notify the owner of the findings. The department shall specify the energy conservation measures necessary to make the rental unit comply with the energy efficiency standards within 10 business days of completion of the inspection or evaluation.

2. Stipulation may be issued where the energy efficiency standards are not met as specified in sub.(4).

3. A certification may be issued after a reinspection or reevaluation if all the required energy measures have been installed. Any request for reinspection or reevaluation performed by the department shall be accompanied with a fee for reinspection or reevaluation. If the effective date of any rule in this chapter occurs after a notice of noncompliance (inspection or evaluation field report) has been issued, then only the energy measures specified in the notice of noncompliance need be installed provided that a certificate of compliance is issued within 30 days after the date of the notice of noncompliance.

(3) WAIVER OF CERTIFICATE. (a) ***General.*** If a rental unit is scheduled for demolition within 2 years, the department, a department agent or an authorized municipality may issue a written waiver to the energy efficiency standards specified in this chapter. A copy of the waiver shall be filed with the authorized municipality or department agent and the department. No waiver may be requested for a rental unit which has been issued a previous waiver or stipulation unless the rental unit had received a certificate of compliance from a certified inspector on some date after the date of issuance of the latest waiver or stipulation under sub.(4).

(b) ***Filing of waiver.*** The waiver shall be on department forms and signed by the purchaser and submitted to the authorized municipality or department agent or the department for authorization. The department, department agent, or authorized municipality shall place a transfer authorization stamp on the waiver. Authorized municipalities and department agents shall obtain transfer authorization stamps from the department. Where a waiver is issued by the authorized municipality or a department agent, a copy shall be filed with the department.

(c) ***Conditions of waiver.*** The waiver shall be conditioned on the demolition of the rental unit within the 2 years of the date of the waiver.

(d) ***Notification of demolition.*** The owner shall notify the department in writing the date that the building was demolished.

(e) Failure to demolish. If demolition does not occur within **2** years of issuance of the waiver, the department or the municipality may do one or more of the following:

1. Order demolition of the rental unit no sooner than 90 days after the order;

2. Withdraw any certificate of occupancy; or

3. Order the owner to bring the rental unit in compliance with the energy measures specified in this chapter.

(f) ***Department orders.*** 1. 'Order for demolition'. Where the department orders the building to be demolished, the owner shall notify the department in writing the date the building was demolished.

2. 'Order for compliance'. Where the department orders the building to comply with the energy measures in this chapter, the owner shall notify the department that the energy measures have been installed and apply for an inspection or evaluation of the rental unit as specified in s. Comm 67.07.

(4) STIPULATION. (a) ***Stipulation requirements.*** 1. If a rental unit does not meet the provisions of this chapter, the transferee or new owner may present a signed stipulation issued by the department, department agent or authorized municipality to the register of deeds for recording.

2. Any rental unit for which a stipulation was issued, but for which no certificate of compliance has been issued, is exempt from any requirement for interior or exterior foundation insulation or basement ceiling insulation.

3. If a stipulation is issued after February 17, 1986, the new owner of the rental unit shall be responsible for bringing the rental unit into compliance with the provisions of this chapter which are in effect on the date of issuance of the stipulation, except for any requirement for interior or exterior foundation insulation or basement ceiling insulation.

(b) ***Owners responsibility.*** 1. The new owner shall bring the rental unit into compliance and receive a certificate of compliance from a certified inspection or evaluation no later than one year after the date of transfer. The date of transfer is the date the stipulation is validated by the department, department agent or authorized municipality, unless acceptable documentation of another date is provided to the department.

2. No stipulation may be requested for a rental unit which has been issued a previous stipulation or waiver unless the rental unit had received a certificate of compliance from a certified inspector on some date after the date of issuance of the latest waiver or stipulation under sub.(3). No stipulation may be requested for a rental property in which the owner has been issued orders on that property pursuant **to s. 101.122**(7) (b), Stats.

(c) Transfer of stipulation responsibility with property. A purchaser who has agreed to a stipulation may transfer both the property and the stipulation to another person within the initial one year period. The transferee shall sign the original stipulation in the appropriate space provided on that document. The transferee shall send a copy of the modified stipulation to the department or authorized municipality which issued the original stipulation. Authorized municipalities shall file a copy of the modified stipulation with the department. The stipulation may not be extended beyond the original one year agreement.

