

FAQ: Practice by Out-of-State Licensees

- 1. When does Out-of-State License (2013 Wis. Act 259) law go into effect?**
January 1, 2015. The new legislation created Wis. Stat. 452.137. A copy of 2013 Wisconsin Act 259 may be found at <http://docs.legis.wisconsin.gov/2013/related/acts/259>.
- 2. How does this new Out-of-State license law impact how I interact with brokers from out of State (OSLs)?**
The new legislation offers the opportunity for the Wisconsin listing company to either:

 - a. enter into a referral arrangement with the OSL
 - OR
 - b. enter into a cooperative agreement with the OSL
- 3. How will the Out-of-State license law affect my current business and transactions?**
The intent is to offer the Wisconsin broker an opportunity to stay at the helm of the transaction while offering flexibility as to process to the Wisconsin listing broker.
- 4. How do I communicate the regulations from the Out-of-State license law to current and potential clients?**
You may choose to send information created by your local board or the Wisconsin REALTORS[®] Association (WRA). In addition, you may contact your local board or the WRA and ask them to provide the information.
- 5. How does this differ from other state's Out-of-State License laws?**
There are 26 other states that have a form of cooperation. In some states the cooperation is limited only to commercial transactions. As of January 1, 2015 Wisconsin law will allow cooperation in all types of transaction, not just commercial. To understand specific distinctions state by state, you are encouraged to reach out to the specific state you wish to learn more about.
- 6. When documentation is needed as a Wisconsin broker to ensure that I am abiding by the Out-of-State License law?**
The Wisconsin Real Estate Examining Board (REEB) will create the cooperation form. Therefore the form will be a WB form and will be required for use by a Wisconsin broker wishing to enter into a cooperative agreement. Unfortunately while the law is effective January 1, 2015 this form will not be available on January 1, 2015 due to a drafting error that occurred. The WRA is currently working on new legislation to expedite the drafting of the form.

Statutorily the form must:

 - i. Establish the terms of cooperation between the out-of state broker, any out-of-state salesperson, and the licensed broker.
 - ii. Establish the terms of the out-of-state broker's compensation.
 - iii. Provide that all client funds, as defined in s. 452.13 (1) (a), that the out-of-state broker and licensed broker receive in connection with a transaction subject to the cooperative agreement shall be deposited in a trust account maintained by the licensed broker.

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The REEB created form may likely include: allocation for license numbers, attestation that the OSL will follow Wisconsin laws and be subject to REEB discipline as well as activities permitted by the OSL such as showings, writing offers to purchases, using Wisconsin forms, which agents are permitted to participate, and proof of E&O insurance.

7. Who is the governing body that will cite violators of the Out-of-State License law?

The Wisconsin REEB and the Department of Safety and Professional Services will be the regulatory bodies. To file a complaint go to <http://dsps.wi.gov/Complaints-and-Inspections/Professions-Complaints/>.

8. What are the consequences for brokers who violate the Out-of-State License law?

Wis. Stat. § 452.137(5) (b) Notwithstanding s. 452.17 (3), any person who violates this section or a rule promulgated under this section may be fined, for each violation, not more than the greater of the following:

1. Five thousand dollars.
2. For a sales transaction, 1 percent of the purchase price of the property subject to the cooperative agreement.
3. For a lease or rental transaction, 1 percent of the total lease or rental value of the property subject to the cooperative agreement.

Additionally, Wis. Stat. § 452.137(5)(f) states, that, “No person may pay an out-of state-broker a commission, money, or other thing of value for brokerage services unless the out-of-state broker is a party to a cooperative agreement with a licensed broker.”

Arguably, “no person” includes a Wisconsin broker, a seller, a title company, a closing attorney, etc. and therefore would be violating the law unless the out-of-state broker has entered into a cooperative agreement with a Wisconsin broker.

9. Are there any activities an Out-of-State licensee can NEVER do?

The OSL legislation prohibits:

- a. the OSL from taking a Wisconsin listing
- b. the OSL from promoting the sale/rental of a property in Wisconsin for property located in Wisconsin

10. Where do I go if I have questions about the Out-of-State licensee?

Each state has a regulatory body and should have a resource to confirm that a broker and any respective licensees authorized to participate in the transaction are licensed and any disciplinary actions taken against them.

11. Who is responsible for paying penalties if found in violation of the Law?

As noted in question 8, Wis. Stat. § 452.137(5)(b), states that no person may pay an out-of-state broker a commission unless the out-of-state broker has entered into a cooperative agreement with the Wisconsin broker. Therefore, anyone who violates Wis. Stat. § 452.137 will be fined for each violation \$5,000 or 1% of the purchase price of the property or total lease or rental value of the property.