

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4720/2dn
MDK:jld:jf

February 26, 2002

Speaker Jensen:

This version makes changes discussed with Rick Staff.

I'm assuming that the requirements of proposed s. 452.137 (3) (b) should apply, even if a broker appoints an individual employee, or himself or herself, to act as designated agent for more than one client in a transaction. Do you agree?

Also note that I changed the proposed language on the notices in the agency agreement. For example, because ch. 452, stats., doesn't talk about giving "full real estate advice and counsel," I used different language.

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2001 BILL

1 AN ACT *to renumber* 452.137 (3); *to renumber and amend* 452.137 (2); *to*
2 *amend* 452.135 (2) (b) and 452.137 (1); and *to create* 452.135 (2) (be), 452.135
3 (2) (bm), 452.135 (2) (bs), 452.137 (2) (b) and 452.137 (3) (b) of the statutes;
4 **relating to:** appointment of designated agents by real estate brokers for
5 multiple representation of clients.

Analysis by the Legislative Reference Bureau

Under current law, a real estate broker owes certain duties to all parties in a transaction and to clients. To all parties, a real estate broker must provide services honestly, fairly, and in good faith and must diligently exercise reasonable skill and care. Other duties include disclosing material adverse facts, unless otherwise prohibited by law, and, with certain exceptions, maintaining the confidentiality of information that is given in confidence. To clients, a real estate broker owes additional duties, including, with certain exceptions, loyally representing a client by placing the client's interests ahead of the interests of any other party and, with certain exceptions, disclosing material information to the client. However, if a real estate broker represents more than one client in a transaction, the real estate broker owes each client all of the duties except the duty regarding placing the client's interests ahead of the interests of any other party.

Also under current law, a real estate broker may not provide services to a client without an agency agreement, which must describe the different duties that the broker owes to all parties to the transaction and to the client. In addition, if the real

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estate broker represents more than one party, the agency agreement must identify the parties who are the broker's clients and each client must consent in writing to the multiple representation. The consent must describe the different duties that the real estate broker owes to all parties and to the clients.

This bill makes changes to the requirements regarding multiple representation. If a real estate broker represents more than one party in a transaction, the bill allows the broker to appoint one or more employees to act as designated agents for a client. The real estate broker may also appoint himself or herself to act as a designated agent for a client. An appointment may be made in the agency agreement. After execution of an agency agreement, an appointment may be made only with the written consent of each client.

Under the bill, if a real estate broker appoints an employee or himself or herself to act as a designated agent for a client in a transaction, and no individual designated agent is appointed to act for more than one client in the transaction, a designated agent appointed for a client owes that client all of the duties that a real estate broker owes to all parties to the transaction under current law. In addition, the designated agent owes the client all of the duties that a real estate broker owes to a client under current law, including the duty to loyally represent the client by placing the client's interests ahead of the interests of any other party, including the interests of another client for whom another employee has been appointed as designated agent. The bill also specifies that all employees other than the designated agent for a client owe that client all of the duties that a real estate broker owes to all parties to the transaction under current law but not the duties that a real estate broker owes to a client under current law. Also, if the real estate broker has not appointed himself or herself as the designated agent for a client, but appoints an employee to act as the client's designated agent, the broker owes the client all of the duties that the broker owes to all parties to the transaction under current law, but does not owe the client the duties that the broker owes to a client under current law.

Different requirements apply if a real estate broker appoints an individual employee or himself or herself to act as a designated agent for more than one client in a transaction. If such an appointment is made, the real estate broker and the real estate broker's employees, including the designated agents, owe all clients in the transaction the following duties: 1) the duties that are owed to all parties under current law; and 2) the duties that are owed to all clients under current law, except the duty regarding placing the client's interest ahead of the interests of any other party. These are the same duties that are owed under current law by a real estate broker who represents more than one client in a transaction.

If a real estate broker appoints a designated agent in an agency agreement, the agency agreement must describe the duties owed to the client by the designated agent, the real estate broker, and the broker's other employees. Also, depending on whether the clients have consented to multiple representation and designated agents, the agency agreement must include different notices about the meaning of the duties in language that is specified in the bill. The consent to multiple representation must also describe the duties. If a real estate broker appoints a designated agent after execution of an agency agreement, the written consent of each

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client must describe the duties owed to the client by the designated agent, the real estate broker, and the broker's other employees.

