



REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL
Room 121A, 1400 East Washington Avenue, Madison
Contact: Brittany Lewin (608) 266-2112
February 25, 2016

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a record of the actions and deliberations of the Board.

AGENDA

9:30 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

- A. Adoption of Agenda (1)**
- B. Approval of Minutes from January 13, 2016 (2)**
- C. Administrative Updates**
 - 1) Staff updates
- D. Review of Real Estate Contractual Forms for Revision:**
 - 1) **WB-1 Residential Listing Contract – Exclusive Right to Sell**
 - a) Original Document **(3-9)**
 - b) Review of WRA Forms Committee Memo with Proposed Revisions to WB-1 **(10-24)**
 - 2) **WB-42 Amendment to Listing Contract**
 - a) Original Document **(25)**
 - b) Review of WRA Forms Committee Memo with Proposed Revisions to WB-42 **(26)**
 - 3) **WB-36 Buyer Agency/Tenant Representation Agreement**
 - a) Original Document **(27-32)**
 - b) Review of WRA Forms Committee Memo with Proposed Revisions to WB-36 **(33-36)**
- E. Public Comments**

ADJOURNMENT

The Next Scheduled Meeting is April 13, 2016.

**REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL
MEETING MINUTES
JANUARY 13, 2016**

PRESENT: Stephen Beers, Casey Clickner, Debra Conrad, John Drzewiecki, Kim Moermond, Richard Petershack, Michael Sewell, Jonathan Sayas, Thomas Weber, Pamela Widen

EXCUSED: Michael Gordon, Cori Lamont, Scott Minter, Gary Tritz

STAFF: Brittany Lewin, Executive Director; Nilajah Hardin, Bureau Assistant

CALL TO ORDER

Stephen Beers, Chair, called the meeting to order at 9:37 a.m. A quorum of ten (10) members was confirmed.

ADOPTION OF AGENDA

MOTION: Casey Clickner moved, seconded by Thomas Weber, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES

MOTION: Debra Conrad moved, seconded by Michael Sewell, to approve the minutes of November 19, 2015 as published. Motion carried unanimously.

Richard Petershack was excused from the meeting at 2:02 p.m.

ADJOURNMENT

MOTION: John Drzewiecki moved, seconded by Thomas Weber, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 2:16 p.m.

WB-1 RESIDENTIAL LISTING CONTRACT - EXCLUSIVE RIGHT TO SELL

1 **SELLER GIVES THE FIRM THE EXCLUSIVE RIGHT TO SELL THE PROPERTY ON THE FOLLOWING TERMS:**

2 ■ **PROPERTY DESCRIPTION:** Street address is: _____
3 _____

4 in the _____ of _____, County of _____, Wisconsin. Insert additional
5 description, if any, at lines xxx-xxx or attach as an addendum per lines xxx-xxx.

6 ■ **INCLUDED IN LIST PRICE:** Seller is including in the list price the Property, all Fixtures not excluded on lines xx-xx,
7 and the following items: _____
8 _____
9 _____
10 _____
11 _____.

12 ■ **NOT INCLUDED IN LIST PRICE:** _____
13 _____
14 _____
15 _____.

16 **CAUTION: Identify Fixtures to be excluded by Seller or which are rented and will continue to be owned by the**
17 **lessor. (See lines xxx-xxx).**

18 ■ **LIST PRICE:** _____ Dollars (\$ _____).

19 **MARKETING** Seller authorizes and the Firm and its agents agree to use reasonable efforts to market the Property.
20 Seller agrees that the Firm and its agents may market Seller's personal property identified on lines x-x during the term
21 of this Listing. The Firm's marketing may include: _____
22 _____.

23 The Firm and its agents may advertise the following special financing and incentives offered by Seller: _____
24 _____.

25 Seller has a duty to cooperate with the marketing efforts of the Firm and its agents. See lines xx-xx regarding the Firm's
26 role as marketing agent and Seller's duty to notify the Firm of any potential buyer known to Seller. Seller agrees that
27 the Firm and its agents may market other properties during the term of this Listing.