(d) ***Issuance of stipulations to purchasers who wish to occupy the rental unit on termination of an existing lease.*** **A** purchaser of a rental unit who intends to occupy that rental unit as an owner but is unable to occupy the rental unit because it is leased to another person at the time of transfer, shall obtain a certificate of compliance or a stipulation. The stipulation shall be obtained as specified in this section. The purchaser shall indicate "owner to occupy upon termination of existing lease" in the signature box of the stipulation form. The purchaser, within one year after the date of transfer, shall either:

1. Bring the rental unit into compliance with the energy measures specified in this chapter and obtain a certificate of compliance from a certified inspector; or

2. Take occupancy of the rental unit and occupy the rental unit for at least one year. Upon occupancy, the purchaser shall notify, in writing, the department or the authorized municipality which issued the stipulation, stating the date of the occupancy and including a copy of the original stipulation. After review and approval, the department or authorized municipality shall then terminate the stipulation and confirm the termination with the owner **Register, September, 1999, No. 525** by return **letter.** Where a stipulation is terminated by an authorized municipality, the authorized municipality shall notify the department of the termination of the stipulation.

(e) Filing stipulation. The stipulation shall be on department forms signed by the purchaser and be submitted to an authorized municipality, a department agent or the department for authorization. Where a stipulation is issued by the authorized municipality, or by a department agent, a copy shall be filed with the department. Only the department, department agent or authorized municipality may place transfer authorization stamps on the stipulation. Authorized municipalities and department agents shall obtain transfer authorization stamps from the department.

(f) ***Stipulation inspection or evaluation.*** 1. Once the new owner has installed the necessary energy conservation measures, the owner shall apply for inspection or evaluation from a certified inspector, an authorizing municipality or the department.

2. If upon inspection or evaluation, it is determined that the rental unit conforms to the conditions specified in the stipulation, the inspector shall issue a certificate indicating the rental unit conforms to the energy measures specified in this chapter. The department shall issue the certificate within 10 business days after determination that the rental unit conforms to the conditions specified in the stipulation.

3. If upon inspection or evaluation, it is determined that the rental unit does not conform to the conditions specified in the stipulation, the inspector shall notify the owner in writing, specifying the measures necessary for compliance. A certification may be issued after reinspection or reevaluation if all the required energy measures have been installed.

4. The department shall conduct a clerical follow–up no later than 180 days after the stipulated compliance date to determine if a certificate has been issued for the rental unit. If no certificate is on file, the department shall order the owner with a specified time to comply with the energy measures and take the necessary action to secure compliance.

(g) ***Filing of certification, waiver and stipulation.*** A copy of the certificate, waiver or stipulation shall be filed with the department.

History: Cr. Register, February, 1983, No. 326, eff. 3–1–83; am. (1) (intro.) and (a), (2) (intro.), renum. (2) (a) to (d) to be (2) (b) to (e), cr. (2) (a) and (3) (c), r. (3) (b), renum. *(3)* (intro.) and (a) to be (3) (a) and (b) and am., Register, December, 1984, No. 348, eff. 1–1–85; am. (1) (intro.), (b) and (c) (intro.) and (3) (c) 1., Register, April, 1985, No. 352, eff. 5–1–85; am (1) (c) 2., (2) (intro.) and (a) and (3) (a), renum. (3) [illegible] to (d) to be *(3)* (d) to (f) and am. (3) (d), cr. *(3)* (b) and (c), Register, November, 1985, No. 359, eff. 12–1–85; emerg, r. and recr. (3) (a), (b) and (c), renum (3) (d) to (f) to be (3) (e) to (g), cr. (3) (d), eff. 2–17–86; r. and recr. (3) (a), (b) and (c), renum (3) (d) to [illegible] to be (3) (e) to (g), cr. (3) (d), Register, June, 1986, No. 366, eff. 7–1–86; r. and recr. (3) (a), Register, June, 1989, No. 402, eff. 7–1–89; correction in (2) made under s. 13.93 (2m) (b) 1., Stats., Register, September, 1995, No. 477; renum. (1) to *(3)* to be (2) to (4) and am., cr. (1), Register, February, 1999, No. 518, eff. 3–1–99.

APPENDIX
Chapter Comm 67

Copies of the certificate of compliance, waiver of certificate, stipulation and building performance worksheet forms are available from:

Department of Commerce
Safety and Buildings Division
Rental Weatherization Program
P.O. Box *7302*
Madison, WI *53707*

Chapter DFI–Bkg 40

DEFINITIONS AND APPLICABILITY REQUIREMENTS FOR MORTGAGE BANKING REGULATION

DFI–Bkg 40.01 Authority.
DFI–Bkg 40.02 Definitions
DFI–Bkg 40.03 Applicability requirements

Note: Ch. RL 40 as it existed on February 28, 1991 was repealed and a new chapter RL 40 was created effective March 1, 1991.

