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## Consumer Protection

Wis. Stats. 106.50, 240.10, 452.01, 452.133, 452.134, 452.135, 452.231, 452.24

REEB 16.05, 24.03, 24.04, 24.05, 24.07, 24.075, 24.09, 24.12, 24.13, SPS 370.09

**Chapter Overview** *This chapter reviews a broker's duty to protect consumers in a real estate transaction. Wisconsin requires real estate professionals to obtain a license to practice real*

### Important Terminology

agency disclosure  
agency relationship  
broker  
condominium addendum  
consumer protection  
education  
executive summary  
latent defect  
limited service  
multiple representation relationship  
multiple representation with designated agency  
multiple representation without designated agency  
negotiations  
pre-agency  
real estate condition report  
single agency  
subagent

*estate. This allows the state to regulate real estate practice in Wisconsin. The goal of regulation is consumer protection. For many consumers in a real estate transactions, the process is unfamiliar and can be overwhelming. Especially in residential transactions, the transfer of property and money may involve the majority of the consumer's accumulated wealth and assets. Consumers rely on licensed real estate professionals to help them navigate the complicated steps required to transfer property from one owner to another.*

**C**onsumer protection is the goal of requiring individuals to be licensed to participate in real estate transactions. Just as the state requires people to obtain a license to drive, practice law or medicine, sell insurance, and provide cosmetology services, Wisconsin requires anyone who does any of the acts found in the definition of **broker** to obtain a real estate license. This allows the state to make sure that those who assist consumers in real estate transactions have completed the licensing education, passed the state exam, satisfied the licensing requirements, and comply with biennial license renewal and continuing education. The state performs this role through the Department

of Safety and Professional Services (DSPS), which relies on the Real Estate Examining Board (REEB) to review license applications, approve education, and issue discipline when warranted. When a consumer makes a complaint to the DSPS regarding the practices of a real estate licensee, the REEB reviews the complaint and issues discipline if it is warranted. The purpose of discipline is to ensure competent practice and consumer protection. Depending on the nature of the violation, discipline may be revocation or suspension of a license or it could be an assignment of additional education and testing. When the REEB requires additional education and testing, the REEB is trying to make sure the licensee understands what was done incorrectly and provide the licensee with the information needed to make sure the transaction is handled correctly next time.

## EDUCATION

One of a broker's most important roles when working with consumers is education. Consumers may only participate in a handful of real estate transactions throughout the course of their lives and because the real estate law changes regularly, the experience may be completely new, even for property owners who have bought or sold property in the past. For example, before 2012, a seller of vacant land did not have to complete a real estate condition report but now a seller must complete one or risk a buyer rescinding an offer. Brokers know the rules and steps that parties must follow in a transaction because of their education and training and it is a broker's duty to help educate buyers and sellers about their roles in the transaction. Whether a broker is working with a client or a customer, a broker has an obligation to make sure that parties understand what is happening in a transaction and understand their obligations related to that transaction. A buyer might not know that a pre-qualification letter is not a loan commitment for purposes of satisfying a financing contingency and a seller might not know that a buyer has a right to rescind an offer if a seller does not provide a real estate condition report in a timely manner. A broker also has an obligation to make sure that parties are not violating fair housing laws and may need to educate buyers and sellers about these laws to prevent violations.

A broker's educational role can be challenging because the parties rely on the professional expertise of the broker. Parties will often want brokers to provide legal, tax, or zoning advice. Providing advice in these areas is beyond the scope of a broker's license and it can be challenging to refrain from providing it to parties while providing good customer service. Providing parties with the resources they need to find the answers to questions that are beyond the scope of a broker's license will permit the broker to provide good customer service but not provide services for which the broker is not licensed.

## AGENCY

A broker must be able to explain the **agency** relationship to parties. Many people, especially buyer-customers, do not understand the role of a broker in a real estate transaction. When buyers forgo buyer agency agreements and choose to be a broker's customer, many of them do not understand that the broker is not their agent. When a buyer asks a broker to write an offer on a property and does not sign a buyer agency agreement, the broker has a duty to make sure that the buyer-customer understands that the broker is providing brokerage services to the buyer-customer but that those services are being provided for the benefit of the broker's seller-client. Consumer confusion related to agency relationships is one of the biggest sources of complaints about brokers to the DSPS. To avoid complaints, brokers must be sure that consumers understand agency relationships.

### ***Pre-agency***

The law of agency allows parties to engage in some discussion before deciding whether to enter into an agency agreement. Wisconsin agency law permits brokers and consumers to engage in pre-agency. **Pre-agency** is the stage in an real estate relationship where a broker and a consumer are discussing the neutral, informational aspects of a transaction or potential transaction but the parties have not decided whether to have an agency relationship. During pre-agency, a broker can provide neutral information to a consumer but cannot engage in negotiations. A broker can provide market information and even show properties to a consumer during pre-agency but as soon as the consumer starts asking for the broker's professional opinions or advice, the broker must discuss agency with the consumer and have the person decide whether to become a client or a customer.

When a broker is in pre-agency with a consumer, the broker owes the duties to all parties in a transaction and cannot provide information and advice contrary to the interests of a party to the current or prospective transaction. This means that if a buyer is looking at properties with a broker and they are in the pre-agency stage, the broker could not say anything to the buyer that would be contrary to the seller's interests.

### **Wis. Stat. 452.134 Agency relationships; multiple representation relationships.**

(1) Agency relationship not required.

(a) Subject to par. (b), a broker may provide brokerage services to any person in a transaction, whether or not the broker has entered into an agency agreement with a party to the transaction or the broker has been engaged to provide brokerage services in the transaction as a subagent.

(b) A broker may not negotiate on behalf of a party to a transaction unless a party to the transaction is one of the following:

1. The broker's client.
2. A client of a principal broker who has engaged the broker as a subagent.

### **Wis. Stats. 452.133 Duties of brokers.**

(5) Duties without agency or subagency relationship. If a broker is providing brokerage services to a person who is a party or a prospective party to a transaction, and the broker does not have an agency agreement with the person and is not a subagent of another broker in the transaction, then the broker owes the person the duties under sub. (1) and may not, unless required by law, provide advice or opinions relating to the transaction in which the person is receiving brokerage services if providing the advice or opinions is contrary to the interests of a party to a current or prospective transaction with the person receiving the brokerage services.

### ***Agency Disclosures***

Whether a broker is working with a customer or a client, the broker must provide **agency disclosures**. The disclosures serve to inform the parties about the broker's role in the transaction and the broker's duties to the various parties. The language that a broker must provide to comply with agency disclosure is mandated by state law. Brokers must request acknowledgment of agency disclosure from customers and clients if the property contains one to four dwelling units.

### **Broker Disclosure to Customers**

Brokers owe duties to all parties in a transaction and additional duties to clients. There is not a state-approved form for agency disclosure to a customer but whatever form a broker uses must contain the language found in the statute. A broker must provide the disclosure prior to any negotiations. **Negotiation** is when a broker provides anything other than neutral or objective information to a party. For example, if a broker is showing properties to a buyer, that is neutral and objective information. If the buyer asks the broker to write an offer, that constitutes negotiations and before a broker writes the offer, the broker must discuss agency with the buyer. If the buyer chooses to be a customer, the broker must give agency disclosure.

**Wis. Stats. 452.135 Disclosure of duties.**

(1) (a) A broker may not negotiate on behalf of a party who is not the broker's client unless the broker provides to the party a copy of the following written disclosure statement:

**BROKER DISCLOSURE TO CUSTOMERS**

You are a customer of the broker. The broker is either an agent of another party in the transaction or a subagent of another broker who is the agent of another party in the transaction. The broker, or a salesperson acting on behalf of the broker, may provide brokerage services to you. Whenever the broker is providing brokerage services to you, the broker owes you, the customer, the following duties:

The duty to provide brokerage services to you fairly and honestly.

The duty to exercise reasonable skill and care in providing brokerage services to you.

The duty to provide you with accurate information about market conditions within a reasonable time if you request it, unless disclosure of the information is prohibited by law.

The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the information is prohibited by law.

The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential information or the confidential information of other parties.

The duty to safeguard trust funds and other property the broker holds.

The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

Please review this information carefully. A broker or salesperson can answer your questions about brokerage services, but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax advisor, or home inspector.

This disclosure is required by section 452.135 of the Wisconsin statutes and is for information only. It is a plain-language summary of a broker's duties to a customer under section 452.133 (1) of the Wisconsin statutes.