28 **COMMISSION** The Firm's commission shall be _____
29 _____
30 _____.

- 31 ■ **EARNED:** Seller shall pay the Firm's commission, which shall be earned, if, during the term of this Listing:
32 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Property;
33 2) Seller grants an option to purchase all or any part of the Property which is subsequently exercised;
34 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Property;
35 4) A transaction occurs which causes an effective change in ownership or control of all or any part of the Property; or
36 5) A ready, willing and able buyer submits a bona fide written offer to Seller or Firm for the Property at, or above, the list
37 price and on substantially the same terms set forth in this Listing and the current WB-11 Residential Offer To
38 Purchase, even if Seller does not accept the buyer's offer. A buyer is ready, willing and able when the buyer submitting
39 the written offer has the ability to complete the buyer's obligations under the written offer, or reasonably could have
40 command or access to sufficient resources to complete the buyer's obligations under the written offer.

41 The Firm's commission shall be earned if, during the term of the Listing, one seller of the Property sells, conveys,
42 exchanges or options, as described above, an interest in all or any part of the Property to another owner, except by divorce
43 judgment.

44 ■ **DUE AND PAYABLE:** Once earned, the Firm's commission is due and payable in full at the earlier of closing or the date
45 set for closing, even if the transaction does not close, unless otherwise agreed in writing.

- 46 ■ **CALCULATION:** A percentage commission shall be calculated based on the following, if earned above:
47 • under 1) or 2) the total consideration between the parties in the transaction.
48 • under 3) or 4) the list price if the entire Property is involved.
49 • under 3) if the exchange involves less than the entire Property or under 4) if the effective change in ownership or
50 control involves less than the entire Property, the fair market value of the Property.
51 • under 5) the total offered purchase price.

52 **NOTE: If a commission is earned for a portion of the Property it does not terminate the Listing as to any remaining**
53 **Property.**

54 **COMPENSATION TO OTHERS** The Firm offers the following commission to cooperating firms: _____
55 _____. (Exceptions if any): _____.

56 **BUYER FINANCIAL CAPABILITY** The Firm and its agents are not responsible under Wisconsin statutes or regulations to
57 qualify a buyer's financial capability. If Seller wishes to confirm a buyer's financial ability, Seller may negotiate inclusion of a
58 contingency for financing, proof of funds, qualification from a lender, sale of buyer's property, or other confirmation in any
59 offer to purchase or contract.

60 **DISPUTE RESOLUTION** The Parties understand that if there is a dispute about this Listing or an alleged breach, and
61 the parties cannot resolve the dispute by mutual agreement, the parties may consider judicial resolution in court or may
62 consider alternative dispute resolution. Alternative dispute resolution may include mediation and binding
63 arbitration. Should the parties desire to submit any potential dispute to alternative dispute resolution it is recommended
64 that the parties add such in Additional Provisions or in an Addendum.

65 **DISCLOSURE TO CLIENTS**

66 Under Wisconsin law, a brokerage firm (hereinafter firm) and its brokers and salespersons (hereinafter agents) owe
67 certain duties to all parties to a transaction:

- 68 (a) The duty to provide brokerage services to you fairly and honestly.
- 69 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.
- 70 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request
71 it, unless disclosure of the information is prohibited by law.
- 72 (d) The duty to disclose to you in writing certain Material Adverse Facts about a property, unless disclosure of the
73 information is prohibited by law. (See Lines xxx-xxx)
- 74 (e) The duty to protect your confidentiality. Unless the law requires it, the firm and its agents will not disclose your
75 confidential information or the confidential information of other parties. (See Lines xxx-xxx)
- 76 (f) The duty to safeguard trust funds and other property the firm or its agents holds.
- 77 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the
78 advantages and disadvantages of the proposals.