Note: Chapter RL 40 was renumbered chapter DFI–Bkg 40 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. **13.93** (2m) (b) **6.** and 7., Stats.. Register, June, 1999, No. 522. **Corrections made under s. 13.93(2m) (b) 7., Stats., Register, September.** 1999, **Nu. 525.**

DFI–Bkg 40.01 Authority. This chapter is adopted pursuant to ss. 227.1 1 (2) (a), 224.71, 224.72 and 224.73, Stats.

History: Cr. Register, February, 1991. No. 422, eff. 3–1–91.

DFI–Bkg 40.02 Definitions. In subch. III of ch. 224, Stats., and chs. DFI–Bkg 40 to 43:

(1) "Department" means the department of financial institutions.

(2) "Employee" means an individual who receives earnings as payment for personal services rendered for the benefit of an employer. An individual is an employee if the individual is listed on an employer's payroll records, federal and state payroll deductions are taken and payroll taxes are paid for the individual, and the employer has a right to control and direct the services performed by the individual, as to the result to be accomplished by the services and as to the details and means by which the result is to be accomplished.

(3) "Finds a loan" means to assist a loan applicant in locating a lender for the purpose of obtaining a loan for the applicant and to make arrangements for a loan applicant to obtain a loan.

(4) "Investor" means a mortgagee or a land contract vendor.

(5) "Loan commitment" means a written statement signed by a lender, setting forth the terms and conditions upon which the lender is obligated to make a particular mortgage loan to a particular applicant.

(6) "Negotiate" means to discuss, explain or present the terms and conditions of a loan or a land contract with or to a loan applicant."Negotiate" docs not include making an underwriting decision on a loan or closing a loan.

(7) "Originate" means to make an underwriting decision on a loan and close a loan.

(8) "Person" means a corporation, partnership, individual or other legal entity, except that in s. 224.71 (Ir), Stats., "person" means an individual. "Person" does not mean a state or other governmental body, subdivision or agency.

(9) "Registrant" means a person registered under s. 224.72, Stats.

(10) "Services mortgage loans or land contracts" means the receipt of payments for interest or principal on a note or a land contract from the borrower or vendee and distribution of such payments in accordance with the terms of the note, land contract or servicing agreement.

History: Cr. Register, February, 1991. No. **422,** eff. 3–1–91.

DFI–Bkg 40.03 Applicability requirements. **(1)** LOAN ORIGINATOR. **A** person may not register as a loan originator unless the person is employed by a mortgage banker. An independent contractor who provides services on behalf of a mortgage banker shall register as a loan solicitor.

(2) LOAN SOLICITOR. **A** corporation or a partnership which acts as a loan solicitor shall register as a loan solicitor and each officer, partner or employee who acts as a loan solicitor on behalf of the corporation or partnership shall, individually, register as a loan solicitor.

(3) SUBSIDIARIES OF EXEMPT PERSONS. A subsidiary corporation of a person which is exempt from registration under s. 224.71 (3) (b) and (4) (b), Stats., shall register as a mortgage banker or loan solicitor when performing acts for which registration is required under subch. III of ch. 224, Stats.

(4) EXEMPTIONS. (a) *Statutory exemption.* **In** s. 224.71 (3) (b) and (4) (b), Stats.. "organized under the laws of this state or of the United States" applies only to a land mortgage or farm loan association. **A** bank, trust company, savings bank, savings and loan association. or insurance company, whether organized under the laws of this state, another state, the United States, a territory or possession of the United States or another country is exempt from the registration requirement when engaged in the transaction of business within the scope of its corporate powers as provided by law.

(b) *Real estate brokers and salespersons.* A real estate licensee who finds a loan for a person is not required to register as a loan solicitor if the licensee does not receive a commission, money or other thing of value from any person for finding the loan.

(5) MORTGAGE BANKER. **(a)** *Servicer of mortgage loans or land contracts.* A person who services loans or land contracts or provides escrow services for another person and for commission, money or other thing of value and who does not perform acts under s. 224.71 (3) (a) 1. and 2., Stats., is required to register the sole proprietor–owner, the corporation or the partnership as a mortgage banker. Other officers, partners or employees who do not use the title "mortgage banker" or "loan originator" and do not advertise or otherwise portray themselves as mortgage bankers or loan originators are not required to register under s. 224.72, Stats.

(b) *Persons who ure not in the business.* In this paragraph "pattern of activity" means engaging in an activity in Wisconsin more than 4 times within one calendar year. The following individuals are not required to register under s. 224.72, Stats., provided that they are not in the business of performing activities, as described in subds. 1. to 4., to the extent that there is a pattern of activity:

1. An individual who originates loans for himself or herself as payee on the note evidencing the loan;

2. An individual who enters into a land contract as the vendor;

3. An individual who sells his or her loans or interests in loans to another person; and

4. **An** individual who sells land contracts in which he or she is the vendor.