**Broker Disclosure to Clients**

A broker owes duties to customers and additional duties to clients. A broker also owes additional duties to a client. A broker must provide disclosure to a client before or at the time of entering into an agency contract. Because most of the state-approved agency agreements contain agency disclosure, a broker does not have to use a separate form unless using an agency agreement that does not contain the disclosure, such as the time-share or business listing, or a seller provided listing contract. If a broker uses a separate form, it must comply with the agency disclosure statute.

**REEB 24.07 Inspection and disclosure duties.**

(8) Disclosure of agency.

(a) General requirements. 1g. A broker may not negotiate on behalf of a client unless the broker gives the client a copy of the broker disclosure required under s. 452.135 (2), Stats.

(e) Agency agreements for lease and property management contracts.

1. A licensee who is entering into agency agreements for lease or property management contracts shall provide to his or her clients the broker disclosure statement as required in s. 452.135 (2), Stats.

2. A licensee shall provide to prospective tenants a broker disclosure statement as required in s. 452.135 (1), Stats., when negotiating the terms of a lease on behalf of the client.

**Wis. Stats. § 452.135 Disclosure of duties.**

(2)(a) Except as provided in par. (b), a broker shall provide to a client a copy of the following written disclosure statement not later than the time the broker enters into an agency agreement with the client:

**BROKER DISCLOSURE TO CLIENTS**

Under Wisconsin law, a broker owes certain duties to all parties to a transaction:

The duty to provide brokerage services to you fairly and honestly.

The duty to exercise reasonable skill and care in providing brokerage services to you.

The duty to provide you with accurate information about market conditions within a reasonable time if you request it, unless disclosure of the information is prohibited by law.

The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the information is prohibited by law.

The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential information or the confidential information of other parties.

The duty to safeguard trust funds and other property the broker holds.

The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

Because you have entered into an agency agreement with a broker, you are the broker's client. A broker owes additional duties to a client.

The broker will provide, at your request, information and advice on real estate matters that affect your transaction, unless you release the broker from this duty. The broker must provide you with all material facts affecting the transaction, not just adverse facts.

The broker will fulfill the broker's obligations under the agency agreement and fulfill your lawful requests that are within the scope of the agency agreement.

The broker will negotiate for you, unless you release the broker from this duty.

The broker will not place the broker's interests ahead of your interests. The broker will not, unless required by law, give information or advice to other parties who are not the broker's clients, if giving the information or advice is contrary to your interests.

Some brokerage companies offer the opportunity for clients to obtain less services than those provided by the traditional full-service model, often at a reduced fee. These companies are commonly known as "limited services" companies. In exchange for paying a reduced fee, a party receives reduced services. Often when a broker offers a **limited service** option, one of the services that is not part of the package is negotiation. When a party waives a broker's duty of negotiation, the party is usually waiving the broker's obligation to present written proposals related to the transaction. In this case, if a seller had a limited service agency contract with a broker, buyers would submit offers directly to the seller and sellers might even be responsible for drafting their own counter-offers as part of the negotiation process. A party can waive a broker's duty to negotiate only if certain requirements are met.



### **Wis. Stats. 452.133 Duties of brokers.**

(6) Waiver of duties. The duties imposed by subs. (1), (2) (a), (am), (b), and (c), (4), and (5) may not be waived. A client may waive, in part or in full, the broker's duty under sub. (2) (d), except that a waiver under this subsection is not effective unless the broker provides to the client a written disclosure containing all of the following:

- (a) A copy of the text of sub. (2) (d) and s. 452.01 (5m), and a statement that, as a consequence of the client's waiver, the broker will have no legal duty to perform the duty imposed by sub. (2) (d).
- (b) A statement that as a consequence of the client's waiver, the client may require the assistance of an attorney or another service provider to fulfill the client's goals and contractual duties in the transaction.

When a broker has a buyer agency agreement with a buyer and is acting as the buyer's broker, the broker has additional agency disclosure duties that the broker owes to the seller and listing agent. The buyer's broker must disclose the agency relationship with the buyer at first contact, a showing of the property, or any other negotiation with the seller or listing broker.

### **REEB 24.07 Inspection and disclosure duties.**

(8) Disclosure of agency. (a) General Requirements

2. Licensees acting as agents of potential buyers of real estate that is 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 a listing broker 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.

### ***Agency Relationships***

A broker's agency agreement with a party must be in writing, describe the property, state the price, state the compensation amount, and must be signed by the person agreeing to pay the commission. A broker cannot mislead a consumer about the benefits the consumer might realize by using the broker's services. When a client signs an agency agreement, the client must select a form of **agency relationship**. Clients in Wisconsin real estate transactions have three choices of agency models for structuring the agency relationship with their broker. Clients can choose from single agency, multiple representation without designated agency, and multiple representation with designated agency. Most brokers will remember the instruction on agency relationships from their sales pre-license education but because so many consumers report complaints to the DSPS about their understanding of agency relationships, brokers must be sure to have a thorough understanding of agency relationships and must be able to explain them to consumers. Brokers who employ other brokers or salespeople must make sure their employees understand agency relationships and explain them clearly to all consumers.

**REEB 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. A licensee also may not mislead a potential client regarding the market value of real estate or a business opportunity to be leased, rented, purchased, optioned, or sold under an agency agreement.

**Wis. Stats. 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 commission 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.

**Single Agency**

**Single agency** is when a broker represents only one client in a transaction. If a broker takes a listing for a seller and writes an offer for a buyer-customer, the broker has single agency with the seller. If a buyer hires a broker with a buyer agency agreement to write an offer on another broker's listing, the broker has single agency with the buyer. If a seller or a buyer chooses single agency when executing the agency contract, it means that the broker cannot represent the other party in a transaction. To choose single agency, a client initials the line in the agency contract that states that the client rejects multiple representation.

Brokers do not have to participate in every form of agency relationship and can restrict their practice to representing clients that fit the broker's business model. When a client chooses single agency, it can restrict a broker because it means that a broker cannot also have a buyer agency agreement with a buyer who wants to purchase that seller's property. If a broker wants to avoid this conflict, a broker can choose not to offer single agency and refer those clients seeking a single agency relationship to another broker. A broker could also choose to practice only single agency. For example, a broker who only represents sellers or who only practices buyer agency will always have a single agency relationship with the broker's client because the broker has chosen to represent only buyers or sellers in transactions.

**Multiple Representation**

A **multiple representation relationship** is when a broker represents two or more clients in the same transaction. When a buyer and a seller are both clients of the same broker in the same transaction, the broker has a multiple representation relationship with the parties. Both clients must consent to this arrangement because of the potential for conflicts of interest when a broker is representing the interests of two different sides of a transaction.

A broker can represent both parties in a transaction as long as both parties consent and the broker provides full written disclosure to both parties. The disclosure to the parties must contain a statement of the broker's duties owed to clients and to non-clients and provide the clients the opportunity to consent to the broker providing services to more than one client in the transaction. Both the listing and buyer agency agreements contain the mandatory disclosure and provide clients the opportunity to consent to a multiple representation relationship. A client can withdraw consent to multiple representation relationships at any time.

If a broker has two clients who are going to be in the same transaction but the clients have chosen different agency models, the broker cannot represent both clients in the transaction. The broker can ask one or both clients to amend their agency agreements so that the agency models match or can offer to terminate one of the agency agreements to allow that former client to hire a new broker and resolve the conflict in agency choices.

**Wis. Stats. 452.134 Agency relationships; multiple representation relationships.**

(3) Designated agency; consent required.

(a) A broker in a multiple representation relationship may not engage in designated agency unless all of the broker's clients in the relationship have consented to designated agency in writing. A client may withdraw consent to designated agency by written notice to the broker at any time.

(b) If a broker is engaged in designated agency, the broker's employee who is negotiating on behalf of a client of the broker in the transaction may provide to the client on whose behalf the employee is negotiating information, opinions, and advice to assist the client in the negotiations, whether or not the information, opinions, and advice place the interests of one of the broker's clients ahead of the interests of another client of the broker.

(4) Multiple representations relationship without designated agency. If a broker's client in a multiple representation relationship does not consent to designated agency or withdraws consent to designated agency, the broker and the broker's employees may not place the interests of any client ahead of the interests of any other in the negotiations.

There are two forms of multiple representation relationships: multiple representation without designated agency or multiple representation with designated agency.