79 **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A FIRM, YOU ARE THE FIRM'S CLIENT.** 80 **A FIRM OWES ADDITIONAL DUTIES TO YOU AS A CLIENT OF THE FIRM:**

- 81 (a) The firm or one of its agents will provide, at your request, information and advice on real estate matters that affect
82 your transaction, unless you release the firm from this duty.
 - 83 (b) The firm or one of its agents must provide you with all material facts affecting the transaction, not just Adverse
84 Facts.
 - 85 (c) The firm and its agents will fulfill the firm's obligations under the agency agreement and fulfill your lawful requests
86 that are within the scope of the agency agreement.
 - 87 (d) The firm and its agents will negotiate for you, unless you release **them** from this duty.
 - 88 (e) The firm and its agents will not place their interests ahead of your interests. The firm and its agents will not, unless
89 required by law, give information or advice to other parties who are not the firm's clients, if giving the information or
90 advice is contrary to your interests.
- 91 If you become involved in a transaction in which another party is also the firm's client (a "multiple representation
92 relationship"), different duties may apply.

93 **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY**

- 94 ■ A multiple representation relationship exists if a firm has an agency agreement with more than one client who is a
95 party in the same transaction. If you and the firm's other clients in the transaction consent, the firm may provide
96 services through designated agency, which is one type of multiple representation relationship.
- 97 ■ Designated agency means that different agents with the firm will negotiate on behalf of you and the other client or
98 clients in the transaction, and the firm's duties to you as a client will remain the same. Each agent will provide
99 information, opinions, and advice to the client for whom the agent is negotiating, to assist the client in the negotiations.
100 Each client will be able to receive information, opinions, and advice that will assist the client, even if the information,
101 opinions, or advice gives the client advantages in the negotiations over the firm's other clients. An agent will not reveal
102 any of your confidential information to another party unless required to do so by law.
- 103 ■ If a designated agency relationship is not authorized by you or other clients in the transaction you may still authorize
104 or reject a different type of multiple representation relationship in which the firm may provide brokerage services to
105 more than one client in a transaction but neither the firm nor any of its agents may assist any client with information,
106 opinions, and advice which may favor the interests of one client over any other client. Under this neutral approach, the
107 same agent may represent more than one client in a transaction.
- 108 ■ If you do not consent to a multiple representation relationship the firm will not be allowed to provide brokerage
109 services to more than one client in the transaction.

CHECK ONLY ONE OF THE THREE BELOW:

110

111 _____ The same firm may represent me and the other party as long as the same agent is not
112 representing us both. (multiple representation relationship with designated agency)

113 _____ The same firm may represent me and the other party, but the firm must remain neutral
114 regardless if one or more different agents are involved. (multiple representation
115 relationship without designated agency)

116 _____ The same firm cannot represent both me and the other party in the same transaction. (I
117 reject multiple representation relationships)

118 **NOTE: All clients who are parties to this agency agreement consent to the selection checked above. You may**
119 **modify this selection by written notice to the firm at any time. Your firm is required to disclose to you in your**
120 **agency agreement the commission or fees that you may owe to your firm. If you have any questions about the**
121 **commission or fees that you may owe based upon the type of agency relationship you select with your firm,**
122 **you should ask your firm before signing the agency agreement.**

SUBAGENCY

123
124 Your firm may, with your authorization in the agency agreement, engage other firms (subagent firms) to assist your firm by
125 providing brokerage services for your benefit. A subagent firm and the agents with the subagent firm will not put their own
126 interests ahead of your interests. A subagent firm will not, unless required by law, provide advice or opinions to other parties
127 if doing so is contrary to your interests.

128 **PLEASE REVIEW THIS INFORMATION CAREFULLY. An agent can answer your questions about brokerage**
129 **services, but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax**
130 **advisor, or home inspector.**

131 This disclosure is required by section 452.135 of the Wisconsin statutes and is for information only. It is a plain language
132 summary of the duties owed to you under section 452.133 (2) of the Wisconsin statutes.

133 ■ **CONFIDENTIALITY NOTICE TO CLIENTS:** The Firm and its agents will keep confidential any information given to
134 the Firm or its agents in confidence, or any information obtained by the Firm and its agents that a reasonable person
135 would want to be kept confidential, unless the information must be disclosed by law or you authorize the Firm to
136 disclose particular information. The Firm and its agents shall continue to keep the information confidential after the Firm
137 is no longer providing brokerage services to you.