Finally, the bill provides that, if a real estate broker appoints an employee as a designated agent for a transaction, neither the broker nor any other employee is considered to know any information that the designated agent knows about the transaction unless the designated agent informs them or they have actual knowledge of the information. If a real estate broker appoints himself or herself as a designated agent for a transaction, the bill provides that no employee of the broker is considered to know any information that the broker knows about the transaction, unless the broker informs the employee or the employee has other actual knowledge of the information.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 452.135 (2) (b) of the statutes is amended to read:

2 452.135 (2) (b) ~~A~~ Except as provided in pars. (be), (bm), and (bs), a statement
3 of the broker's duties to his or her client under s. 452.133 (2).

4 **SECTION 2.** 452.135 (2) (be) of the statutes is created to read:

5 452.135 (2) (be) If the clients in the transaction have consented to multiple
6 representation under s. 452.137 (1) (a) but not to designated agents under s. 452.137
7 (2) (b) 1., a statement regarding multiple representation that shall be in the following
8 form:

9 MULTIPLE REPRESENTATION WITHOUT DESIGNATED AGENCY

10 IF A BROKER REPRESENTS MORE THAN ONE CLIENT IN A
11 TRANSACTION AND ALL THE CLIENTS HAVE NOT CONSENTED TO
12 DESIGNATED AGENCY, THE EMPLOYEES OF THE BROKER ARE REQUIRED
13 TO PERFORM ALL DUTIES THAT ARE OWED TO EACH CLIENT, INCLUDING
14 KEEPING CERTAIN INFORMATION CONFIDENTIAL, BUT NOT INCLUDING
15 THE DUTY TO PLACE THE INTERESTS OF ANY CLIENT AHEAD OF THE
16 INTERESTS OF ANOTHER CLIENT IN THE TRANSACTION. THIS MEANS

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1 THAT THE BROKER AND THE BROKER'S EMPLOYEES MUST TAKE A
2 NEUTRAL ROLE IN NEGOTIATIONS BETWEEN THE CLIENTS.

3 **SECTION 3.** 452.135 (2) (bm) of the statutes is created to read:

4 452.135 (2) (bm) If the clients in the transaction have consented to multiple
5 representation under s. 452.137 (1) (a) and to designated agents under s. 452.137 (2)
6 (b) 1., and if no designated agent is appointed to act for more than one client in the
7 transaction, a statement regarding multiple representation that shall be in the
8 following form:

9 **MULTIPLE REPRESENTATION WITH DESIGNATED AGENCY**

10 IF A BROKER REPRESENTS MORE THAN ONE CLIENT IN A
11 TRANSACTION AND ALL THE CLIENTS CONSENT TO DESIGNATED
12 AGENCY, AND IF NO INDIVIDUAL DESIGNATED AGENT IS APPOINTED TO
13 ACT FOR MORE THAN ONE CLIENT, THE DESIGNATED AGENT FOR A
14 CLIENT IS REQUIRED TO PERFORM ALL THE DUTIES OWED TO EACH
15 CLIENT, INCLUDING KEEPING CERTAIN INFORMATION CONFIDENTIAL,
16 AND INCLUDING THE DUTY TO PLACE THE INTERESTS OF THE CLIENT
17 AHEAD OF THE INTERESTS OF ANOTHER CLIENT IN THE TRANSACTION.
18 THIS MEANS THAT A DESIGNATED AGENT MUST LOYALLY REPRESENT
19 THE INTERESTS OF THE CLIENT FOR WHOM THE DESIGNATED AGENT IS
20 APPOINTED, INCLUDING IN NEGOTIATIONS.

21 **SECTION 4.** 452.135 (2) (bs) of the statutes is created to read:

22 452.135 (2) (bs) If the clients in the transaction have consented to multiple
23 representation under s. 452.137 (1) (a) and to designated agents under s. 452.137 (2)
24 (b) 1., and if a designated agent is appointed to act for more than one client in the

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1 transaction, a statement regarding multiple representation that shall be in the
2 following form:

3 MULTIPLE REPRESENTATION WITH DESIGNATED AGENCY

4 IF A BROKER REPRESENTS MORE THAN ONE CLIENT IN A
5 TRANSACTION AND ALL THE CLIENTS CONSENT TO DESIGNATED
6 AGENCY, BUT IF AN INDIVIDUAL DESIGNATED AGENT IS APPOINTED TO
7 ACT FOR MORE THAN ONE CLIENT, THE EMPLOYEES OF THE BROKER,
8 INCLUDING THE DESIGNATED AGENTS, ARE REQUIRED TO PERFORM ALL
9 THE DUTIES OWED TO EACH CLIENT, INCLUDING KEEPING CERTAIN
10 INFORMATION CONFIDENTIAL, BUT NOT INCLUDING THE DUTY TO
11 PLACE THE INTERESTS OF ANY CLIENT AHEAD OF THE INTERESTS OF
12 ANOTHER CLIENT IN THE TRANSACTION. THIS MEANS THAT THE
13 BROKER AND THE BROKER'S EMPLOYEES, INCLUDING THE DESIGNATED
14 AGENTS, MUST TAKE A NEUTRAL ROLE IN NEGOTIATIONS BETWEEN THE
15 CLIENTS.

16 **SECTION 5.** 452.137 (1) of the statutes is amended to read:

17 452.137 (1) (a) No broker may provide brokerage services to more than one
18 client in a transaction without an agency agreement under s. 452.135 (1) with each
19 client and a written consent to multiple representation.

20 (b) The consent to multiple representation shall contain a statement of the
21 broker's duties under s. 452.133 (1) to a party to the transaction who is not a client,
22 and a statement of the broker's duties to the client under s. 452.133 (2), and except
23 that, if the broker appoints designated agents under sub. (2) (b) 1., the consent to
24 multiple representation shall contain a statement of the duties that the broker,
25 designated agents, and other employees of the broker owe to the client under sub. (2)

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1 (b) 2. and 3. The consent to multiple representation shall also contain a statement
2 that the clients understand the broker's duties described therein and consent to the
3 broker providing brokerage services to more than one client.

4 (c) The consent to multiple representation may contain additional disclosures
5 by the broker or additional agreements between the broker and the clients that do
6 not violate any duty of a broker under this chapter.

7 **SECTION 6.** 452.137 (2) of the statutes is renumbered 452.137 (2) (a) and
8 amended to read:

9 452.137 **(2)** (a) ~~A~~ Except as provided in par. (b) 2., a broker who represents
10 more than one client in a transaction owes the duties specified in s. 452.133 (2) to
11 each client but may not place the interests of any client ahead of the interests of
12 another client in the transaction.

13 **SECTION 7.** 452.137 (2) (b) of the statutes is created to read:

14 452.137 **(2)** (b) 1. A broker who represents more than one client in a transaction
15 may appoint one or more employees to act as designated agents for a client. The
16 broker may also appoint himself or herself to act as designated agent for a client.
17 Appointments under this subdivision must be made in the agency agreement or, if
18 made after execution of the agency agreement, with the written consent of each client
19 that complies with the requirements of sub. (1) (b).

20 2. If a broker does not appoint an individual employee or himself or herself
21 under subd. 1. to act as designated agent for more than one client in a transaction,
22 an employee or broker who is appointed as a designated agent for a client under subd.
23 1. owes the duties under s. 452.133 (1) and (2) to that client and all other employees
24 of the broker, including the broker if the broker does not appoint himself or herself

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1 as that client's designated agent, owe that client the duties under s. 452.133 (1), but
2 not the duties under s. 452.133 (2).

3 3. If a broker appoints an individual employee or himself or herself under subd.
4 1. to act as designated agent for more than one client in a transaction, the broker and
5 all employees of the broker, including employees appointed to act as designated
6 agents, owe the clients in the transaction the duties under s. 452.133 (1) and the
7 duties under s. 452.133 (2), but may not place the interests of any client ahead of the
8 interests of another client in the transaction.

9 **SECTION 8.** 452.137 (3) of the statutes is renumbered 452.137 (3) (a).

10 **SECTION 9.** 452.137 (3) (b) of the statutes is created to read:

11 452.137 (3) (b) If a broker appoints an employee as a designated agent for a
12 transaction under sub. (2) (b) 1., neither the broker nor any other employee may be
13 considered to know any information that the designated agent knows about the
14 transaction unless the designated agent informs the broker or other employee of that
15 information or the broker or other employee has other actual knowledge of that
16 information. If a broker appoints himself or herself as a designated agent for a
17 transaction under sub. (2) (b) 1., no employee of the broker may be considered to know
18 any information that the broker knows about the transaction unless the broker
19 informs the employee of that information or the employee has other actual
20 knowledge of that information.

21 (END)