**Multiple Representation without Designated Agency**

With **multiple representation without designated agency**, a broker takes a neutral position and acts as a facilitator between the buyer and the seller. The broker does not provide advice or opinions that would advantage one side over the other.

**Multiple Representation with Designated Agency**

With **multiple representation with designated agency**, the broker is representing both the seller and the buyer in a transaction but the broker assigns an agent to each party. Each client receives full negotiation services from their designated agent even if the negotiation services place the interests of one of the broker's clients ahead of the other. Both agents are employees of the broker so the broker is representing multiple parties but each party still has a real estate professional advocating for the party's interest.

**Wis. Stats. 452.01 Definitions.**

(3w) "Designated agency" means a multiple representation relationship in which each client of the broker in the multiple representation relationship receives negotiation services from the broker only from employees of the broker who are not providing negotiation services to any other client of the broker in the transaction.



**Subagency**

A **subagent** is an agent of another broker in the transaction but is not that broker's employee. A subagent negotiates for a person who is not the broker's client. When a transaction involves a subagent, most often the subagent writes an offer for a buyer-customer on another broker's listing. Because a subagent is not a party to the agency agreement between the principal broker and the buyer or the seller, the agent is not subject to the provisions of the agency agreement. A subagent must provide agency disclosure that lists the broker's duties to the party with whom the subagent is working. A subagent would use a broker disclosure to customer form to provide agency disclosure.

Clients must consent to their broker using subagents in a transaction. A client usually provides consent with the agency agreement. Clients can prohibit brokers from working with subagents. Licensees are generally required to cooperate with other licensees but if subagency has not been authorized by a client, a licensee will be acting legally and ethically by refusing to work with other licensees if it would create subagency. If a seller refuses subagency, the listing broker should document this in the listing contract.

**REEB 24.07 Inspection and disclosure duties.**

(8) Disclosure of Agency.

(b) Agency agreements.

2. No broker or broker's salesperson may permit other brokers to act as subagents in a transaction unless the broker's client has authorized the use of a subagent in the agency agreement

(d) Subagency agreements.

3. A subagent shall provide a broker disclosure statement to a customer as required in s. 452.135 (1), Stats., with whom he or she is working but not to the principal broker's client.

4. A principal broker is not required to provide a broker disclosure statement to a customer as required in s. 452.135 (1), Stats., to a customer of their subagents.

A subagent owes the duties to all persons as well as the duty of loyalty to the principal broker's client. A subagent of a listing broker drafting an offer for a buyer-customer on the listing broker's listing, cannot put the subagent's interest ahead of the seller's or provide the buyer advice or opinions contrary to the interests of the seller unless required by law. The subagent cannot give the buyer an opinion that the property is overpriced or advise the buyer to offer less than the list price. If the buyer wants this type of opinion or advice, a buyer must hire a broker with a buyer agency agreement and become a client rather than a customer.

**Wis. Stats. 452.133 Duties of brokers.**

(4) Subagent's duties.

(a) A subagent owes all persons to whom a broker is providing brokerage services in a transaction the duties specified in sub. (1) but does not owe the clients of the principal broker the duties under sub. (2).

(b) A subagent may not do any of the following:

1. Place the subagent's interests ahead of the interests of the clients of the principal broker in the transaction in which the subagent has been engaged by the principal broker.

2. Provide advice or opinions to parties in the transaction if providing the advice or opinions is contrary to the interests of the clients of the principal broker in the transaction in which the subagent has been engaged by the principal broker, unless required by law.

## LEGAL PRACTICE

Brokers have the limited ability to practice law. Brokers can draft approved forms on behalf of the parties to a transaction. Providing legal advice and opinions about parties' rights and obligations is the unauthorized practice of law and is prohibited. Brokers can provide explanations of the terms of contracts and explain the transaction process to parties. Brokers cannot charge a separate fee for completing an approved form.

### **REEB 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.

## ADVERTISING

While advertising is most often thought of as a print ad or a multiple listing service listing, advertising covers a wide range of media. Advertising may be communicated in the newspaper, MLS, telephone book yellow pages, outdoor advertising signs, billboards, television, radio, magazines, periodicals, leaflets, brochures, homes magazines, sales presentations, public speeches, graphics, pictures, telephone calls, letters, fax transmissions, e-mail, social media and other electronic platforms, face-to-face conversations, and other media. Brokers should keep in mind that the rules and laws governing advertising apply to all of these.

As part of the DSPS goal of protecting consumers, the DSPS has rules governing a broker's advertisement for a property. All advertisements must comply with these rules. The advertisement must contain the broker's name, unless it is an advertisement for a tenant for personally-owned property. The advertisements must be honest and not deceptive. Brokers cannot advertise without the consent of the owner and must advertise at a price agreed upon by the seller. The listing contract must state a specific price for the property but advertisements can advertise the property using a range price as long as the seller consents. A broker has many options for choosing how and when to advertise properties. Marketing strategies and a broker's use of advertisements are part of a broker's business management decisions.

**REEB 24.04 Advertising.**

(1) False advertising. Licensees shall not advertise in a manner which is false, deceptive, or misleading.

(2) Disclosure of name.

REEB 24.04(2)(a)(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. REEB 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.

**INSPECTION*****Broker Inspection***

When listing a property, whether it is a residence, vacant land, commercial, or other property, a listing broker shall perform a reasonably competent and diligent property inspection and ask the owner about the condition of the structure, mechanical systems and other relevant aspects of the property. The broker must ask for a written response. The duty to inspect is not limited to just listing brokers. All brokers have a duty to inspect the property for readily observable material adverse facts. Listing brokers must do so before executing the listing contract and all other brokers must inspect prior to or during the showing. Some courts in the past were determining that real estate licensees had a higher knowledge level about property structures and mechanical systems. The standard of care a licensee is to use when conducting the inspection is that of a reasonably prudent person who has the knowledge, skills, and training required for licensure. There is not a state-approved form for a broker to use to demonstrate the broker's compliance with this inspection but brokers may want to develop a form to put in client files noting the broker's compliance with the broker's inspection obligation.

### **REEB 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 property 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 inspection of vacant land does not require an observation of the entire property, but shall include, if given access, an observation of the property from at least one point on or adjacent to the property.

### **Wis. Stats. 452.23(4) Disclosures, investigations and inspections by brokers and salesperson.**

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.

#### ***Third Party Inspections***

There is not an automatic ability for third party inspectors to inspect a property. Brokers are legally obligated to inspect a property but no other party has an obligation or a duty to inspect a property. If a party to a transaction wants an inspection made by a third-party inspector, this must be arranged in the offer to purchase. The extent, details, and costs of the inspection will all be contained in the offer to purchase. If a buyer does not include the specific terms of the buyer's desired inspections in an offer that a seller accepts, a seller has no obligation to provide access to the property for inspection.

**“As-Is” Properties**

A seller can sell a property “as-is.” The generally means that the seller does not intend to complete a real estate condition report. When a seller sells a property “as-is,” brokers still must comply with their inspection duties.

**BROKER DISCLOSURE*****Broker Disclosure Obligations***

All brokers have disclosure obligations. Brokers must disclose all material adverse facts to the parties in writing and in a timely fashion. A broker must disclose material adverse facts, even if disclosure is contrary to the instructions of a party. Brokers must disclose all material facts to a client. Brokers must also disclose information that suggests a material adverse fact, such as finding out that a party does not intend to close a transaction as agreed to in the offer to purchase. The broker must disclose to the client all information known to the broker that is material to the transaction and not known by the client or discoverable through reasonably vigilant observation. This duty to disclose material information, however, does not authorize disclosure of other parties’ confidential information or information that cannot otherwise be disclosed under law.

Determining whether an item is a material adverse fact can be difficult. Some items, such as a known underground storage tank or lead paint are obvious but other items may be less clear. When a broker is confronted with a fact that a broker cannot conclusively decide is a material adverse fact or is information that suggests a material adverse fact, the broker must make a judgement call to decide whether to disclose the information. In this situation, a broker may want to consult with an attorney. A broker-employer should instruct all licensed employees on the broker’s procedure for disclosing material adverse facts. Because there is not a state-approved form for disclosing this, a broker may have a standard form that the broker uses and expects all licensed employees to use. A broker-employer may also have additional procedures that licensees need to follow when confronted with disclosing a material adverse fact or information that suggests a material adverse fact. Brokers have an additional duty to disclose all material facts to clients.