(6) NONRESIDENT PERSONS. The primary factors which determine the department's jurisdiction over nonresident persons who engage in activities described in s. 224.71, Stats., are as follows:

(a) Whether the person's activity relates to real property located in Wisconsin which serves or may serve as security for a loan or a land contract; and,

(b) Whether the activity occurs in Wisconsin or the activity involves a resident *of* Wisconsin. In this section "activity occurs

in Wisconsin.' includes, but is not limited to, tclephonc calls into Wisconsin arid correspondence sent into Wisconsin.

(7) SOURCE OF FINANCING FOR A LOAY. **A** person who provides funding for a loan must be registered as a mortgage banker if the person is in the business of originating loans directly with loan applicants. However, if the person who provides funding engages the services of a registered mortgage banker or other lending institution which is lawfully engaged in the practice of originating loans, the person is not required to be registered as a mortgage banker.

History: Cr. Register, February, 1991, No. 422, eff. **3–1–91.**

Chapter NR 116
WISCONSIN'S FLOODPLAIN MANAGEMENT PROGRAM

NR 116.01 Purpose.
NR 116.06 Areas to he regulated.

Note: Chapter NR 116 as it existed on February 28, 1986 was repealed **and** a new chapter NR 116 was created effective March 1, 1986.

NR 116.01 Purpose. (1) The Wisconsin legislature in enacting chapter 614, laws of 1965, recognized that floodplain zoning is a necessary tool to protect human life, health and to minimize property damages and economic losses. Municipalities are required by s. 87.30 (1), Stats., to adopt reasonable and effective floodplain zoning ordinances within their respective jurisdictions to regulate all floodplains where serious flood damage may occur within one year after hydraulic and engineering data adequate to formulate the ordinance becomes available. If a municipality has a floodplain zoning ordinance already in effect, the provisions in s. NR 116.05 shall apply.

(2) The purpose of these rules is to provide a uniform basis for the preparation and implementation of sound floodplain regulations for all Wisconsin municipalities, to:

(a) Protect life, health and property;

(b) Minimize expenditures of public monies for costly flood control projects;

(c) Minimize rescue and relief efforts, generally undertaken at the expense of the general public;

(d) Minimize business interruptions;

(e) Minimize damage to public facilities such as water mains, sewer lines, streets and bridges;

(f) Minimize the occurrence of future flood blight areas;

(g) Discourage the victimization of unwary land and home buyers; and (h) Prevent increases in the regional flood from occurring which will increase flood damage and may result in conflict and litigation between landowners.

History: Cr. Register, February, 1986, No. **362,** eff. 3–1–86.

NR 116.06 Areas to be regulated. Municipalities shall develop floodplain zoning maps, reflecting the best available data, which show the areas to be regulated. They shall also develop floodplain zoning ordinances to define proper uses in those regulated areas. These floodplain maps and zoning ordinances shall regulate all floodplains where serious flood damage may occur. The minimum limits for regulatory purposes shall be all those areas covered by water during the regional flood.

History: Cr. Register, February, 1986, No. **362,** eff. **3–1–86.**

Chapter Trans 142

RECREATIONAL VEHICLE DEALER TRADE PRACTICES, FACILITIES AND RECORDS

Trans 142.01 Purpose and scope.
Trans 142.02 Definitions.
Trans 142.03 Advertising and sales representations.
Trans 142.04 Purchase contract.
Trans 142.05 Consignment agreements.
Trans 142.06 Disclosure of the condition of the recreational vehicle
Trans 142.07 Dealer facilities and records.

Trans 142.01 Purpose and scope. (1) STATUTORY AUTHORITY. As authorized by ss. 218.12 (6) and 227.11, Stats., the purpose of this chapter is to establish the department's administrative interpretation of ss. 218.10 (1g), 218.11 (3), (6) (e), (h), (i), (k) and (n) and (7) (c), 218.12 (5) and 342.16 (2), Stats., relating to recreational vehicle dealer trade practices, facilities and records.

Note: The Department of commerce regulates the trade practices, facilities and records of manufactured home dealers.

(2) APPLICABILITY. This chapter applies to any person applying for or holding a Wisconsin recreational vehicle dealer or salesperson license.

Note: A form used in administering this rule is the recreational vehicle dealer service agreement.

History: Cr. Register, October. 1984. No. 346. eff. 11-1-84; correction in (1) made under s. 13.93(2m)(b) 7., Stats., Register, December, 1987, No. 384; am. Register, August, 2000, No. 536, eff. 9-1-00.

