



To: Assembly Committee on Housing and Real Estate
From: Cori Lamont, Vice President of Legal and Public Affairs
Date: January 9, 2024
RE: AB 918/SB 870 – Real Estate Practice Changes

The Wisconsin REALTORS® Association (WRA) supports AB 918/SB 870 making a series of changes to the practice of real estate including establishing a safe harbor for licensees who use government information, disclosures to consumers in contracts when contractual rights are being assigned to another and creating consistency in the statute and administrative rule relating to disclosure obligations by real estate agents.

Background

Wisconsin Statute Chapter 452 governs real estate brokerage practice, investigation and discipline of licensees, and the duties and powers of the Real Estate Examining Board (REEB). Real estate brokers and salespersons are regulated by the Wisconsin Department of Safety and Professional Services as well as the REEB which protects Wisconsin property buyers and sellers by ensuring safe and competent practice.

AB 918/SB 870

- I. **Reduces real estate licensee risk by creating a safe harbor** when using government information and citing the source. For example, if a real estate agent uses the assessor record to indicate the lot size when selling the property and later it is determined the assessor record was wrong, the agent should not be held responsible for incorrect information cited from a government source.
- II. **Allows payment of referral fees and commission to former licensees under certain circumstances.** AB 918/SB 870 clarifies that the payment of referral fees or commission can be made if the individual was licensed when the commission was earned, or referral fee arrangement was made.

Currently, the REEB has a policy that an individual must still be licensed both when the agreement to receive commission or referral fees is made and when the money is paid. However, this often creates challenges in the real world. For illustration, an agent earned a commission but passed away before the transaction closed when they would have received the payment. Under the REEB's policy, the firm cannot pay the agent's estate the commission owed, because the deceased agent at the time of payment is no longer licensed.

Another common example is an agent who has decided to retire and has not renewed their license before a transaction has closed. The agent has earned the commission or referral fee, but the firm or licensee cannot pay the agent due to the REEB's policy.

- III. **Underscore the value of competent real estate practice and transparency by**

- a. Increasing fines & forfeitures up to \$5,000 for the most egregious violations of Wis. Stat. Ch. 452. Under current law, for the most severe violations of Wisconsin license law, the REEB can only assess a fine or forfeiture up to \$1,000. Therefore, increasing the REEB's ability to assess a fine or forfeiture for the more egregious violations up to \$5,000, modernizes the statute and emphasizes the importance of competent practice.
- b. Requiring wholesaler buyers and sellers to provide written disclosure of purchase or sale of a property. Wholesaling in most simple terms is assigning contractual rights under a contract to another.

Real estate wholesaling is a strategy often utilized by investors. The investor, also known as the wholesaler, enters into a purchase agreement with the seller of real property. The wholesaler then finds a buyer interested in the property and assigns their contractual rights to that buyer for the seller's property. The wholesaler most often profits by selling the contract to the buyer for a price higher than the one agreed to with the seller.

To encourage transparency, this legislation requires a written disclosure from the wholesaler at the time of entering the agreement. 1) disclosure to the seller that they are a wholesaler and 2) to the buyer they are a wholesaler with an equitable interest in the property and does not own title to the property.

- IV. Eliminate administrative rule inconsistency.** Wis. Admin. Code § REEB 24.07(3) currently requires in addition to known material adverse facts to disclose information suggesting the possibility of material adverse facts. Wis. Admin. Code § REEB 24.07(3) creates a disclosure obligation beyond what is required by Wis. Stat. Ch. 452 and inconsistent to the statute. Wis. Stat. Ch. 452 requires real estate licensees to disclose known material adverse facts. AB 918/SB 870 eliminates the inconsistency between the statute and rule.

V. Technical changes relating to independent contractor status

- a. Firms are not responsible for compliance with license limitations. Typically, real estate agents are independent contractors. Therefore, firms cannot control the behavior of the agents associated with their firm. On occasion, real estate licensees are issued a license that includes limitations such as not being able to have consumers in the car for one year because of an operating while intoxicated conviction.

To protect the independent contractor status, AB 918/SB 870 clarifies firms are not responsible for compliance or monitoring of license limitations for licensees associated with the firm unless the firm agrees.

- b. Notification of supervising broker regarding activities. While agents are independent contractors, firms have some legal requirements involving supervision. AB 918/SB 870 requires the REEB to notify the supervising broker of all complaints, order, limitations, suspension, and revocations including non-renewal of licenses relating to any licensee associated with their firm. Establishing that supervising brokers must be copied on communications from the regulator regarding the license of the agent associated with the firm associated with the agents ensures the agent is not practicing on behalf of the firm unless authorized under law.

We respectfully request your support for 918/SB 870.