**Wis. Stats. 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.

(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 terms of such a contract or agreement.



**Broker Disclosure Not Required**

There is some information about a property that a broker cannot disclose and other items that a broker does not have to disclose. A broker cannot disclose information that would violate housing discrimination laws. This includes information about neighborhood demographics, such as whether a neighborhood is made up primarily of people who follow a particular religious faith or share a common ethnic heritage. A broker also cannot disclose information related to buyers and sellers if that information is related to the buyer's or the seller's membership in a protected class, such as whether a potential buyer is of a particular ancestry or religious faith. Most brokers and salespeople are knowledgeable about these prohibitions but consumers may not be.

Brokers also do not have to disclose the presence of adult family homes, community based residential facilities, or nursing homes. Brokers do not have to disclose if a property was the sight of a "stigmatizing" act or occurrence. This refers to whether the property was the sight of a crime or some other event that might cause people to view the property negatively even though the event did not affect the structure or condition of the property. Finally, brokers do not have to disclose information that is contained in reports prepared by third parties as long as the reports are provided to the parties. A broker does have an obligation to review those reports and if any information in the reports contradicts a broker's knowledge of the property, the broker must disclose this in writing to all parties in a timely fashion.

**Sex Offender Registry**

Brokers must disclose information related to registered sex offenders if a party requests it. A broker who provides the party with Department of Corrections' website and telephone number and information about Wisconsin's sex offender registry in writing does not have to disclose information about registered sex offenders. This information is contained in the state-approved agency agreements and offers to purchase. Most brokers decline to provide information about sex offenders and just provide the required information about the sex offender registry. Broker-employees and salespeople should consult with their employing broker for policies on disclosure of information related to sex offenders.

**Wis. Stats. 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.

### **Wis. Stats. 452.23 Disclosures, investigations and inspections by brokers and salespeople.**

(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 party in order to prepare the written report.

452.23(2)(c) (c) The location of any adult family home, as defined in s. 50.01 (1), 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.

### **SELLER DISCLOSURE**

A seller is asked to disclose property condition information and other information affecting the transaction several times throughout the process of listing and selling a property. A listing broker first asks the seller for a written response to the broker's inquiry about the condition of the seller's property when taking the listing. The buyer, with an offer to purchase, also asks the seller if, as of the date of the offer, the seller has any notice or knowledge of items comprising the offer's definition of "conditions affecting the Property or transaction." When taking any listing, including commercial, the listing broker is required to inspect the property and ask the seller to respond in writing to the inquiry.

### ***Real Estate Condition/Disclosure Report***

Chapter 709 of the Wisconsin Statutes requires sellers of property containing one to four dwelling units to complete a **real estate condition report**. Sellers of vacant land have to complete a **vacant land disclosure report**. This requirement applies to both broker-assisted transactions and for-sale-by-owner properties. Sellers of other properties, such as commercial, still must disclose known defects and conditions affecting their property but Chapter 709 does not require that they complete a real estate condition report. Many sellers, even if not required, fill out a disclosure or condition report.

Certain transactions are exempt from the requirement. Chapter 709 does not apply to:

1. Real estate which has not been inhabited, such as new construction or property converted from commercial or other use;
2. Transfers exempt from the real estate transfer fee, such as gifts between a husband and a wife or between a parent and a child, tax sales, foreclosure sales, condemnations and transfers by will, descent or survivorship; and
3. Transfers by personal representatives, trustees, conservators and other fiduciaries appointed by or subject to supervision by a court, but only if those persons have never occupied the property.

A seller completes a condition or disclosure report based on the seller's own knowledge of the property. A seller could use reports from third-party qualified inspectors to supplement the information in the report. Sellers must disclose known defects when completing the form and amend the condition or disclosure report if the seller receives information that would change a response.

Most sellers complete the reports early in the listing process and have them available for buyers at showings and open houses so buyers have access to them before submitting offers. A seller must provide a completed condition report to a buyer no later than 10 days after accepting an offer to purchase or risk rescission of the buyer's offer. A buyer can rescind an offer if the seller does not provide the report by the deadline or provides an incomplete report. A buyer has two business days to rescind and must rescind in writing. If a seller accepts an offer and provides a report that discloses a defect of which the buyer was not already fully aware, the buyer may have a right to rescind the offer.

There is not a state-approved form for a real estate condition or vacant land disclosure report. Usually when brokers meet with a seller to discuss listing the property, the broker will provide a condition report for the seller to complete. The WRA has real estate condition reports and vacant land disclosure reports for brokers to provide to sellers when listing properties.

### **Waiver of Right to Real Estate Condition/Disclosure Report**

If a seller does not want to provide a condition or disclosure report and does not want a buyer to have the right to rescind the offer, the seller can ask a buyer to waive the buyer's right to rescind. A seller could do this by submitting a counter-offer that includes a waiver of a buyer's right to rescind based on the report or by instructing the listing broker to not present any offers that do not contain a waiver of the right to rescind based on the report.

Because the goal of real estate laws and rules is to protect consumers, a party cannot usually waive a consumer protection right granted by law but Wis. Stats. § 790.08 permits a buyer to 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."

### **“As-Is” Sales**

Sellers may want to sell property “as-is,” without making any representations about the condition of the property. An “as-is” sale puts the buyer on notice that the buyer should do a thorough inspection of the property because the seller will not be providing information about its condition. Selling a property “as-is” does not result in waiver of liability for a seller if:

1. The seller concealed a known defect;
2. The seller prevented the buyer from conducting a thorough inspection; or
3. The seller knew of a latent defect.

A **latent defect** is one that could only be discovered under certain conditions, which were not in existence when the buyer inspected.

A buyer should strongly consider inspection contingencies when making an offer on an “as-is” property. If a seller wants to sell “as-is,” the listing agent must modify the portions of the listing contract where the seller is making condition representations and where the seller is agreeing to complete a condition report. Brokers must comply with their inspection and disclosure obligations when dealing with an “as-is” seller.

### ***Condominium Disclosure Requirements***

Sellers of condominiums have additional disclosure obligations. When a condominium seller completes a real estate condition report, the seller is commenting on the condition of the unit, common elements, and limited common elements to which the seller has access. A seller must include an executive summary and a condominium addendum with the seller’s condition report and condominium disclosure documents that the seller provides to a buyer after accepting an offer. There is not a state-approved form for a condominium seller’s real estate condition report, executive summary, or condominium addendum. Any form that a seller uses must comply with the condominium and seller disclosure laws.

#### **Executive Summary**

Brokers can use an **executive summary** when showing the unit to potential buyers as an overview of the highlights of a condominium and focus on the information that may be most important to the buyer. Brokers do not prepare the summary. The declarant or the association prepares the summary, which must either explain the following information in plain, clear language or specifically refer to where the information can be found in the condominium disclosure documents:

1. Condominium identification - the name of the condominium.
2. Governance - the name and address of the condominium association, whether the association is self-managed or has delegated management and the name and address of the person who may be contacted for general condominium information.
3. Parking - a description of parking availability, restrictions, and costs.
4. Pets - a description of the rules relating to pets.
5. Unit rentals - whether unit owners may rent their units and any restrictions on rentals.
6. Special amenities - a description of special amenities like a golf course or athletic club, and any unit owner obligations to join or pay dues.
7. Unit repair and maintenance responsibilities - a description of a unit owner’s repair and maintenance responsibilities.

8. Common element and limited common element maintenance, repair and replacement - identity of person responsible for the maintenance, repair, and replacement of the common elements and the limited common elements, and whether this is paid with unit assessments, reserve funds, or both.
9. Reserves - whether the association has reserves for common element repairs and replacements and whether the reserves are in a statutory reserve account.
10. Fees on new units - a description of any provisions exempting the declarant or modifying the declarant's obligation to pay condo maintenance fees on unsold units during the declarant control. Declarant control refers to that period of time when the declarant exercises the powers and responsibilities of the association while construction is completed and new units are sold (up to 10 years for expandable condominiums, up to three years for other projects).
11. Expansion plans -- description of any condominium expansion plans, deadline for completion of any expansion, and who is responsible for management during the expansion period.
12. Unit alterations -- description of the rules, restrictions and procedures for unit owners who want to alter their units or enclose limited common elements.
13. Amendments - an indication that a unit purchaser's rights and responsibilities may be altered by amendment of the declaration or bylaws, and a description of the amendment process.
14. Other restrictions or features - optional.