Trans 142.02 Definitions. In this chapter:

(1) "Cash price" means dealer asking price including dealer installed options and accessories and additional dealer markup, profit and transportation charges, minus the dollar value of cash discounts.

(2) "Damage" means defects caused by reasons other than normal wear through vehicle age and usage.

(3) "Licensee" means any recreational vehicle dealer, or salesperson, or any person who is both a recreational vehicle dealer and a salesperson.

(4) "Mobile home" has the meaning set forth in s. 340.01 (29), Stats.

(5) "New recreational vehicle" means any untitled or titled recreational vehicle which has not been previously occupied. used or sold for private or business use.

(6) "Recreational vehicle" means a mobile home which in the traveling mode, is 8 feet 6 inches or less in width or 45 feet or less in length, and which is built on a permanent chassis and designed to be towed on a highway by a motor vehicle and equipped and used, or intended to be used, primarily for temporary human habitation or recreational living quarters, and includes the plumbing, heating, air-.conditioning, and electrical systems contained in the recreational vehicle. For purposes of this chapter the measurement of length shall be determined in accordance with s. 348.07 (3), Stats.

(7) "Recreational vehicle dealer" means:

(a) A dealer as set forth in s. 218.10 (Ig), Stats., but does not include:

1. A manufactured home retailer as defined in s. Comm 97.02 (7).

2. Governmental units and agents performing their official duties.

3. Advertising media and agents performing their assigned duties.

(b) A person, not excluded by par. (a), who sells 2 or more new or used recreational vehicles in any one calendar year.

Note: Dealer financial responsibility requirements are specified in ch. Trans 140.

(8) "Retail purchaser" means any purchaser not licensed as a recreational vehicle dealer or salesperson.

(9) "Service agreement" means any repair agreement sold by a licensee.

(10) "Used recreational vehicle" means any untitled or titled recreational vehicle which has been occupied, used or sold for private or business use.

History: Cr. Register, Octflher. 1984. No. 346. eff. 11-1-84; am. (7)(a)(intro.) and 1., Register, August, 2000, No. 536, eff. 9-1-00; correction in (7) (a) 1. made under s. 13.93 (2m) (b) 7.

Trans 142.03 Advertising and sales representations. (1) TRUTHFUL. The use of false, deceptive or misleading advertising or representations by any licensee to induce the purchase of a recreational vehicle constitutes an unfair practice and is prohibited.

(2) FACTUAL. Any licensee, making a statement of fact to the public in an advertisement, written statement or representation concerning the recreational vehicle offered for sale, the services provided or other aspects of the business operation, shall upon request of the department, furnish evidence of the validity and accuracy of the statement of fact at the time it was made.

(3) DISCLOSURES REQUIRED WHEN ADVERTISING PRICE. When the price of a recreational vehicle is advertised by a licensee, the advertised price shall include all charges that shall be paid by the purchaser to acquire ownership of the advertised recreational vehicle with the exception of sales tax and title and registration fees.

(4) NAME. Advertisements for recreational vehicle sales shall include the licensed business name.

(5) MODELYEAK AND IF USED. When advertising a recreational vehicle, a licensee shall state the recreational vehicle's model year and whether the recreational vehicle is new or used. If all of the recreational vehicles in an advertisement are used, one reference designating that they are used is sufficient.

(6) EXPIRATION TERMS OF SALES OK PROMOTIONS. Whenever a sale or promotion offering gifts, merchandise, equipment, accessories, service, discounts, price reductions, or cash is advertised, the advertisement shall also specifically disclose the expiration terms or date of the sale or promotion.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

Trans 142.04 Purchase contract. (1) USAGE. (a) All licensees shall furnish retail purchasers with a copy of a document entitled "Recreational Vehicle Purchase Contract" that clearly states that the prospective retail purchaser is making an offer to purchase a recreational vehicle. An exact copy of the purchase contract shall be provided to the purchaser at the time the purchaser signs the offer and again after the offer is accepted by the dealer. Any changes to the purchase contract after signing by the purchaser or subsequent to acceptance by the dealer shall be initialed by all parties on all copies.

(b) A recreational vehicle purchase contract shall be executed whenever the licensee accepts a down payment, deposit or title for a trade-in unit from a prospective retail purchaser.

(2) CONTRACT FACE REQUIREMENTS. A purchase contract shall, on its face:

(a) Clearly identify the names and addresses of the dealer and purchaser.

(b) Describe the recreational vehicle purchased by year, make, model and identification number, and any trade-in vehicle by year, make, and model, and specify whether the purchased recreational vehicle is new or used.

(c) State the date and time each signature is affixed.

