

FAQ: Practice by Out-of-State Licensees (OSL)

1. How does Wisconsin's Out-of-State license (OSL) law impact how I interact with OSL brokers?

The legislation offers the opportunity in different situations for a Wisconsin firm to either:

- a. enter into a referral arrangement with the OSL
- OR
- b. enter into a cooperative agreement with the OSL

2. How will the OSL law affect my current business and transactions?

The intent is to position the Wisconsin firm an opportunity to stay at the helm of the transaction while offering flexibility as to the choices to the Wisconsin firm. Each Wisconsin firm decides if they want to cooperate with OSLs or not.

3. Are there different types of Wisconsin OSL laws?

Yes. In January 2015, the law created a voluntary option that permitted a Wisconsin listing firm to allow an OSL to provide limited brokerage services in Wisconsin. See Wis. Stat. § 452.137(2)(ag).

In December 2017, Wisconsin further modified its OSL cooperation law to allow Wisconsin firms to cooperate with OSLs working with or representing a buyer/tenant. This modification permits cooperation between a Wisconsin firm and OSL when the Wisconsin firm does not have the property listed or when the OSL wants to cooperate with a Wisconsin firm other than the Wisconsin listing firm. This provision of the law is limited to commercial transactions only. See Wis. Stat. § 452.137(2)(am).

Remember cooperation by a Wisconsin firm is voluntary. See Question 1.

4. What form do I use to cooperate with an OSL?

- WB-28 Cooperative Agreement: When a Wisconsin firm has a listing and wishes to cooperate with an OSL. This option is currently available for all types of transactions. A separate WB-28 must be entered into for each listing for which the Wisconsin firm wants to cooperate with an OSL.
- WB-29 Commercial Cooperative Agreement: When a Wisconsin firm that does not have a listing wishes to cooperate with an OSL who has a buyer/tenant wanting to rent or purchase Wisconsin commercial property. This option is available for commercial transactions only. A separate WB-29 must be entered into for each "project" for which the OSL's buyer/tenant wishes to purchase or rent property.



A Wisconsin firm wishing to cooperate with an OSL must use the correct WB Cooperative Agreement.

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5. How does Wisconsin OSL cooperation law define commercial transaction?

Under the OSL cooperation law, commercial transactions are transactions concerning any property other than any real property containing one to four dwelling units or real property zoned for agricultural use. Further, commercial transactions do not include transactions concerning a dwelling unit that is a part of real property containing more than four dwelling units and that is being sold on a unit-by-unit basis, such as a residential condominium.

6. Are there any activities an OSL can NEVER do?

Wisconsin law prohibits an OSL from:

- a. Listing Wisconsin property
- b. Post signs or otherwise promote a Wisconsin property for sale/rent in Wisconsin

7. Who is the governing body that will cite violators of the OSL 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 OSL law?

Wis. Stat. § 452.137(5)(b) provides that, any person who violates the OSL law or any OSL rule promulgated by the Real Estate Examining Board 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(2)(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” may include a Wisconsin broker, a seller, a title company, a closing attorney, and therefore any of those entities or individuals would be violating the law unless the out-of-state broker has entered into a cooperative agreement with a Wisconsin broker.

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

As noted in Question 8, Wis. Stat. § 452.137(2)(f), states that no person may pay an OSL broker a commission unless the OSL broker has entered into a cooperative agreement with a Wisconsin firm. 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.