#### **Condominium Addendum to the Seller's Real Estate Condition Report**

The **condominium addendum** supplements the seller's condition report. The seller completes the condominium addendum with very basic information, including the unit address and description, contact information for the seller or the listing agent, association management information, and budget and condominium maintenance fee information.

It may be helpful to attach a copy of the current budget to the condominium addendum to provide potential buyers with information about current unit fees. The budget and the assessment fees are important aspects of condominium living that first-time condominium buyers may not understand.

#### **Buyer's Rescission Rights**

A condominium seller usually does not provide condominium disclosure documents to buyers until after accepting a buyer's offer. The documents are extensive and sellers may only have one copy. A seller must provide the documents within 10 days of accepting a buyer's offer and at least 15 days before closing. These deadlines are found in the WB-14 Condominium Offer to Purchase. After a buyer receives the condominium documents, the buyer has five business days to rescind in writing. If a seller does not provide the documents by the deadline, the buyer has five business days to rescind in writing. If the seller provides incomplete documents, the buyer has five business days to request the missing documents. If the seller fails to provide them within five business days of the buyer's request, the buyer has five business days to rescind based on the missing documents. If a buyer does not request missing documents or rescind within the five business days, the documents are deemed satisfactory and the buyer will have no further right to rescind based on condominium disclosure documents.



## ADDITIONAL DISCLOSURE OBLIGATIONS

### ***EPA Lead-Based Paint Disclosure Rules***

The requirements of the rules apply to the sale or rental of target housing. Target housing is residential properties constructed before 1978. It also includes properties for which the building permit was issued before January 1, 1978.

#### **Owner's Responsibilities**

A property owner must disclose to a buyer, or if it is a rental property, the tenant, whether the owner has any knowledge of lead-based paint (LBP) or LBP hazards on the property and to provide copies of any reports or records available to the owner pertaining to LBP or LBP hazards. The property owner must also disclose this to the listing broker. The owner must also provide the buyer or tenant with a copy of the EPA pamphlet entitled *Protect Your Family From Lead in Your Home*.

In a sale transaction, the seller must also provide the buyer with the opportunity to conduct a lead-based paint inspection or risk assessment. A rental property owner does not have to provide this opportunity to a tenant.

#### **Broker's Responsibilities**

The listing broker must inform the owner of the owner's obligations under the law and ensure the owner's compliance with the obligations. The listing broker must also inspect the property for material adverse facts.

Cooperating agents, other than buyer's agents paid solely by the buyer, share the listing broker's responsibilities. Typically, the cooperating agent will be the one to provide the EPA pamphlet to the buyer and to discuss with the buyer whether the buyer wants to include a LBP inspection contingency in an offer to purchase. Because the brokers have the ultimate responsibility to make sure that sellers comply with the lead-based paint disclosures, brokers often take it upon themselves to make sure that sellers comply. Failing to comply with the disclosures can result in high monetary penalties and potentially costly lawsuits so brokers have an incentive to make sure sellers comply with the disclosure responsibilities.

#### **Renovations and Remodeling**

Renovators and remodelers must provide a warning to occupants and owners of target housing before beginning work that will create a LBP hazard. The law covers almost any trade or occupation that could engage in work that would disturb painted surfaces that may contain LBP. It also covers the owner of the property and the owner's employees when they engage in this type of work.

### ***Use Value Assessment of Agricultural Land***

Under the use value assessment method of assessing Wisconsin agricultural land for property tax purposes, farmland is assessed based upon its agricultural productivity rather than its potential for development or fair market value. If the use of agricultural land assessed under the use value system is changed to a non-agricultural use, the current owner must pay a fee based on the number of acres removed from agricultural use.

Sellers must disclose whether the property has been assessed under the use value system, whether the owner has been assessed a charge for changing the property's use, and whether the owner has been assessed a penalty that has been deferred. Though not specifically required by law, sellers and brokers should disclose to buyers that changes in use of the property assessed under the use value system will result in a buyer owing a conversion fee if the property is taken out of agricultural use. This is information that suggests a material adverse fact that a broker might have to disclose even if a seller chooses not to.

If a buyer intends to buy and develop the property or otherwise change the use, the buyer should confer with the local taxing authorities to determine the approximate amount of any use value penalty and obtain any other pertinent tax information.

The conversion charge amount is a per-acre charge based upon the number of acres taken out of agricultural production. The dollar amount per acre will vary based upon the size of the parcel involved and the county in which the parcel is located. The conversion charge amount also changes each year and is not imposed on the property until the property is actually taken out of agricultural production. It is the change in use, not the change in ownership, zoning, or other factors that triggers the conversion charge. To view current penalties for taking property assessed under this system out of agricultural use, go to the Wisconsin Department of Revenue's website section on the use value conversion charge.

### ***Storage Tank Disclosure Issues***

#### **Underground Storage Tanks (UST)**

All underground fuel oil and gasoline tanks are regulated by the DSPS. All residential underground heating fuel tanks 1,100 gallon capacity or greater must have a tightness test every two years. If the tank does not pass the tightness test, an investigation must be conducted and the problem corrected. This may involve the removal of the tank and remediation of any contamination. All underground gasoline or diesel fuel tank systems (tank and piping) used to supply fuel for vehicle or other combustion engines must be provided with corrosion protection and spill and overfill protection. When a person purchases property with an existing tank, the new owner must notify the DSPS and register the tank. If a property owner discovers an previously unregistered tank, the current property owner is responsible for registering the tank and complying with any removal or remediation requirements.

Tanks that are no longer in use must have closure. At least 30 days before permanent closure of a UST, the DSPS must be notified. Closure means removing the tank from the ground after cleaning out any liquids or sludge. If removing a tank would damage a structure, the DSPS may permit closure in place. Site assessments at the time of removal are required, except for heating oil tanks of 4,000 gallons or less and farm and residential fuel tanks. UST removals must be performed under the observation of a neutral, third party who would report any leak observed during the removal.

#### **Residential Aboveground And Basement Fuel Oil Storage Tanks**

Residential aboveground storage tanks (AST) abandoned and no longer in service are required to be permanently closed. An AST is considered to be abandoned if regular product transfers are not made to and from the AST. Product transfers must be made at least once every 180 days for motor fuel ASTs and at least once a year for heating oil ASTs for the AST is considered to be in use and not abandoned. Exceptions are made for oil ASTs used for emergency and backup fuel and overflow ASTs that are not subject to the product transfer criteria.

### **Land Use**

A **flood plain** is land that has been or may be covered by flood water during a regional flood. "Regional flood" means a flood statistically determined to be representative of large floods known to have generally occurred in Wisconsin and that may be expected to occur on a particular water body, based on similar physical, rainfall and runoff characteristics, once in every 100 years. There is also a 500-year zone.

**Shorelands** are lands within 300 feet of the ordinary high water mark of a river or stream or 1000 feet from an ordinary high water mark of a lake.

**Wetlands** are areas where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and that have soils indicative of wet conditions.

It is not the broker's responsibility to determine if a property falls into one or more of these categories. Part of being a competent broker, however, is knowing the local market, which means if a broker practices in an area with waterfront properties, the broker should have some knowledge about the regulations affecting real estate located near water. A broker should disclose to parties in a transaction involving a property adjacent to or near water that the property may be in a floodplain or subject to wetland or shoreland zoning regulations. These property characteristics may require additional permits and reviews.

### **Radon**

Radon is a naturally occurring, odorless radioactive gas. It comes from the breakdown of uranium in soil, rock, and water. The gas may be found in new and existing construction including homes, offices, and schools. Radon is believed to be the second-leading cause of lung cancer in the United States. Radon exposure may contribute to other kinds of cancer in children. The Environmental Protection Agency (EPA) estimates that 1 in every 15 homes nationwide has a radon level at or above the recommended radon action level.

Radon issues can often be fixed with simple and affordable venting techniques. Testing is the only way to determine the presence and amount of radon. A radon test should be taken at the lowest level. The lowest lived-in level may be a basement if used frequently. Testing should occur in a regularly used room like a living room or bedroom but not a kitchen or bathroom. When including a radon test contingency in an offer, parties should consider performance of radon mitigation, completion schedule, and payment for mitigation performed. Testing is not required by law or regulated.