(d) Include the salesperson's name and license number in an area separate from the signatures of the purchaser and dealer or authorized representative.

(c) Specify an anticipated dclivcry date and state further in bold faced type next to the anticipated delivery date: IF THE RECREATIONAL VEHICLE ORDERED BY THE PURCHASER IS NOT AVAILABLE FOR DELIVERY BY THE DEALER WITHIN 15 CALENDAR DAYS AFTER THE ANTICIPATED DELIVERY DATE, THE PURCHASER MAY CANCEL THIS ORDER. THE PURCHASER SHALL RECEIVE A FULL REFUND OF ANY DOWN PAYMENT AND RETURN OF THE TRADE–IN, OR TITLE FOR THE TRADE-IN, OR BOTH BY THE CLOSE OF THE DEALER'S NEXT BUSINESS 'DAY. IF THE TRADE–IN HAS BEEN SOLD, THE PURCHASER SHALL RECEIVE THE TRADE–IN ALLOWANCE SPECIFIED IN THE OFFER.

(f) Clearly state the price due on closing and the known components of that price, including but not limited to, the price of the recreational vehicle, the price and description of any additional accessories, options, or equipment, sales tax, license and title fees, down–payment, and trade–in allowance. Rebates shall be stated separately by dollar amount and assignment.

(g) Clearly state whether or not the contract is subject to the purchaser obtaining acceptable financing through the dealer or at the creditor of the purchaser's choice, and how long the purchaser has to obtain financing. If the purchaser is unable *to* obtain acceptable financing, the purchaser may cancel the contract without penalty and shall, by the close of the dealer's next business day, receive a full refund of any down–payment, and return of the trade-in, or title for the trade--in, or both. The licensee may delay returning the down–payment beyond the close of the dealer's next business day only when the purchaser's personal check or other negotiable instrument has not cleared the payor's bank. If the check or other negotiable instrument clears, the licensee shall return, in person or by mail, the down–payment to the purchaser within 24 hours of receiving evidence of clearance. If the trade–in has been sold, the purchaser shall receive the trade--in allowance specified in the offer.

(h) Specify all other negotiated conditions of the sale not stated elsewhere on the contract.

(3) TERMINATION OF THE OFFER. (a) Unless otherwise specified in the contract, the offer to purchase is automatically voided if the licensee fails to accept or reject the offer by the close of the dealer's next business day.

(b) The licensee shall not sell the recreational vehicle to any other party until either the offer is rejected by the licensee, or the offer is voided in accordance with this section, or the purchaser cancels the contract in accordance with sub (4).

(c) Any down payment, deposit, or title shall be returned to the prospective retail purchaser within 2 working hours from the time the offer to purchase is rejected by the licensee. If the prospective purchaser is not present or available during the 2 hour period, those items shall be returned in person or mailed by the close of the dealer's next business day.

(4) PENALTIES FOR CANCELLATION BY PURCHASER. (a) The purchase contract shall clearly state that cancellation of a recreational vehicle contract by a purchaser within 24 hours after acceptance by the dealer may subject the purchaser to a penalty of up to *2%* of the cash price of the recreational vehicle and that cancellation of the recreational vehicle contract by the purchaser after the 24 hour period may subject the purchaser to penalty of up to 5% of the cash price of the recreational vehicle. Modification of the purchase contract shall not extend the 24 hour period. Documented proof of notification of cancellation is required regardless of the method of notification.

(b) The title and any down–payment or deposit which is not retained by the dealer as a penalty in accordance with par. (a) shall be returned to the purchaser by the close of the dealer's next business day following receipt of the purchaser's notice of cancellation.

(5) PRICE CHANGES. Any increase in price to a retail purchaser after the dealer has accepted an offer is an unfair practice and prohibited except when the price increase is due to:

(a) The addition of new equipment as required by state or federal law, or

(b) State or federal tax rate changes, or

(c) The reappraisal of a trade-in unit which has suffered damage as defined in this chapter or is missing parts or accessories which were part of the trade–in unit at the time the purchase contract was executed. Reappraisal by the licensee shall be limited to an amount equal to the retail repair costs of damages incurred, or to the value of the parts or accessories removed.

(d) The reappraisal of a trade–in unit when the model year or dimensions of the trade–in unit were misrepresented by the purchaser. Reappraisal by the licensee shall be limited to the difference between the fair market value of the trade–in unit and the trade in allowance specified on the purchase contract.

(6) WARRANTIES. (a) Reference to any warranties, service agreements, or warranty disclaimers which apply to the recreational vehicle shall be made on the purchase contract.

(b) if a recreational vehicle is sold with a warranty, the warranty shall be in writing and shall be provided to the purchaser at the time the recreational vehicle is delivered.

