



Creating a New Voluntary Commercial Option for OSL

Background

As of January 1, 2015, Wisconsin law created a new voluntary option permitting a Wisconsin firm to allow an out-of-state (OSL) firm to provide limited brokerage services in Wisconsin. Newly created Wisconsin Statute § 452.137 affords the opportunity for Wisconsin listing companies to either enter into a referral arrangement with the OSL or enter into a cooperative agreement with the OSL. The intent of the new law is to keep the Wisconsin broker at the helm of the transaction while offering flexibility as to process to the Wisconsin listing firm.

Before the law change, Wisconsin law included no specific legislative structure for brokerage services performed by OSLs in Wisconsin. However over time, it was evident that OSLs started coming to and practicing in Wisconsin. The impact of OSLs coming into Wisconsin created serious transaction issues because OSLs were unfamiliar with Wisconsin transactions. In addition, Wisconsin consumers were often having to incur additional costs for attorney review because non-Wisconsin forms were being utilized by the OSL; these forms included contract provisions that placed Wisconsin consumers at serious contractual risk such as earnest money held by the OSL and contract jurisdiction in another state. Additionally, the OSLs faced very little consequences legally when returning to their home state, which created jurisdictional issues for the DSPS. Wisconsin brokers were placed in the precarious position of being confronted with OSLs with buyers who wanted to purchase the Wisconsin broker's listings.

Wisconsin joined 26 other states by becoming a cooperative state. As previously mentioned, the legislation allowed Wisconsin firms to enter into a cooperative agreement with the OSL. This is a voluntary opportunity.

Basics of the current law (Wis. Stat. § 452.137)

- Applies to all types of transactions.
- Applies only to the Wisconsin firm's listings — not any other firm. For example, Lamont Realty, a Wisconsin brokerage company, can only enter into a cooperative agreement with an OSL for Lamont Realty's listings, not another company's.
- It is the decision of the Wisconsin firm as to whether they want to enter into a cooperative or referral agreement.
- Does NOT apply to buyer agency agreements.
- A separate cooperative form must be entered into for each transaction. A Wisconsin firm cannot have a blanket form for use with all OSLs. For example, Wisconsin-based Lamont Realty cannot have one OSL cooperative agreement with The Land Group, an Illinois firm.
- If the Wisconsin firm chooses to enter into a cooperative agreement, then the Wisconsin firm must use the WB-28 Cooperative Agreement form.
- Cooperative agreement lays out the agreement between the firm and the OSL.
- OSL must agree to comply with Wisconsin law and subject to discipline by the REEB.
- All earnest money and client funds are held by the Wisconsin firm and Wisconsin law is the jurisdiction for all disputes between the firms.
- Clarifies what the OSL is not allowed to do in Wisconsin.
- Clear penalties are placed into the law.

Challenge

Commercial firm representatives from the Milwaukee market approached the WRA to express a challenge they experience with the new law; specifically the limitation that permits cooperation with an OSL only when a Wisconsin firm has a property listed. Because the law does NOT apply to buyer agency/tenant representation agreements the only option is to offer a referral fee to the OSL.

Over the course of the last few years, the Wisconsin commercial firms have cited that this limitation creates a situation where the Wisconsin firm arguably could be practicing outside of the permitted Wisconsin laws. In commercial transactions, it is common for OSLs to reach out to Wisconsin firms who do not have a property listed because they wish to have an expert, other than the Wisconsin listing firm, be a part of their buyer/tenant purchase or rental.

Therefore, the following proposal has been recommended to allow Wisconsin commercial firms a greater ability to participate in, and control, of a Wisconsin transaction from the buyer/tenant perspective.

Proposal

The law current OSL law allows two options for the Wisconsin firm when an OSL is involved:

- 1) Referral
- 2) Cooperate with the Wisconsin listing firm by entering into a WB-28

Create a third option:

- 3) Allow cooperation for Buyer Agency/Tenant Representation between a Wisconsin firm with an OSL by use of a WB-28 Cooperative Agreement.

Under this structure:

- All negotiations must go through the Wisconsin Buyer Agent/Tenant Firm
- All showings must be attended with the Wisconsin Buyer Agent/Tenant Firm representative
- Limited to commercial transactions