### **Lead**

The source of lead in the drinking water of most Wisconsin homes is usually lead pipes or solder in the plumbing or lead service lines connecting buildings to street water mains. As water passes through the pipes and across soldered connections, lead will dissolve continuously into the water. Lead concentrations vary greatly depending on the corrosiveness of the water, the type and age of the plumbing materials used in the house, and the length of time that the water stands in the pipes.

Levels of dissolved lead in drinking water may decrease as the plumbing ages and mineralization and oxidation occur inside the pipes creating a barrier between the water and the lead. Lead poses a greater hazard to young children, infants, and fetuses than to adults. Excessive levels of lead can damage the brain, kidneys, nervous system, red blood cells, and reproductive system. The degree of harm is directly related to the level of lead in the blood. Known effects of exposure to lead range from subtle changes in body system functions at low levels of exposure to severe toxic effects associated with acute poisoning or even death at very high levels.

In homes constructed before October 1984, running a cold water faucet for a few minutes may reduce lead concentrations in water. Hot tap water may have higher concentrations of lead because the hot water will dissolve lead into the water. To minimize exposure to lead, owners of homes where lead is potentially present should not use hot tap water for drinking, cooking, or mixing baby formula.

### **Asbestos**

Asbestos refers to six naturally occurring minerals that are combined with a binder to produce a variety of products including insulation, sound and fire proofing materials, floor coverings and other construction materials.

Repair consists of sealing or covering the ACM. This may necessitate the use of certified asbestos workers for any projects disturbing or impacting the insulation unless the project is:

- A homeowner performing asbestos abatement or activities on the homeowner's own single-family, non-rental residential property that is occupied or intended to be occupied solely by the owner and the owner's family;
- Operations and maintenance work involving disturbing or removing no more ACM than would fit in a single glove bag or a disposal bag no larger than 60 inches by 60 inches properly filled and sealed; or
- Backhoe operators using the backhoe to demolish or remove a facility when ACM is allowed to remain.

### **Consequences for Rental Property Owners**

Many building materials may contain asbestos, such as slate shingles, floor tiles, blown-in insulation, window glazing, and caulk. These and other similar materials must be tested or assumed to contain asbestos before disturbing or removing. If the apartment renovations or maintenance activities include disturbing, replacing, or removing any of these known or suspect materials in any type of building, the rental owner or management company must be a certified asbestos company and use only workers certified in asbestos abatement or hire a certified asbestos company to remove these materials.

### **Health Risks**

Generally, only damaged asbestos poses a risk and undisturbed asbestos may be best handled by leaving it alone. Asbestos is harmful in its friable state, which means that it is deteriorated or damaged enough to be crumbled thereby releasing the dangerous fibers into the air, leading to potential ingestion.

Exposure to asbestos has been linked to:

- Asbestosis, which is a scarring of the lung tissue;
- Lung cancer; and
- Mesothelioma, which is cancer of the lining of the lungs.

Asbestos can only be identified by analysis of a sample of the material suspected to be asbestos. It cannot be identified simply by looking at it. The Wisconsin State Laboratory of Hygiene conducts tests on material suspected to contain asbestos.

Wis. Admin. Code § DHS 159.04(7) “Asbestos inspection” means any activities undertaken to specifically determine the presence or location or assess the condition of asbestos-containing material or suspect asbestos-containing material, by visual or physical examination or by collecting a sample or samples of the materials. “Asbestos inspection” includes re-inspection of known or suspect asbestos-containing material that has previously been identified.

Wis. Admin. Code § DHS 159.04(9) “Asbestos management activity” means an inspection for asbestos-containing material, including collecting sample material, the design of an asbestos abatement activity or school asbestos response action, or the development of an asbestos management plan.

## **Pesticides**

### **Lead Arsenate**

Lead arsenate was used as a pesticide on apple and cherry orchards from the late 1800s to the mid 1900s. It is a compound containing both lead and arsenic. Both may be present in soil around trees to which the pesticide was applied. In addition to the soil around trees, orchard operators typically used an area of the property for mixing and preparing the pesticide for application to the trees and this area may be contaminated. Farmers favored it because of its low toxicity to plants and great effectiveness for controlling insects.

Lead arsenate does not break down and is not very mobile. It may still be found in soil today even though it has not commonly been used for over 50 years. Disclosure of potential past usage of lead arsenate pesticides in former orchard properties is useful for buyers and others in a transaction but a buyer may need specialized assistance due to the population’s general unfamiliarity with the hazards of lead arsenate. Concentrations of lead arsenate can vary considerably on a property because it was most effective when applied individually to trees. Higher concentrations tend to occur where the former trees stood; lower concentrations appear between the former tree sites. Chemical analysis of soil will determine if there are any elevated concentrations of lead or arsenic.

### **WRA – ADP Lead/ Arsenic Pesticide Addendum**

WRA worked cooperatively with the DNR and DATCP to develop the Lead/ Arsenic Pesticide Addendum. It prompts the seller to disclose any information about use of the property as an orchard prior to 1960 and about any use of lead or arsenic-based pesticides. Licensees should use this addendum or another similar form with sites that have been orchards.

### **Health Risks**

Lead arsenate enters the body by ingestion. Infants and small children may be more adversely affected by exposure to lower levels of lead arsenate. Preschool age children are the most vulnerable because they play in soil and are likely to place their hands and other objects into their mouths. Small children also absorb lead and arsenic more readily than adults and are more likely to have nutrient deficiencies that may facilitate lead and arsenic absorption. Long-term exposure to arsenic can lead to cancer and lead exposure can lead to developmental problems in children and adverse effects on the nervous system and kidneys in both adults and children.



### **Atrazine**

Atrazine is an herbicide used for over 25 years to control weeds in Wisconsin cornfields. Groundwater contamination from atrazine is due to runoff from farm fields, agricultural spills, or improper disposal of unwanted or unused products. In areas where corn has been planted, contaminated wells usually contain some level of atrazine, which makes testing for atrazine a good indicator of other potential contamination due to herbicides and pesticides.

### **Health Risks**

Atrazine may lead to cardiovascular or reproductive problems. Drinking water that contains atrazine will not cause immediate sickness but low-level consumption over time may lead to health problems. The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) is responsible for protecting Wisconsin's groundwater from pesticide, herbicide, and fertilizer contamination.

### ***Methamphetamine***

Methamphetamine or "meth" is a man-made amphetamine that is produced and sold illegally in the form of pills, powder, or chunks. Common street names for meth include "speed," "crank," "ice," "glass," and "crystal." Meth is produced in makeshift labs set up in homes, apartments, hotel rooms, mobile homes, or other buildings. Although the ingredients used to produce meth are readily available, many of the chemicals used in the "cooking" process can be harmful.

The following are signs that meth may have been manufactured in a property:

- Yellow discoloration on walls and other surfaces;
- Taped-off smoke detectors;
- Burning eyes, an itchy throat, or a metallic taste in the mouth while in the property;
- Strong odors similar to solvent, cat urine, or ammonia; or
- Presence of security cameras or other surveillance equipment.

If the seller does not disclose the property's history, licensees should generally disclose the current or prior presence of a meth lab on the premises as information suggesting the possibility of a material adverse fact and recommend that the parties obtain expert assistance to inspect or investigate. If an active meth lab is discovered, local law enforcement or the Wisconsin Department of Justice's Division of Criminal Investigation (DCI) will seize the lab and bring in hazardous chemical consultants to assess property contamination. Local law enforcement or DCI will then consult with the local health department to assess the property for hazards and long-term exposure risks from residual chemicals. The DNR may also be called in to assess any environmental impacts from chemical spills or improper waste disposal.

A buyer could contact local law enforcement or the health department to see if a property has a history of being used for methamphetamine production. When listing a property formerly used as a meth lab, a broker can contact local law enforcement or the local public health department and request any reports from the seizure and clean up of the lab. If reports are obtained, they can be provided to parties as a disclosure document.

Short-term exposure to high concentrations of chemical vapors in a functioning meth lab can cause severe health problems or even death. For this reason, meth "cookers," their families, and first responders are at the highest risk of acute health effects including lung damage and chemical burns to different parts of the body. Unsuspecting people can also touch residue of meth and have symptoms similar to those experienced by meth users. The meth "cooking" process may release toxic gases and hazardous waste materials in the lab and throughout the building. There have been reported cases of illness resulting from lab residue and some reports of structural property damage have been documented. Contamination must be remediated and sanitation, electrical, and other safety hazards must be addressed.

