

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
 :
MIKE D. MALY, :
 :
 : LS#0706111REB
RESPONDENT. :

Division of Enforcement Case No. 06 REB 092

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Mike D. Maly
4517 Mallory Circle
Madison, WI, 53704

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Real Estate Board
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A formal complaint was filed in this matter on June 11, 2007. The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Real Estate Board. The Board has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Mike D. Maly (“Maly”), whose date of birth is September 27, 1958, is duly licensed as a Real Estate Broker in the state of Wisconsin (90-37408). Mr. Maly’s most recent address of record on file with the Department of Regulation and Licensing (“Department”) is 4517 Mallory Circle, Madison, WI 53704. The license was first granted on April 16, 1986, and is due to expire on December 14, 2008.

2. On September 20, 2005, Mr. Maly, acting as a seller’s sub-agent, provided assistance to a buyer in drafting an offer to purchase real property.

3. The property was new construction. The MLS sheet showed the 2005 assessed value, which was based upon the value of the property as completed, but only showed the 2004 property tax amount, which was based upon a lower 2004 value assessment, as well as the 2004 property tax mill rate. At the time of the drafting of the offer to purchase and closing the new mill rate was not available, so that the exact amount for property taxes for 2005 was not known at closing.

4. The offer to purchase utilized form WB-11 – Residential Offer to Purchase. The standard language of the form reads as follows:

“The following items shall be prorated at closing: real estate taxes... Any... taxes... shall accrue to Seller, and be prorated, through the day prior to closing. Net general real estate taxes shall be prorated based on (the net general real estate taxes for the current year, if known, otherwise on the net general real estate taxes for the preceding year)... **Caution: If proration on the basis of the net general real estate taxes is not acceptable (for example, completed/pending reassessment, changing mil rate, lottery credits), insert estimated annual tax or other formula for proration.**”

WB-11, lines 45-52, emphasis in original.

5. Upon receipt of the full tax bill for 2005, which was based upon the full value of the property at the new mill rate, the buyer was surprised and upset. Although Mr. Maly and the real estate business entity employing him advocated on behalf of the buyer, they could not prevail upon the seller or the listing broker to contribute to making the buyer whole.

6. Per Wis. Stat. § 452.14(3)(i), a licensee is subject to discipline if he or she has, “Demonstrated incompetency to act as a ...salesperson... in a manner which safeguards the interests of the public.”

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in these matters pursuant to Wis. Stat. § 458.26.
2. The Wisconsin Real Estate Board has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).
3. By failing to understand the implications of the tax information contained in the MLS listing, and failing to advise the buyer accordingly, Respondent has demonstrated incompetency to act as a salesperson in a manner which safeguards the interests of the public, thereby subjecting himself to discipline per Wis. Stat. § 452.14(3)(i).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. MIKE D. MALY is ordered to take no less than three class-room hours of continuing education in lieu of a reprimand, the subjects of which must include real estate taxes as remedial education, which may not be counted towards Respondent's continuing education requirements. Education required by this Order must be completed within six months of the date of signing of the Order.
2. Respondent shall pay the costs of the Division of Enforcement in investigating this matter, in the amount of \$350.00 within ninety (90) days of the date of signing of this Order.
3. All payments and proof of completion of remedial education required by this Order shall be mailed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 261-7904
4. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit any payment as set forth above (if any), or fails to timely submit proof of completion of education as set forth above (if any), the Respondent's license (90-37408) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order, and with the suspension called for in this Order not to begin until the other terms of the Order have been complied with.
5. This Order is effective on the date of signing.
6. Division of Enforcement Case Number 06 REB 092 is hereby CLOSED as to Respondent Mike D. Maly, Silvan H. Maly and Sil Maly Realty only, and shall remain open for potential disciplinary action against other licensees.

WISCONSIN REAL ESTATE BOARD

By: Peter Sveum
A Member of the Board

4/24/08
Date