



LEGAL UPDATE

JANUARY 2020, 20.01

A MONTHLY GUIDE TO WISCONSIN REAL ESTATE LAW & POLICY

"Agent Agency"

Over the course of the last several years, professionalism has been a concern of a large portion of Wisconsin REALTORS®. Therefore, the Wisconsin REALTORS® Association (WRA) conducted two surveys of the entire membership and discovered:

1. 88 percent of the REALTORS® surveyed said they had experienced incompetent and unethical practice by a fellow REALTOR®.
2. 83 percent said this conduct did not happen in their office.
3. 44 percent said they felt REALTORS® were performing less professionally than they were in 2007.

REALTOR® Practice Tip

If a real estate licensee is not practicing competently, then a complaint should be filed at the Department of Safety and Professional Services (DSPS) at <https://dsps.wi.gov/Pages/SelfService/FileAComplaint.aspx>. If the real estate licensee is also a REALTOR®, a complaint can be filed at the local REALTOR® association. Complaints in both circumstances can be filed by consumers or REALTORS®.

Commitment to Work Together

In real estate, while real estate professionals are competitors, there is still a need to work together, in a cooperative, professional way to provide consumers confidence in the process. When consumers become distracted by the unprofessional behaviors of the real estate practitioners, a disservice has occurred. Consumers should not hear details of how the agent on the other side is behaving unprofessionally or practicing incompetently.

Examples of unprofessional behavior include speaking rudely to another agent, not returning calls, hanging up on another agent, calling an agent an offensive name or using offensive language, and not responding to any communication. Illustrations of incompetent practice include not completing forms correctly, not presenting written proposals, allowing unauthorized persons into properties and not entering into a buyer agency agreement when acting as a buyer's agent.

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REALTOR® Practice Tip

Take a breath before responding to another agent's communication you may perceive as hostile. REALTORS® are not adversaries; the goal is the same – assisting the consumers in getting to closing.

Repeated complaints about lack of communication and zero expectation of professionalism from real estate practitioners creates a significant concern for WRA members. This concern is and has been shared by WRA leadership, and addressing the issue of professionalism has been a focus for the WRA leadership for the last few years. Confronting the lack of professionalism is a priority for the WRA's 2019-2020 Chairman Steve Beers as well.

After receiving the survey results, Chairman Beers began to contemplate how to address setting expectations of professionalism between real estate agents. His exercise brought him to the legal concepts of buyer agency and agency disclosure and how the law sets forth expectations of real estate licensees as it relates to clients and customers.

REALTOR® Practice Tip

A common complaint is, “I call the other agent and ask them to call me, and the agent then texts me. When I ask them via text to call me, they text me back rather than calling.” This scenario is not generation-specific, i.e., the lack of calling someone is not exclusive to the Millennial generation.

The "Emily Post" of real estate etiquette generally says: Respond to the communications in the method requested – not in the method that is easiest for you.

"Agent Agency"

To help improve the professionalism of real estate agents, Beers offered a common-sense approach by offering the idea of an “Agent Agency” Agreement. Unlike the legal concepts of buyer agency and agency disclosure, “agent agency” is an understanding between agents setting expectation about working together in a real estate transaction.

While “agent agency” is conceptual in its nature and is neither a legal theory nor a legally binding contract, it offers a set of expectations relating to professionalism between agents in real estate dealings. Therefore, when referring to “agent agency,” the term is surrounded by quotation marks to further impress the fact it is not a legal concept.

REALTOR® Practice Tip

“Agent agency” is not a legal concept or a legally binding contract. The objective of the “Agent Agency” Agreement is to afford agents at the beginning of their real estate transaction to commit to work together professionally in the transaction.

Canons of "agent agency"

The precepts of “agent agency” are not foreign to real estate practitioners. As a matter of fact, the tenets of the “Agent Agency” Agreement between agents is to honor the following:

- Follow the golden rule – do unto others as you would want them to do unto you.
- Respond to all text, email and phone inquiries and requests in a timely manner.
- Show courtesy, trust and respect to other real estate professionals.
- Work collaboratively to achieve a positive outcome for everyone in the transaction.
- Work competently by understanding all the forms and completing them according to the instruction of the parties.

When to execute an “Agent Agency” Agreement

While committing to work better together can occur anytime in a real estate transaction, the ideal time would be earlier rather than later. This allows each agent to have clear expectations at the start. Either agent can initiate the “Agent Agency” Agreement.

The “Agent Agency” Agreement

The WRA released the “Agent Agency” Agreement in January 2020. The form will be available in both Zipform and the WRA’s PDF forms subscription service. Since the form is not a state-approved (WB) form, but rather a WRA form, the agreement is not required for use by Wisconsin real estate licensees.

Again, “agent agency” is not a legal theory, thus it does not exist in Wisconsin statute, license law or even Wisconsin case law. Rather “agent agency” is a concept designed by the Wisconsin REALTOR® community to help raise the level of professionalism of real estate licensees.



The “Agent Agency” Agreement is short and straightforward because the concept is not complicated. The form offers the opportunity for agents to print their names, their firm’s names, include the date and sign, as well as include the property address. Lastly, the form provides at the bottom, “This agreement does not create any contractual obligations” to once again further emphasize this is not an agreement creating a contract.

Resources

Wisconsin Real Estate Magazine

- December 2016, "Lessons in Professionalism," at www.wra.org/WREM/Dec16/Ethics
- November 2019, “Cooperation and Courtesy,” at www.wra.org/WREM/Nov19/Cooperation
- March 2013, “Risky Behavior,” at www.wra.org/WREM/Mar13/Consequences
- March 2013, “REALTOR® professionalism and the Code of Ethics,” at www.wra.org/WREM/Mar13/LegalHotline
- Thursday Takeaways, Ep. 5, “Professionalism,” at www.wra.org/thursdaytakeaways/episode5

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“Agent Agency”
Commitment to Working Better Together

In addition to honoring the REALTOR® Code of Ethics, we as fellow REALTORS® working together in the real estate profession agree to honor the following principles:

- **To follow the golden rule – Do unto others as you would want them to do unto you.**
- **To respond to all text, email and phone inquiries and requests in a timely manner.**
- **To show courtesy, trust and respect to other real estate professionals.**
- **To work collaboratively to achieve a positive outcome for everyone in the transaction.**
- **To work competently by understanding all the forms and completing them according to the instruction of the parties.**

Print Agent's name: _____

Print Agent's Firm name: _____

Signature: _____ Date: _____

Print Agent's name: _____

Print Agent's Firm name: _____

Signature: _____ Date: _____

Property Address: _____

This agreement does not create any contractual obligations.

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