## INSURABILITY DISCLOSURE ISSUES

Insurance coverage may be difficult to find or expensive. Home buyers need to know about the insurability of their property. Properties that high-risk, such as properties in floodplains or those with an environmental problem will be even more difficult to insure. Buyers will need to consider whether the property they are considering is insurable, what kind of coverage is available, and whether they will be able to afford the premium and deductible. Real estate licensees are not insurance experts but brokers must urge buyers to consult with a homeowners-insurance provider early on in the process. This should happen at the same time the buyer is looking for mortgages and obtaining pre-qualification letters. Buyers need to learn about the risks commonly excluded from homeowners-insurance policies and about any property conditions that may need to be addressed to make the property insurable. Whether a property's insurability is a material adverse fact that a broker must disclose will depend on the facts and circumstances of the transaction.

## DRAFTING AND PRESENTATION OF WRITTEN PROPOSALS

Brokers must present written proposals to parties in a fair and truthful manner, discussing the pros and cons of each proposal. Written proposals include any written document provided by one party to another during a transaction such as offers, options, counter-offers, amendments, notices, and rental agreements. When presenting an offer authored by a broker and where that broker would earn a commission as a co-broker, that broker should not "oversell" the offer to the seller. A broker must present all written proposals to a party unless contrary to the party's instructions. Instructions should be in the agency agreement to protect the broker from any claim of discrimination or violation of the Sherman Act.

### **REEB 24.13 Drafting and submission of written proposals.**

(1) Refusal prohibited. Licensees shall not refuse to draft or submit any written proposal unless the terms of the written proposal would be contrary to specific instructions of the other party.

(2) Withholding written proposals prohibited.

REEB 24.13(2)(a)(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 promptly present all written proposals received to the licensee's client or customer. Licensees shall not withhold any written proposal from presentation pending the party's action on a written proposal previously presented.

(3) Fair presentation of written proposals.

(a) Licensees shall present all written proposals in an objective and unbiased manner to their clients and customers. Licensees shall inform their clients and customers 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 on written proposal. Licensees shall promptly inform their clients and customers whether the other party has accepted, rejected, or countered their written proposal. A licensee shall immediately provide a written statement to the other party's broker that includes the date and time when the written proposal was presented when such a statement is requested by the other party or the other party's broker. A licensee shall immediately provide a written statement to the other party's broker that includes the date and time when the written proposal was rejected or had expired without acceptance when such a statement is requested by the other party or the other party's broker.

### ***Confidentiality of Offers***

A broker may, but is not required to, disclose to potential buyers that a seller has accepted an offer, accepted an offer subject to contingencies, or accepted an offer that has a bump clause. A licensee is prohibited from disclosing any terms of a submitted or accepted offer other than that an accepted offer may be subject to contingencies and may contain a bump clause. A licensee cannot tell a potential secondary buyer, for example, that the primary offer is for \$2,000 less than the listing price. An agent is not required to tell a buyer if other offers have been submitted. If a licensee offers to tell a buyer upon submission of other offers, that licensee has created a duty to provide this information to the buyer.

#### **REEB 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 lease 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.

### ***Drafting Written Proposals***

Brokers must draft written proposals exactly and precisely to reflect the details of a transaction. If a party asks a licensee to draft a written proposal that does not accurately reflect the terms of the transaction, the licensee should refuse to do so.

#### **REEB 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.

## SCOPE OF LICENSE AND COMPETENCY

One of a broker's most challenging roles can be to recognize the limits of what a real estate license permits a broker to do and recognize the limits of the broker's competency. This can be challenging because brokers are working with parties who are demanding results, whether that is selling a listed property or finding a buyer's dream house. Much of a broker's success in real estate practice depends on customer service and pleasing the client or customer. Consumers see real estate licensees as experts in all areas connected to a real estate transaction including taxes, zoning, construction standards, and home inspections. To minimize a broker's liability and protect consumers, brokers must be able to limit the kind of information and advice they provide to consumers. This means referring consumers to other service providers such as tax attorneys or the local zoning board when consumers ask questions that fall outside of the scope of providing real estate services. Brokers also must be willing to refer transactions to colleagues if the broker is not competent to engage in the transaction.

## DISCLOSURE OF COMPENSATION AND INTERESTS

Agency law prohibits an agent from competing with a principal because a broker cannot perform services on behalf of the broker's client with undivided loyalty if the broker also has an interest in the transaction. Brokers can participate in transactions where the broker has an interest in limited situations where there is written disclosure of the broker's interest and written consent from the parties to the transaction. A broker acting in a real estate transaction may not accept compensation related to the transaction from anyone other than the broker's client, principal broker, or broker-employer without prior written consent from all parties in the transaction. A party can give consent in an agency agreement, an offer to purchase, or another written document.

### ***Family Members***

Brokers acting as agents in a transaction cannot act on the broker's own behalf and cannot act for a member of the broker's immediate family without prior written consent of all parties to the transaction. A broker also cannot act on behalf of any firm, other organization, or business entity in which the broker has an interest without the prior written consent of all parties to the transaction. The broker shall obtain consent in an offer to purchase, option, lease, or other transaction document.

Immediate family includes 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, the spouse of a licensee, aunts, and uncles, sons-in-law or daughters-in-law of a licensee, or a licensee's spouse.

### ***Referral Fees***

Brokers may not receive referral fees from individuals or entities for a referral, unless prior to or at the time of referral, the broker discloses the potential for compensation in writing. The broker must disclose the potential compensation for the referral or that the broker has an interest in the person or entity providing services. Licensees do not need to disclose referral fees for real estate services between licensees.

### ***Principal in a Transaction***

A listing broker cannot pay compensation or an incentive to a licensee who is acting as a buyer in a transaction without prior written consent from the seller. When acting as a principal in a transaction rather than as an agent, a broker cannot earn commission. To address this, when purchasing a property, a broker may include incentives in an offer to purchase requesting that the listing broker or the seller pay the broker what the broker would have earned if the broker

could earn a commission on the transaction.

**Disclosure of Status**

A licensee acting as a principal in a real estate transaction shall disclose in writing the licensee's licensed status and intent to act in the transaction as a principal at the earliest of:

- 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;
- A showing of the property; or
- Any other negotiation with the seller or the listing broker.

**REEB 24.05 Disclosure of compensation and interests.**

(1) Compensation.

(a) A licensee acting as an agent in a real estate or business opportunity transaction may not accept any fee or compensation related to the transaction from any person, other than the licensee's client, principal broker, or broker-employer without prior written consent from all parties to the transaction.

(b) 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, unless the licensee, prior to or at the time of the referral, discloses to the party in writing 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. This paragraph does not apply when the licensee makes a referral to another licensee for real estate services under s. 452.19, Stats.

(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 shall obtain the written consent in the offer to purchase, option, lease or other transaction contract.

(4) Disclosure to seller. A listing broker may not pay any compensation or incentive to a licensee who is acting as a buyer in a transaction without prior written consent from the seller.

(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 in writing to the other party in a transaction or to an agent representing the other party.



## TIE-IN ARRANGEMENTS

Broker generally cannot enter into tie-in arrangements, where the broker will only provide services to a seller or a buyer if the party agrees to obtain other services through the broker. Brokers can enter into tie-in agreements if the broker is selling or controlling the sale of vacant land and requires a buyer to use a specific builder to develop is if:

1. The builder owns a bona fide interest in the real estate and there is full disclosure; or
2. The licensee is the builder or the builder owns the real estate, personally or by a commonly controlled corporation and whose business is selling improved property and not vacant land and there is full disclosure; or
3. The agreement to sell if the buyer uses one or more specific builders is a bona fide effort to maintain development quality or architectural uniformity and the licensee does not receive compensation from the contractor for the agreement.

### **REEB 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. REEB 24.05 (1) (b).

(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. REEB 24.05 (1) (b).

(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.

## FAIR HOUSING AND THE AMERICANS WITH DISABILITIES ACT

### **REEB 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.

#### **Federally protected classes:**

Race  
Color  
Religion  
National origin  
Sex  
Handicap  
Familial status

#### **State protected classes under Section 106.50, Wis. Stats.:**

Race	Color
Religion	National origin
Sex	Disability
Family status	Marital status
Lawful source of income	Age
Ancestry	Sexual orientation
Status as a victim of domestic abuse, sexual assault, or stalking	

### **Local Fair Housing Law**

Counties and municipalities in Wisconsin are allowed to adopt local fair housing ordinances. The ordinances may add protected classes in addition to those protected under federal or state law. Many such ordinances have been adopted, and real estate licensees must be aware of any additional classes protected under local ordinances covering the licensee's practice area.

