

# 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 THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 : FINAL DECISION AND ORDER  
DONALD BENDER AND :  
BENDER AND ASSOCIATES LLC, : ORDER 0000 506  
RESPONDENTS. :

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Division of Enforcement Case No. 08 REB 131

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

Donald L. Bender  
316 W. Main St.  
Mount Horeb, WI 53572

Bender and Associates LLC  
316 W. Main St.  
Mount Horeb, WI 53572

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

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition 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

1. Respondent Donald Bender is licensed in the State of Wisconsin as a Real Estate Broker, having license # 90-48078. This license was first granted to him on 7/17/1995 and is current through 12/14/2010. The most recent address on file with the Department of Regulation and Licensing for Mr. Bender is 316 W. Main St., Mount Horeb, WI 53572.
2. Respondent Bender and Associates LLC is licensed in the State of Wisconsin as a Real Estate Business Entity, having license # 91-700284. This license was first granted to it on 11/19/1999 and is current through 12/14/2010. The most recent address on file with the Department of Regulation and Licensing for Bender and Associates LLC is 316 W. Main St., Mount Horeb, WI 53572.
3. The Department of Regulation and Licensing received a complaint on September 12, 2008 against Mr. Bender, Bender and Associates LLC, and Kenneth E. Lowe (broker's license #94-34717, expired 12/14/2008) from Jennifer Lea Bronsdon regarding a real estate transaction.
4. Mr. Bender is the owner of record for Bender and Associates LLC. Mr. Bender employed Kenneth E. Lowe as a broker from 11/9/1999 to 12/12/2008. As the owner, Mr. Bender was responsible for supervising Mr. Lowe's activities as a broker for Bender and Associates LLC.
5. On 6/27/2006, Mr. Lowe entered into a one year listing agreement with Seller Marion Brown for the sale of 116 acres of vacant farmland ("116 Acre Agreement"). Prior to the listing contract, Mr. Brown sold 5 acres of land, which included a farmhouse, to Ms. Bronsdon. That sale included a right of first refusal for the remaining 116 acres of the farm, which was drafted on or about 10/5/2005 and recorded 8/17/2006.
6. The 116 Acre Agreement was inadequately completed as follows:
  - a. Mr. Lowe did not sign the listing contract;
  - b. The advertising contingency on line 32-33 does not properly indicate what advertising was to be done;
  - c. Lines 7 and 8 were left blank (minimally acceptable language would be "to be determined"); and
  - d. No date was indicated on line 253.
7. On 6/6/2007, Mr. Lowe entered into a listing agreement with Seller Marion Brown for the sale of the remaining 76 acres of vacant farmland ("76 Acre Agreement") to run through 12/31/2008.
8. The 76 Acre Agreement was inadequately completed as follows:

- a. The "NA" written on line 7 is insufficient because some type of payment is expected;
  - b. The listing contract indicates a starting date of 6/6/2007 but was not signed by the owner until 6/15/2007 per line 251; and
  - c. No date was indicated on line 253.
9. During the period of time during which Mr. Brown listed the vacant farmland with Mr. Lowe, Mr. Bender supervised Mr. Lowe by reviewing the listing contract, offer, purchase agreement and other transaction documents. He discussed the progress of the listing, sale and dispute regarding the right of first refusal with Mr. Lowe on a near-weekly basis.
  10. In the period from 1/10/2001-2/28/2002 during which Mr. Lowe's license (#94-34717) was expired, Mr. Lowe was employed by Bender and Associates LLC and participated in 11 transactions. These transactions include seven (7) listings and four (4) sales.
  11. In resolution of this matter, Respondents Donald L. Bender and Bender and Associates LLC consent to the entry of the following Conclusions of Law and Order.

#### CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 452.14, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).
2. Respondents Donald L. Bender and Bender and Associates LLC have violated the following regulations:
  - a. Wis. Admin. Code § RL 17.08(1) and (2) by failing to properly supervise Lowe, who violated the following:
    - i. Wis. Stat. § 452.133(1)(b) by failing to exercise reasonable skill and care when inadequately completing the "116 Acre Agreement" and "76 Acre Agreement" as described in paragraphs 6 and 8 of the Findings of Fact;
  - b. Wis. Admin. Code § RL 17.07 for failing to check Mr. Lowe's licensure while he was employed by Bender and Associates LLC from 1/10/2001-2/28/2002, during which he participated in seven (7) listings and four (4) sales as described in paragraph 10.
3. As a result of these violations, Respondents Donald L. Bender and Bender and Associates LLC are subject to discipline pursuant to Wis. Stat. §452.14.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached stipulation is accepted.

IT IS FURTHER ORDERED that:

2. The real estate broker license of **Donald L. Bender** (license # 90-48078) and the real estate business entity license of **Bender and Associates LLC** (license # 91-700284) are hereby **REPRIMANDED**.

IT IS FURTHER ORDERED that:

3. Respondent **Donald L. Bender** shall, within 120 days, pay a **FORFEITURE** in the amount of **FIVE HUNDRED DOLLARS (\$500.00)** and **COSTS** in the amount of **TWO HUNDRED AND FIFTY DOLLARS (\$250.00)** for a **TOTAL** of **SEVEN HUNDRED AND FIFTY DOLLARS (\$750.00)**.
4. Respondent **Bender and Associates LLC** shall, within 120 days, pay a **FORFEITURE** in the amount of **FIVE HUNDRED DOLLARS (\$500.00)** and **COSTS** in the amount of **TWO HUNDRED AND FIFTY DOLLARS (\$250.00)** for a **TOTAL** of **SEVEN HUNDRED AND FIFTY DOLLARS (\$750.00)**.
5. Payment of the forfeiture and costs shall be made payable to the Wisconsin Department of Regulation and Licensing and sent to:

Department Monitor  
Division of Enforcement  
Department of Regulation and Licensing  
P.O. Box 8935, Madison, WI 53708-8935  
Telephone (608) 261-7904, Fax (608) 266-2264

6. 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 Respondents' licenses. 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 Respondents fail to timely submit payment of the forfeiture and costs as set forth above, the Respondents' licenses (Donald L. Bender - # 90-48078; Bender and Associates LLC - #91-700284) may, in the discretion of the board or its designee, be **SUSPENDED**, without further notice or hearing, until Respondents have complied with payment of the forfeiture and costs.
7. This Order is effective on the date of its signing.

8. File 08 REB 131 is hereby closed as to Respondents Donald L. Bender and Bender and Associates LLC.

Dated this 28 day of OCTOBER, 2010.

WISCONSIN REAL ESTATE BOARD

By:

A handwritten signature in black ink, appearing to read "Donald L. Bender", is written over a horizontal line.