

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
JEANETTE E. DAVIS,	:	87 REB 40
RESPONDENT.	:	87 REB 397

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The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Jeanette E. Davis  
One West Main Street  
Evansville, WI 53536

Wisconsin Real Estate Board  
P.O. Box 8935  
Madison, WI 53708-8935

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

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 Board. The Board has reviewed this Stipulation and considers it acceptable.

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

FINDINGS OF FACT

Nordness Transaction

1. Jeanette Davis ("Davis"), 1 West Main Street, Evansville, WI, 53536, is a real estate broker licensed to practice in the State of Wisconsin pursuant to license # 23510, granted on March 19, 1980.

2. On or about July 11, 1983, Wilma L. Gmeinder (hereinafter referred to as "Gmeinder") entered into a residential listing contract with Davis granting Century 21 Evansville Realty an exclusive right to sell a residential property located at 429 South Second Street, Evansville, WI (hereinafter referred to as "property").

3. While the sidewalk for the property was replaced in 1983, the special assessment was not placed on the tax rolls until 1984 and the tax letter received by Davis did not show any outstanding special assessments.

4. On or about September 6, 1983, Christal Flynn (hereinafter referred to as "Flynn"), a real estate sales person in Davis's office, prepared and submitted an offer to purchase Gmeinder's property on behalf of prospective buyers William and Cynthia Nordness (hereinafter collectively referred to as "Nordnesses").

5. From the office file folder on Gmeinder, Flynn learned of sidewalk assessment involving the property and informed the Nordnesses that the assessment for the sidewalk would be paid by the seller at the closing.

6. To address the issue of the unpaid sidewalk assessment, a provision in the offer was specifically inserted to the effect that the seller was to pay special assessments at closing.

7. On or about September 27, 1983, Gmeinder accepted the offer.

8. In the closing statement Davis prepared for the October 31 closing, \$1596.56 was charged to the seller to pay for delinquent taxes and unpaid special assessments. None of this amount included funds to pay for the special assessment for the new sidewalk.

9. Davis failed to account for the unpaid sidewalk assessment of an amount to be determined in the future.

10. In 1984, the amount of \$421.40 plus interest on the unpaid balance was assessed against the property for 1983 sidewalk installation.

#### Schoenenberger transaction

11. On or about October 21, 1986, Leonard Eager in his capacity as Executive Vice-President of the Union Bank and Trust Company (hereinafter referred to as "Union Bank") entered into a Vacant Land Listing Contract with Davis granting Century 21 Evansville Realty the exclusive right to sell six lots owned by Union Bank in Evansville, WI.

12. The listing contract provided that the broker's commission shall be as follows: "Seller to net \$12,000.00 Commission amount between Sales price and \$12,000.00."

13. On or about October 22, 1986, Davis prepared and submitted an offer to purchase one of Union Bank's vacant lots on behalf of James and Fay Schoenenberger (hereinafter collectively referred to as "Schoenenbergers"). The offer was contingent upon Union Bank obtaining approval for the lot division.

14. Approval for the bank's proposed subdivision could not be obtained, because the lot sizes were too small to conform with zoning requirements, and thereafter the development subdivided into five lots.

15. Davis and Eager entered into a new listing contract, which was undated, to provide for the sale of five lots at a list price of \$13,900.00.

The contract also specified:

a. Its term would run retroactively from October 21, 1986 to February 1, 1987; and

b. The broker's commission shall be "seller to net \$12,750.00 on all lots except lot 7, seller to \$12,500.00 (Schoenenberger Lot)".

16. On or about November 19, 1986, the Schoenenbergers submitted an offer to purchase one of the replatted lots for \$13,800.00.

17. On or about November 24, 1986, the offer, as modified by a counter offer changing the closing date, was accepted by Eager on behalf of Union Bank.

18. Davis failed to accurately disclose to the Schoenenbergers material and adverse factors affecting the property in an approved manner.

19. Following the February 27, 1987 closing, the Schoenenbergers incurred unanticipated expenses to obtain a variance to build their house and pay \$1,300 for the extension of water and sewer laterals to the curb.

20. In mitigation, the net listing arrangements were made at the suggestion of the seller.

#### CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to Sec. 452.14, Wis. Stats.

2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to Sec. 227.44(5), Wis. Stats.

3. Respondent Jeanette E. Davis has violated Sec. 452.14(3)(i) Wis. Stats., by her incompetency in failing to account for the special assessment for the new sidewalk in closing statement.

4. Respondent Jeanette E. Davis has violated Sec. RL 24.10, Wis. Adm. Code, by obtaining a listing contract on two occasions which provided for a stipulated net price to the owner with the excess over the stipulated net price to be received by the broker as commission.

5. Respondent Jeanette E. Davis has violated Secs. RL 24.07(1), 24.07(2)(d) and 24.08, Wis. Adm. Code, by failing to accurately disclose material and adverse factors affecting the property in an approved manner.

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that the real estate broker's license (#23510) of Respondent Jeanette E. Davis be, and hereby is, suspended for Twenty-One (21) days, effective on the date this Final Decision and Order is entered.

IT IS FURTHER ORDERED, that Respondent Jeanette E. Davis successfully complete Ten (10) hours of real estate-related education covering (a) contractual and applied aspects of listings, (b) listing procedures, (c) providing property information and disclosure, and (d) other related matters, and submit proof of the same in the form of verification from the institution providing the education within Five (5) months of the date of this Final Order and Decision. .

IT IS FURTHER ORDERED, that the Real Estate Board shall close investigative file Nos. 87 REB 40 and 397.

Dated this 22<sup>nd</sup> day of February, 1990.

WISCONSIN REAL ESTATE BOARD

by: Linda L. Schlavensky

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
JEANETTE E. DAVIS,	:	87 REB 40
RESPONDENT.	:	87 REB 397

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It is hereby stipulated between Jeanette E. Davis, personally on her own behalf; Robert Kuehling, Attorney for Jeanette E. Davis; the Department of Regulation and Licensing, Division of Enforcement by its Attorney Richard Castelnuovo; and the Real Estate Board ("Board"), as follows:

1. This Stipulation is entered into as a result of a pending action involving the licensure of Jeanette E. Davis ("Respondent") commenced by the Division of Enforcement (87 REB 40 and 397). Respondent consents to the resolution of this matter by Stipulation.

2. Respondent is aware and understands her rights with respect to disciplinary proceedings, including the right to a statement of the allegations against her; the right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel attendance of witnesses by subpoena; the right to testify herself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

4. Respondent is represented by counsel in connection with this proceeding and has received legal advice prior to execution of this Stipulation.

5. With respect to the attached Final Decision and Order, Respondent admits the facts set forth in the Findings of Fact solely for the purpose of resolving this matter and such admission shall not be construed as an admission of liability, and further agrees that the Board may reach the conclusions set forth in the Conclusions of Law, and may enter the Order suspending Respondent's license and requiring real estate education.

6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

## NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

### 1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with State of Wisconsin Real Estate Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

### 2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon State of Wisconsin Real Estate Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: State of Wisconsin Real Estate Board.

The date of mailing of this decision is February 23, 1990.

WLD:dms  
886-490