138 The following information is required to be disclosed by law:

- 139 1) Material Adverse Facts, as defined in section 452.01 (5g) of the Wisconsin statutes (lines xxx-xxx).
- 140 2) Any facts known by the Firm and its agents that contradict any information included in a written inspection report on
141 the property or real estate that is the subject of the transaction.

142 To ensure that the Firm and its agents are aware of what specific information you consider confidential, you may list
143 that information below (see lines xxx-xxx). At a later time, you may also provide the Firm with other information you
144 consider to be confidential.

145 **CONFIDENTIAL INFORMATION:** _____

146 _____

147 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by the Firm and its agents): _____

148 _____

149 **COOPERATION, ACCESS TO PROPERTY OR OFFER PRESENTATION** The parties agree that the Firm and its
150 agents will work and cooperate with other firms and agents in marketing the Property, including firms acting as
151 subagents (other firms engaged by the Firm - See lines xxx-xxx) and firms representing buyers. Cooperation includes
152 providing access to the Property for showing purposes and presenting offers and other proposals from these firms to
153 Seller. Note any firms with whom the Firm shall not cooperate, any firms or agents or buyers who shall not be allowed
154 to attend showings, and the specific terms of offers which should not be submitted to Seller: _____

155 _____
156 **CAUTION: Limiting the Firm's cooperation with other firms may reduce the marketability of the Property.**

157 **EXCLUSIONS** All persons who may acquire an interest in the Property who are Protected Buyers under a prior listing
158 contract are excluded from this Listing to the extent of the prior firm's legal rights, unless otherwise agreed to in writing.
159 Within **seven** days of the date of this Listing, Seller agrees to deliver to the Firm a written list of all such Protected Buyers.

160 **NOTE: If Seller fails to timely deliver this list to the Firm, then no Protected Buyers are excluded from this Listing**
161 **and Seller may potentially face paying commission to two listing firms.**

162 The following other buyers _____

163 _____ are excluded from this Listing until _____ [INSERT DATE].

164 These other buyers are no longer excluded from this Listing after the specified date unless, on or before the specified date,
165 Seller has either accepted a written offer from the buyer or sold the Property to the buyer.

166 **DEFINITIONS**

167 ■ **ADVERSE FACT:** An "Adverse Fact" means any of the following:

168 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

- 169 1) Significantly and adversely affecting the value of the Property;
170 2) significantly reducing the structural integrity of improvements to real estate; or
171 3) presenting a significant health risk to occupants of the Property.

172 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her
173 obligations under a contract or agreement made concerning the transaction.

174 ■ **DEADLINES – DAYS:** Deadlines expressed as a number of "days" from an event are calculated by excluding the day the
175 event occurred and by counting subsequent calendar days.

176 ■ **DEFECT:** "Defect" means a condition that would have a significant adverse effect on the value of the Property; that
177 would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or
178 replaced would significantly shorten or adversely affect the expected normal life of the premises.

179 ■ **FIRM:** "Firm" means a licensed sole proprietor broker or a licensed broker business entity.

180 ■ **FIXTURES:** A "Fixture" is an item of property which is physically attached to or so closely associated with land or
181 buildings so as to be treated as part of the real estate, including, without limitation, physically attached items not easily
182 removable without damage to the premises, items specifically adapted to the premises, and items customarily treated
183 as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and
184 windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and
185 cooling units and attached equipment; water heaters and owned (non-rental?) water softeners and treatment systems;
186 sump pumps; attached or fitted floor coverings; awnings; attached antennas and satellite dishes, television wall
187 mounting brackets, (but not the television unless included on lines 6-11), garage door openers and remote controls;
188 installed security systems; central vacuum systems and accessories; in-ground sprinkler systems and component parts;
189 built-in appliances; ceiling fans; fences; storage buildings on permanent foundations and docks/piers on permanent
190 foundations.