(c) If a recreational vehicle is sold on an as is – no warranty basis, the purchase contract shall include the following statement in bold faced type: "AS IS—NO WARRANTY"—"EXCEPT FOR ANY EXPRESSED OR IMPLIED WARRANTY BY THE MANUFACTURER OR OTHER THIRD PARTY WHICH EXISTS ON THIS RECREATIONAL VEHICLE, THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE RECREATIONAL VEHICLE IS WITH THE PURCHASER, AND SHOULD THE RECREATIONAL VEHICLE PROVE DEFECTIVE FOLLOWING THE PURCHASE, THE PURCHASER SHALL ASSUME THE ENTIRE COST OF ALL SERVICING AND REPAIR."

(d) A warrantor shall service or repair a recreational vehicle in accordance with the terms and conditions of the warranty or service agreement.

(7) SERVICE FEES. A licensee shall not assess a purchaser an additional service fee or charge for completing any sales–related vehicle inspection or forms which are required by law or rule.

(8) WAIVER. The use of a recreational vehicle purchase contract which requires the purchaser to waive any claims the purchaser may have for breach of contract by the licensee is an unfair practice and prohibited.

History: Cr. Register, October, 1984. No. *346,* eff. 11–1–84.

Trans 142.05 Consignment agreements. (1) USAGE AND CONTENTS. Whenever a recreational vehicle dealer offers for sale a recreational vehicle on consignment, a written consignment agreement shall be completed and shall include:

(a) The date of the consignment agreement,

(b) The name of the recreational vehicle owner and dealer, and any other parties to the agreement,

(c) The description of the recreational vehicle including year, make, and identification number,

(d) The terms of the agreement including the duration of the agreement, the selling price, the amount of the sales commission or fee, and when the sales commission or fee is to bc paid,

(e) A statement by the owner indicating that either the recreational vehicle is clear of any liens, or the amount of any outstanding lien balance, and

(f) Signatures of the recreational vehicle owner and selling dealer.

History: Cr. Register, October, 1984, No. 346, eff. 11–1–84.

Trans 142.06 Disclosure of the condition of the recreational vehicle. (1) MODEL YEAR DESIGNATION. Changing the model year of a recreational vehicle is an unfair practice and prohibited. If no model year is designated, the year of manufacture applies.

(2) NEW RECREATIONAL VEHICLE DISCLOSURE. The licensee shall, on the face of a new recreational vehicle purchase contract, disclose all dealer installed options or accessories and whether or not the options or accessories are warranted.

(3) USED RECREATIONAL VEHICLE GENERAL CONDITION DISCLOSURE. (a) Licensees shall inform prospective retail purchasers of used recreational vehicles in writing before execution of the purchase contract in the manner and on the form prescribed by the dcpartmcnt, of all significant structural or mechanical defects and damage. Disclosure of infonnation shall include that which the licensee discovers as a result of a careful visual inspection, which shall consist of but is not limited to a walk–around and interior inspection, under vehicle inspection, roof inspection and an inspection of the appliances. Licensees shall not be required to dismantle any part of the recreational vehicle during the inspection process.

(b) Unless othcrwisc agreed to in the purchase contract, the inspection disclosures shall neither create any warranties, expressed or implied, or affect warranty coverage provided for in the purchase contract.

History: Cr. **Register,** October, 1984, No. 346. eff. 11–1–84.

Trans 142.07 Dealer facilities and records. (1) DEALER BUSINESS FACILITIES. Business facilities required to be provided and maintained by recreational vehicle dealers are as follows:

(a) A building with a business office to maintain the books, records and files necessary to conduct business. The required business office may be established within a residence if it is accessible to an outside entrance and **is** used primarily for conducting the recreational vehicle business.

(b) If a display lot is provided, it shall be within the same block or directly across the street from the main business location.

(c) A repair shop, or a service contract with a nearby repair shop, where there are repair tools, repair equipment and personnel to perform the services provided for in a warranty applicable to a recreational vehicle sold by the dealer. Any service contract shall be on the form provided by the department.

(2) ZONING. The business premises shall comply with the local zoning, building code and permit requirements.

(3) SIGN. Recreational vehicle dealers who carry and display inventory shall provide an exterior business sign in compliance with **s.** 100.18(5), Stats.

(4) TEMPORARY SALES LOCATIONS. Recreational vehicle dealers shall be permitted to display and sell recreational vehicles at a temporary site other than the licensed place of business, providing that:

(a) Each dealer furnishes the department with written notification of the sale and location at least 10 days in advance; and

(b) The duration of each sale does not exceed 10 days; and

(c) The dealer does not participate in more than 6 sales during each licensing (calendar) year; and

(d) Each participating dealer furnishes each consumer a witten notice of the 3–day "cooling off" rights pursuant to **s.** 423.203, Stats.

