



Wisconsin Compensation Rating Bureau

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CIRCULAR LETTER 3136—APRIL 11, 2016

TO: Members of the Bureau

FROM: Donna Knepper

RE: Proceedings of the WCRB Governing Board
Wisconsin Real Estate Salespersons Endorsement WC 48 03 04

Pursuant to ch. 626, Wis. Stat., the Office of the Commissioner of Insurance has approved the following changes adopted by the Governing Board effective July 1, 2016.

Previously, the Department of Workforce Development (DWD) has consistently ruled that real estate salespersons licensed to work for licensed brokers are employees of the broker under the Wisconsin Worker's Compensation Act. The salespersons were covered under the worker's compensation insurance policy issued to the broker.

Due to statutory changes proposed and adopted in Assembly Bill 456, some real estate salespersons may now be categorized as independent contractors. The WCRB, along with the DWD, created a new endorsement which allows independent contractor real estate salespersons meeting the definition in s. 452.38 to still be included for coverage under a real estate firm's worker's compensation insurance policy.

Wisconsin Real Estate Salespersons Endorsement WC 48 03 04 is approved effective July 1, 2016, applicable to new, renewal and outstanding business. The Wisconsin Real Estate Salespersons Endorsement must be added to a policy if coverage is to continue for any independent contractor real estate salespersons beyond July 1, 2016.

The new law states, in part:

“102.078 Election by real estate firm. (1) A firm, as defined in s. 452.01 (4w), may elect to name as its employee for purposes of this chapter a real estate broker or salesperson who is excluded under s. 452.38 by an endorsement on its policy of worker's compensation insurance ...”

For reference, s. 452.38 reads, in part:

“452.38 Independent contractor relationship. (1) Except as otherwise provided in s. 102.078, a licensee shall not, under ch. 102, 103, 104, or 109, under subch. X of ch. 71 or subch. II of ch. 111, under any other law or rule other than those specified under sub. (1m), or in any action or proceeding under the common law, be considered an employee of a firm if all of the following are satisfied:

(a) A written agreement has been entered into with the firm that provides that the licensee shall not be treated as an employee for federal and state tax purposes.

(b) Seventy-five percent or more of the compensation related to sales or other output, as measured on a calendar year basis, paid to the licensee pursuant to the written agreement referenced under par. (a) is directly related to the brokerage services performed by the licensee on behalf of the firm.”