191 **CAUTION: Exclude any Fixtures to be retained by Seller or which are rented (e.g., water softener or other water**
192 **conditioning systems, home entertainment and satellite dish components, L.P. tanks, etc.) on lines xx-xx**
193 **in the offer to purchase.**

194 ■ **MATERIAL ADVERSE FACT:** A "Material Adverse Fact" means an Adverse Fact that a party indicates is of such
195 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable
196 party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or
197 affects or would affect the party's decision about the terms of such a contract or agreement.

198 ■ **PERSON ACTING ON BEHALF OF BUYER:** "Person Acting on Behalf of Buyer" shall mean any person joined in interest
199 with buyer, or otherwise acting on behalf of buyer, including but not limited to buyer's immediate family, agents, employees,
200 directors, managers, members, officers, owners, partners, incorporators and organizers, as well as any and all corporations,
201 partnerships, limited liability companies, trusts or other entities created or controlled by, affiliated with or owned by buyer, in
202 whole or in part whether created before or after expiration of this Listing.

203 ■ **PROPERTY:** Unless otherwise stated, "Property", means all property included in the list price as described on lines x-xx

204 ■ **PROTECTED BUYER:** Means a buyer who personally, or through any Person Acting on Behalf of Buyer, during the term
205 of this Listing: 1) delivers to Seller or the Firm or its agents a written offer to purchase, exchange or option on the Property; 2)
206 views the Property with Seller or negotiates directly with Seller by communicating with Seller regarding any potential terms
207 upon which buyer might acquire an interest in the Property; or 3) attends an individual showing of the Property or
208 communicates with agents of the Firm or cooperating firms the potential terms upon which buyer might acquire an interest in
209 the Property, but only if the Firm or its agents deliver the buyer's name to Seller, in writing, no later than five days after the
210 expiration or termination (lines 264-273) of the Listing. The requirement in 3), to deliver the buyer's name to Seller in writing,
211 may be fulfilled as follows: a) If the Listing is effective only as to certain individuals who are identified in the Listing, by the
212 identification of the individuals in the Listing; or, b) if a buyer has requested that the buyer's identity remain confidential, by
213 delivery of a written notice identifying the firm or agents with whom the buyer negotiated and the date(s) of any individual
214 showings or other negotiations. A Protected Buyer also includes any Person Acting on Behalf of Buyer joined in interest with
215 or otherwise acting on behalf of a Protected Buyer, who acquires an interest in the Property during the extension of listing
216 period as noted on lines xxx-xxx.

217 **FAIR HOUSING** Seller and the Firm and its agents agree that they will not discriminate against any
218 prospective buyer on account of race, color, sex, sexual orientation as defined in Wisconsin Statutes, Section
219 111.32(13m), disability, religion, national origin, marital status, lawful source of income, age, ancestry, family
220 status, status as a victim of domestic abuse, sexual assault, or stalking, or in any other unlawful manner.

221 **EXTENSION OF LISTING** The Listing term is extended for a period of one year as to any Protected Buyer. Upon
222 receipt of a written request from Seller or a broker who has listed the Property, the Firm agrees to promptly deliver to

223 Seller a written list of those buyers known by the Firm and its agents to whom the extension period applies. Should this
224 Listing be terminated by Seller prior to the expiration of the term stated in this Listing, this Listing shall be extended for
225 Protected Buyers, on the same terms, for one year after the Listing is terminated (lines xxx-xxx).

226 **OCCUPANCY** Unless otherwise provided, Seller agrees to give buyer occupancy of the Property at time of closing
227 and to have the Property in broom swept condition and free of all debris and personal property except for personal
228 property belonging to current tenants, sold to buyer or left with buyer's consent.

229 **LEASED PROPERTY** If Property is currently leased and lease(s) will extend beyond closing, Seller shall assign Seller's
230 rights under the lease(s) and transfer all security deposits and prepaid rents (subject to agreed upon prorations) thereunder
231 to buyer at closing. Seller acknowledges that Seller remains liable under the lease(s) unless released by tenants.
232 **CAUTION: Seller should consider obtaining an indemnification agreement from buyer for liabilities under the**
233 **lease(s) unless released by tenants.**

234 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and
235 persons registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at
236 <http://www.doc.wi.gov> or by telephone at (608)240-5830.