(5) RECORDS KEPT. The minimum of books and records required to be kept and maintained at the licensed business premises by recreational vehicle dealers under ss. 218.11 (3) and (7) (c) and 342.16 (2), Stats., shall include:

(a) The title for each used recreational vehicle owned and offered for sale and the manufacturer's statement of origin for each new recreational vehicle owned and offered for sale. The dealer shall also have either a factory invoice, a completed retailer reassignment form, or a purchase contract evidencing trade–in or purchase when a manufacturer or lending institution is holding the title or manufacturer's statement of origin of the recreational vehicle.

(b) A written consignment agreement between the owner and dealer for each recreational vehicle owned by an individual and offered for sale by the dealer.

(c) The original or a copy of all recreational vehicle purchase contracts, purchase orders and invoices. The records shall also include a copy of MV1 Wisconsin title and registration application forms as additional evidence of the sale as well as information regarding collection of sales tax and Wisconsin title and registration fees.

(d) 1. The following information shall be kept on every recreational vehicle bought, sold, exchanged or consigned:

a. Date of acquisition of the vehicle.

b. Name and address of the person from whom the vehicle was acquired.

c. Whether the vehicle was new or used.

d. The year, make and vehicle identification number, or VIN, of the vehicle.

e. The date of the disposition of the vehicle.

f. The name and address of the person to whom any vehicle was disposed.

2. Persons requiring a license who do not maintain their records in an electronic data processing record keeping system shall maintain the information required in subd. 1. in a permanently bound book containing consecutively pre.numbered pages with horizontal line ruling. Initial entries shall be made immediately when each recreational vehicle is acquired. Sales information shall be entered on the same line at the time of the sale. **All** entries shall be consecutively entered in **ink** and be legible. Blank horizontal lines shall not be allowed. The information should be maintained in the following format:

Date Acquired	Acquired From Name & Address	New or Used	Year–Make–VIN	Date Sold or Disposed of	Disposed of or Sold to Name & Address

3. Persons requiring a license who maintain their records in an electronic data record keeping system shall maintain the information required in subd. 1. in compliance with the following requirements:

a. One record shall contain all of the information specified in subd. 1.

b. Initial entries shall be made immediately when each recreational vehicle is acquired.

c. The information shall be accessible for inspection and shall be retrievable electronically by the date acquired, name of person from whom the vehicle was acquired, VIN, date sold, and name of person to whom the vehicle was disposed.

d. All records shall be retrievable during the inspection and a printer shall be kept on site to provide hard copy if requested. Hard copy shall include all information in the same format as specified in subd. 2. Horizontal and vertical lines are not required.

e. An employe of the person requiring a license shall be available to retrieve the records during the hours of operation of the business.

(e) The information as specified in par. (d) shall be maintained for 5 years, as required by s. 342.16, Stats., and all other required records shall be maintained for a period of 5 years from the date of sale, including facsimile copies of factory invoices, dealer reassignmcnt forms, consignment agreements, purchase contracts, MVI and MV11 Wisconsin title and registration applications, used recreational vehicle disclosure labels, regular and conforming power of attorney forms, and for motor vehicles taken in trade, prior owner odometer disclosure statements and dealer's subsequcnt odometer disclosure statements. The records shall be kept in the place of business during business hours and shall be open to inspection and copying by the department during reasonable business hours.

(f) Persons requiring a license who maintain their used vehicle records as specified in par. (d) in an electronic data processing record keeping system can satisfy the record retention requirement in par. (c) with hard copy of their records when memory limitations of the electronic system prohibit electronic storage for the specified period. Hard copy shall meet the following requirements:

1. Hard copy shall include only those records of vehicles that have been disposed of. Incomplete records of vehicles acquired and still in inventory must be maintained on the electronic system until disposed of and the record is completed.

2. Hard copy shall include all information in the same format as specified in par. (d) 2. Horizontal and vertical line ruling shall not be required.

3. Hard copy shall be printed in the order of the date acquired and each report shall contain at least **12** consecutive months of vehicle acquisitions.

4. Hard copy shall contain system generated page numbers and the current date on every page.

Note: Dealer financial responsibility requirements are specified in ch. Trans 140.

History: Cr. Register, October. 1984. No. 346. eff. 11–1–84; renum. (5) (d) to be (5) (d) 2. and am., cr. (5) (d) 1. and 3., (f), am. (5) (e), Register, January, 1996, No. 481, eff. 2–1–96

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