

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."
The status of an appeal may be found on court access websites at:
<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wsccl>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE REAL ESTATE EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
DENNIS C. MIDTHUN AND	:	
REAL ESTATE PREFERRED, INC.,	:	
RESPONDENTS.	:	ORDER 0001985

Division of Enforcement Case No. 11 REB 099

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

Dennis C. Midthun
2970 Chapel Valley Road, Ste. 204
Madison, WI 53711

Real Estate Preferred, Inc.
2970 Chapel Valley Road, Ste. 204
Madison, WI 53711

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

Division of Enforcement
Department of Safety and Professional Services
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 disposition of this matter, subject to the approval of the Wisconsin Real Estate Examining Board (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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Dennis C. Midthun (dob 11/13/1956) is licensed in the State of Wisconsin as a Real Estate Broker, having license number 90-39448, first issued on January 8, 1987, and current through December 14, 2012. Respondent Midthun's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 2970 Chapel Valley Road, Ste. 204, Madison, WI 53711.

2. Respondent Real Estate Preferred, Inc. is licensed in the State of Wisconsin as a Real Estate Business Entity, having license number 91-834236, first issued on March 2, 1992, and current through December 14, 2012. Respondent Real Estate Preferred Inc.'s most recent address on file with the Department is 2970 Chapel Valley Road, Ste. 204, Madison, WI 53711. Respondent Midthun was at all times relevant to this matter the responsible broker for Respondent Real Estate Preferred, Inc.

3. On December 2, 2004, Respondents Midthun and Real Estate Preferred, Inc. were disciplined by the Real Estate Board for allowing an unlicensed person to work.

4. On March 18, 2011, a Department auditor performed an audit of the real estate trust account of Respondent Real Estate Preferred, Inc. The audit revealed the following:

- a. There were 56 transactions on the February 28, 2011 trial balance that listed a closing date of prior to January 1, 2010. Of those, 43 closed more than five years prior to the March 18, 2011 audit;
- b. Respondents Midthun and Real Estate Preferred, Inc. were holding \$31,700 in their trust account and were unable to produce documents to determine the rightful owners of the property;
- c. In 35 cases, the name of the party who paid the money was not recorded in the journal or ledgers; and
- d. In 30 cases, the journal and ledgers did not record an accurate closing date for the transaction (all were dated 12/31/2005).

5. The Department auditor and subsequently assigned Department investigator made several unsuccessful attempts to get Respondent Real Estate Preferred, Inc. to identify and return the retained funds.

6. In resolution of this matter, Respondents Midthun and Real Estate Preferred, Inc. consent to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Examining 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. By the conduct described in the Findings of Fact, Respondent Midthun violated Wis. Stat. § 452.133(1)(f) by failing to safeguard trust funds and other property held by the broker.

3. By the conduct described in the Findings of Fact, Respondents Midthun and Real Estate Preferred, Inc. violated Wis. Admin. Code §§ RL (now REEB) 18.13(1)(a), (2), (3), and (5) by failing to: maintain a journal showing the chronological sequence in which real estate trust funds are received and disbursed, including the name of the party who gave the money; include

required information in the ledger; reconcile the real estate trust account each month; prepare a trial balance of all open items and ensure all records are valid and in agreement as of the date the account statement has been reconciled.

4. As a result of the above violations, Respondents Midthun and Real Estate Preferred, Inc. are subject to discipline pursuant to Wis. Stat. §§ 452.14(3)(h),(i) and (L).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached Stipulation is hereby accepted.
2. Respondents Midthun and Real Estate Preferred, Inc. are hereby REPRIMANDED.
3. The real estate broker license issued to Respondent Midthun (license no. 90-39448) is hereby LIMITED as follows:
 - a. Respondent Midthun shall, within six months of the date of this Order, successfully complete 3 hours of education on the topic of real estate trust accounts offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the course(s).
 - b. Respondent Midthun shall submit proof of completion in the form of verification from the institution providing the education to the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department, and also may not be used in future attempts to upgrade a credential in Wisconsin.
 - c. This limitation shall be removed from Respondent Midthun's license and Respondent's will be granted a full, unrestricted license after satisfying the Board or its designee that Respondent has successfully completed all of the ordered education.
4. The real estate business entity license issued Respondent Real Estate Preferred, Inc. (license number 91-834236) is hereby LIMITED as follows:
 - a. Respondent Real Estate Preferred, Inc. shall submit monthly trial balances, reconciliations and validations to the Department Monitor within 30 days after the end of each month.
 - b. Upon acceptance of the information as accurate by the Department Auditor for 6 reports, this limitation will be lifted and Respondent Real Estate Preferred, Inc. will be granted a full, unrestricted license.

5. Within 90 days of the date of this Order, Respondent Midthun shall pay COSTS of this matter in the amount of \$236.00.

6. Within 90 days of the date of this Order, Respondent Real Estate Preferred, Inc. shall pay COSTS of this matter in the amount of \$236.00.

7. Proof of successful course completion, monthly reports and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be mailed, faxed or delivered by Respondent to the Department Monitor at the address below:


Department Monitor
Division of Enforcement
Department of Safety and Professional Services
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817, Fax (608) 266-2264

8. 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 costs as ordered or fail to submit monthly reports or proof of successful completion of the ordered education as set forth above, Respondents' licenses (nos. 90-39448 and 91-834236) 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 costs, submission of reports and completion of the education.

9. This Order is effective on the date of its signing.

WISCONSIN REAL ESTATE EXAMINING BOARD

by:


A Member of the Board

8-16-12
Date