237 **REAL ESTATE CONDITION REPORT** Seller agrees to complete the real estate condition report provided by the Firm
238 to the best of Seller's knowledge. Seller agrees to amend the report should Seller learn of any Defect(s) after completion
239 of the report but before acceptance of a buyer's offer to purchase. Seller authorizes the Firm and its agents to distribute
240 the report to all interested parties and agents inquiring about the Property. Seller acknowledges that the Firm and its
241 agents have a duty to disclose all Material Adverse Facts as required by law.

242 **SELLER REPRESENTATIONS REGARDING DEFECTS** Seller represents to the Firm that as of the date of this
243 Listing, Seller has no notice or knowledge of any Defects affecting the Property other than those noted on the real estate
244 condition report.
245 **WARNING: IF SELLER REPRESENTATIONS ARE INCORRECT OR INCOMPLETE, SELLER MAY BE LIABLE FOR**
246 **DAMAGES AND COSTS.**

247 **SELLER COOPERATION WITH MARKETING EFFORTS** Seller agrees to cooperate with the Firm in the Firm's
248 marketing efforts and to provide the Firm with all records, documents and other material in Seller's possession or
249 control which are required in connection with the sale. Seller authorizes the Firm and its agents to do those acts
250 reasonably necessary to effect a sale and Seller agrees to cooperate fully with these efforts which may include use of a
251 multiple listing service, Internet advertising or a lockbox system on Property. Seller shall promptly refer all persons
252 making inquiries concerning the Property to the Firm and notify the Firm in writing of any potential buyers with whom Seller
253 negotiates or who view the Property with Seller during the term of this Listing.

254 **OPEN HOUSE AND SHOWING RESPONSIBILITIES** Seller is aware that there is a potential risk of injury, damage
255 and/or theft involving persons attending an "individual showing" or an "open house." Seller accepts responsibility for
256 preparing the Property to minimize the likelihood of injury, damage and/or loss of personal property. Seller agrees to
257 hold the Firm and its agents harmless for any losses or liability resulting from personal injury, property damage, or theft
258 occurring during "individual showings" or "open houses" other than those caused by the negligence or intentional
259 wrongdoing of the Firm or its agents. Seller acknowledges that individual showings and open houses may be
260 conducted by licensees other than agents of the Firm, that appraisers and inspectors may conduct appraisals and
261 inspections without being accompanied by agents of the Firm or other licensees, and that buyers or licensees may be
262 present at all inspections and testing and may photograph or videotape Property unless otherwise provided for in
263 additional provisions at lines xxx-xxx or in an addendum per lines xxx-xxx.

264 **TERMINATION OF LISTING** Neither Seller nor the Firm has the legal right to unilaterally terminate this Listing absent a
265 material breach of contract by the other party. Seller understands that the parties to the Listing are Seller and the Firm.
266 Agents for the Firm do not have the authority to enter into a mutual agreement to terminate the Listing, amend the
267 commission amount or shorten the term of this Listing, without the written consent of the agent(s)' supervising broker. Seller
268 and the Firm agree that any termination of this Listing by either party before the date stated on lines xxx-xxx shall be
269 effective by the Seller only if stated in writing and delivered to the agent and Supervising Broker and effective by the
270 Firm only if stated in writing by the Supervising Broker and delivered by Seller in accordance with lines xx-xx. indicated
271 to the other party in writing and shall not be effective until delivered to the other Party in accordance with lines xxx-xxx.
272 **CAUTION: Early termination of this Listing may be a breach of contract, causing the terminating party to**
273 **potentially be liable for damages.**

274 **EARNEST MONEY** If the Firm holds trust funds in connection with the transaction, they shall be retained by the Firm in the
275 Firm's trust account. The Firm may refuse to hold earnest money or other trust funds. Should the Firm hold the earnest money,
276 the Firm shall hold and disburse earnest money funds in accordance with Wis. Stat. Ch. 452 and Wis. Admin. Code Ch. REEB
277 18. If the transaction fails to close and the Seller requests and receives the earnest money as the total liquidated damages,
278 then upon disbursement to Seller the earnest money shall be paid first to reimburse the Firm for cash advances made by the
279 Firm on behalf of Seller and one half of the balance, but not in excess of the agreed commission, shall be paid to the Firm as
280 full commission in connection with said purchase transaction and the balance shall belong to Seller. This payment to the Firm
281 shall not terminate this Listing

282 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Listing, delivery of
283 documents and written notices to a Party shall be effective only when accomplished by one of the methods specified at

284 lines xx-xx.