### **Sanctions for Violations**

Real estate licensee discipline  
Civil fines and damages  
Court costs and attorney's fees

### **Testers and Fair Housing Organizations**

U.S. Department of Housing and Urban Development (HUD)  
Wisconsin Department of Workforce Development (DWD)  
Local fair housing organizations  
Private individuals

### **Conduct Prohibited by Fair Housing Law**

**Discrimination** – Failing or refusing to provide equal services because of a person's membership in a protected category or class.

**Blockbusting** – Attempting to obtain listings by instilling fear in the property owner that the property's value is about to decrease because a member of a protected category or class is entering into the area.

**Steering** – Showing properties to a consumer only in those geographic areas when the licensee believes the consumer "belongs" or would "fit in," because of the consumer's membership in a protected category or class.

**Advertising** – Placing ads that an "ordinary reader" would believe to be seeking or precluding persons based on membership in a protected category or class. The intent of the licensee writing the advertisement is not important – it is the perception presented to the "ordinary reader" that matters.

***Permissible Under Fair Housing Law***

- Discrimination based on age or family status with respect to housing for older persons. Housing may qualify as housing for older persons when at least 80% of the dwelling units are occupied by at least one person 55 years of age or older, and policies are published and procedures are adhered to that demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.
- 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.
- The development of housing designed specifically for persons with disabilities in relation to such housing.
- Refusing to provide housing 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. The property owner must be able to demonstrate a pattern of this behavior.
- Requiring that a person who seeks to buy or rent housing supply information concerning family, marital, financial, and business status but not concerning race, color, disability, sexual orientation, ancestry, national origin, or religion.
- Requiring that a person who seeks to buy or rent housing for older persons supply information concerning age for the purpose of verifying compliance with that type of housing.
- Advertising for roommates may indicate the desired gender of the tenant sought in situations where there are shared living areas or where the advertising is for a dormitory at an educational institution. This exception does not apply if the rental is for separate units in a single or multi-family dwelling.
- Referencing a protected class in an advertisement if advertising is part of an affirmative marketing program designed to attract persons who would not ordinarily be expected to apply for housing.
- Refusing to rent owner-occupied housing to a person with a service animal if an owner or an immediate family member occupying the property is allergic to the animal. The person with the allergy must be able to verify the allergy with a certificate signed by a physician that states that the owner or family member is allergic to the type of animal the individual possesses.

### ***Occupancy Standards***

The Federal Fair Housing Act permits local and state governments and the federal government to establish reasonable occupancy limitations for housing units. An occupancy standard, such as a minimum square footage per person or maximum number of persons per bedroom, should not discriminate against large families, which could violate the familial status protections of the Fair Housing Act. Occupancy standards should be based upon reasonable criteria, such as size of the unit or heat and water limitations. HUD guidance has stated that an occupancy policy of two persons per bedroom, as a general rule, is reasonable under the act.

### **SPS 379.09. Size of rooms.**

Every sleeping room shall be of sufficient size to afford at least 400 cubic feet of air space for each occupant over 12 years of age, and 200 cubic feet for each occupant under 12 years. No greater number of occupants than the number thus established shall be permitted in any such room.

### **Advertising**

Brokers, publishers, advertisers, and multiple listing services are responsible if they make, print, or publish an advertisement that violates fair housing laws. HUD provides guidance for advertising property or services related to housing.

1. Race, color, national origin. Real estate advertisements should not state a discriminatory preference or limitation on membership in a protected class. Using racial or ethnic terms such as “white family home” or “no Irish” to describe housing, current or potential residents, or the neighbors or neighborhood would create liability under fair housing laws.
2. Religion. Advertisements should not contain an explicit preference, limitation, or discrimination on account of religion. For example, stating “Lutherans only” or “no Catholics” in an advertisement would be a violation of the law. Advertisements that use the legal name of an entity that contains a religious reference, such as “Roselawn Catholic Home” or those that contain a religious symbol standing alone may indicate a religious preference and violate fair housing laws unless the advertisement also includes a disclaimer stating that the property will not discriminate on the basis of race, color, religion, national origin, sex, handicap, or familial status.

Advertisements containing descriptions of properties such as “apartment complex with chapel” or “kosher meals available” that do not state a preference for persons likely to make use of those facilities do not violate fair housing law. Including secularized terms or symbols such as Santa Claus or the Easter Bunny that relate to religious holidays or using phrases such as “Merry Christmas” or “Happy Easter” are not violations of fair housing advertising laws.

3. Disability. Real estate advertisements should not contain explicit exclusions, limitations, or other indications of discrimination based on ability, such as “no wheelchairs.” Advertisements describing attributes like “jogging trails” or “fourth-floor walk-up” do not violate the act. Describing prohibited conduct such as “no smoking” or “no alcohol” does not violate the act. Advertisements that describe accessibility features such as ramps and lower counters are not violations of fair housing law.
4. Familial status. Advertisements may not state an explicit preference, limitation, or discrimination based on familial status. Advertisements may not contain limitations on the number or ages of children, or state a preference for adults, couples or singles.

Advertisements describing the property as “two bedroom, cozy, family room” or “quiet streets” do not violate fair housing law.

For more information about fair housing and advertising, go [www.hud.gov](http://www.hud.gov).

### ***Fair Housing Complaints***

The Office of Fair Housing and Equal Opportunity (FHEO) investigates complaints filed with HUD. The person filing the complaint is called the complainant and the person or organization at the source of the complaint is the respondent. HUD provides the respondent with an opportunity to agree to a remedy to the complaint. Any conciliation agreement between HUD and the respondent must remedy the problem and protect the parties and the public interest. If HUD and the respondent reach a suitable agreement, HUD does not take any further action. After the agreement, if HUD has reasonable cause to believe that a respondent has breached the agreement, HUD will recommend the attorney general file suit seeking additional remedies and enforcement action.

If HUD and the respondent cannot reach an agreement remedying the complaint, the FHEO determines whether reasonable cause exists to believe that the respondent engaged in discriminatory housing practices. If FHEO finds reasonable cause, they notify the parties of the reasonable cause, HUD's determination of possible discrimination, and schedule a hearing before an administrative law judge. Either the complainant or respondent can terminate the administrative proceeding by elevating the matter to litigation in federal court. If a party chooses to litigate the matter in federal court, the Department of Justice takes over HUD's role as counsel seeking resolution of the charge on behalf of aggrieved persons, and the matter proceeds as a civil action.

A complainant can file a suit in federal district court or state court within one year of an alleged violation. If a complainant cannot afford an attorney, the court may appoint an attorney to litigate the case. A court can award actual and punitive damages and attorney's fees and costs.

### **Complaints under Wisconsin's Law**

1. Complaints must be in writing, state the facts, and be filed within one year of the alleged discriminatory act taking place.
2. At any time after a complaint is filed alleging discrimination, the DWD may file a petition seeking a temporary injunction or restraining order against the respondent.
3. The DWD shall commence proceedings with respect to a complaint before the end of the 30th day after receipt of the complaint. If the DWD is unable to complete the investigation within 100 days, it shall notify the complainant and respondent in writing of the reasons.
4. The court may allow a prevailing complainant reasonable attorney fees and costs.

The Equal Rights Division of DWD may also refer a fair housing complaint against a person holding a Wisconsin real estate license to the DSPS for enforcement action. Potential DSPS discipline could include education, reprimand, forfeiture, and license revocation, suspension, or limitation.

***Establishing Office Procedures Regarding Fair Housing Laws***

Brokers should institute office procedures to ensure all employees are complying with fair housing laws and to protect the broker from potential claims of discrimination.

Topics for a Broker's Compliance Practices and Procedure

1. Executing agency contracts.
2. Keeping lists of available properties and practices for sharing them with consumers. This can avoid having a licensee tell a consumer a property is sold or unavailable if the property is still available, which could lead to a claim of steering.
3. Uniform qualifying procedures for prospective buyers and tenants. A broker could create uniform prospect cards so that salespeople ask all prospective buyers and sellers the same questions.
4. Handling questions at showings or open houses.
5. Marketing and advertising guidelines.
6. Procedures for handling compromising situations and suspected discrimination.
7. Record-keeping procedures.