285 (1) Personal Delivery: giving the document or written notice personally to the Party, or the Party's recipient for delivery
286 if named at line xx or xx.

287 Seller's recipient for delivery (optional): _____

288 Firm's recipient for delivery (optional): _____

289 (2) Fax: fax transmission of the document or written notice to the following telephone number:

290 Seller: (_____) _____ Firm: (_____) _____

291 (3) Commercial Delivery: depositing the document or written notice fees prepaid or charged to an account with a
292 commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line xx or
293 xx, for delivery to the Party's delivery address at line xx or xx.

294 (4) U.S. Mail: depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the
295 Party, or to the Party's recipient for delivery if named at line xx or xx, for delivery to the Party's delivery address at line
296 xx or xx.

297 Delivery address for Seller: _____

298 Delivery address for Firm: _____

299 (5) E-Mail: electronically transmitting the document or written notice to the Party's e-mail address, if given below at
300 line xx or xx. If this is a consumer transaction where the property being purchased or the sale proceeds are used
301 primarily for personal, family or household purposes, each consumer providing an e-mail address below has first
302 consented electronically as required by federal law.

303 E-Mail address for Seller: _____

304 E-Mail address for Firm: _____

305 **ADDITIONAL PROVISIONS** _____

306 _____

307 _____

308 _____

309 _____

310 _____

311 **ADDENDA** The attached addenda _____

312 _____

313 _____

314 _____ is/are made part of this Listing.

315 **TERM OF THE CONTRACT** From the _____ day of _____, _____, up

316 to the earlier of midnight of the _____ day of _____, _____, or the

317 conveyance of the entire Property.

318 **READING/RECEIPT: BY SIGNING BELOW, SELLER ACKNOWLEDGES RECEIPT OF A COPY OF THIS LISTING**
319 **CONTRACT AND THAT HE/SHE HAS READ ALL x PAGES AS WELL AS ANY ADDENDA AND ANY OTHER**
320 **DOCUMENTS INCORPORATED INTO THE LISTING.**

321 (x) _____

322 Seller's Signature ▲ _____ Print Name Here: ▲ _____ Date ▲ _____

323 (x) _____

324 Seller's Signature ▲ _____ Print Name Here: ▲ _____ Date ▲ _____

325 (x) _____

326 Seller's Signature ▲ _____ Print Name Here: ▲ _____ Date ▲ _____

327 _____

328 (x) _____

329 Seller's Signature ▲ _____ Print Name Here: ▲ _____ Date ▲ _____

330 _____

331 Seller Entity Name (if any): _____

332 _____

333 (x) _____

334 Authorized Signature ▲ Print Name & Title Here ► _____ Date ▲ _____

335 (x) _____

336 Agent for Firm ▲ _____ Print Name Here: ▲ _____ Firm Name ▲ _____ Date ▲ _____

337 Supervising Broker: _____ Contact information: _____

338 Firm Address ▲ Firm Phone # ▲

339

340 Firm Fax # ▲ Firm E-Mail Address ▲

WB-1 REVISIONS

To: WRA Forms Committee
From: WRA Staff
Date: February 12, 2016
RE: **WB-1 Residential Listing Contract – Exclusive Right to Sell**

The following are revisions to the WB-1 Residential Listing Contract – Exclusive Right to Sell (mandatory use date 7-1-08), as noted below, proposed by the DSPS Real Estate Contractual Forms Advisory Council and the WRA Forms Committee. The line numbers in this memo refer to the line numbers in the accompanying draft of proposed WB-1 modifications (WB1_draft02.16.16d). As you can see, the WB-1 was reorganized in anticipation of final approval by this Committee today for approval by the REEB at its next opportunity. The goal is to have the WB-1 ready for a mandatory use date of July 1, 2016, the date it is anticipated the legislation making many changes to chapter 452 of the Wisconsin Statutes goes into effect. This legislation has passed both houses of the Legislature and is awaiting the Governor's signature.

Turquoise: items new or revised by the DSPS Committee

Green: items new or suggested by the WRA Forms Committee

UPDATE: the Committee member suggestion that a mandatory arbitration and class action waiver provision be added to the listings and buyer agency agreements was declined by this Committee. You believed that it would be better placed in company addenda and if it comes to be shown that this is a helpful tool that deserves wider application, it can be reconsidered at that time. Some believed that arbitration is better between professionals on relatively equal footing and is difficult and intimidating for consumers as well as hard for agents to explain. In addition, mediation and arbitration are frequently offered and/or recommended within the court system at present.

The following related addition was brought before the WRA Forms Committee. The proposal is to include some language adding a reference to the potential of mediation and binding arbitration, along the lines of:

DISPUTE RESOLUTION: The Parties understand that if there is a dispute about this Listing or an alleged breach, and the parties cannot resolve the dispute by mutual agreement, the parties may consider judicial resolution in court or may consider alternative dispute resolution. Alternative dispute resolution may include mediation and binding arbitration. Should the parties desire to submit any potential dispute to alternative dispute resolution it is recommended that the parties add such in Additional Provisions or in an Addendum.

This language is shown in the draft on lines 60-64 solely for the consideration of this Committee even though the WRA Forms Committee was not in favor of this provision (we thought it was easier to see it and easier to take it out rather than add new material). The thought is that a provision like this would be helpful to have in the listings in the event that it is determined by any parties, or the Association at some point, that binding arbitration is a preferred mechanism. The WRA Forms Committee preferred to not include this but if such language would be added, they wondered if it

perhaps should more closely echo the language in the offer. For example, lines 290-292 of the WB-11 state: “If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution instead of the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those disputes covered by the arbitration agreement.”

⇒ Does this Committee wish to add the language on lines 58-62 of the draft or should it be removed? Is there other language that should be used? Note that if language is added for this or any other provision that is text only, there is not a lot of extra room in the formatted draft other than at the top of the second page before the Disclosure to Clients.

RECAP:

◆ Update the top of the form to say Approved by the Wisconsin Real Estate Examining Board. The mandatory use date will be July 1, 2016. The optional use date should be ____ (depends on the timing of the REEB approval).

◆ **Chapter 452 Terminology.** The terminology throughout this form is modified in anticipation of the Wis. Stat. chapter 452 revisions wherein the proposed terminology would refer to a Firm to mean either a broker entity or a sole proprietor broker.

◆ **Property Definition (Lines 12-17 and 202):**

If we want to have commission computed upon the total sales price we may wish to make it clear that all property – real and personal – is included in the purchase price. The DSPS Real Estate Contractual Forms Advisory Committee chose to do this by modifying the definition of Property on line 202:

PROPERTY: Unless otherwise stated, “Property“, means all property included in the list price as described on lines x-xx~~the real estate described at lines 2-4.~~

In addition, the Not Included in List Price section on lines 12-17 was modified to move the CAUTION regarding fixtures to the end of the subsection.

~~**NOT INCLUDED IN LIST PRICE:** CAUTION: Identify Fixtures to be excluded by Seller or which are rented and will continue to be owned by the lessor. (See lines 199-210):~~

CAUTION: Identify Fixtures to be excluded by Seller or which are rented and will continue to be owned by the lessor. (See lines xxx-xxx).

UPDATE: On November 19 the DSPS Real Estate Contractual Forms Advisory Council discussed whether a zip code line should be added to the Property Description on lines 2-5. This pertains to the discussion of properties that may have a legal description in a given municipality but have a mailing address and zip code in another adjoining municipality. Both descriptions are needed for purposes of loan and insurance underwriting, property taxes, school district, fire district, etc. It was decided, however, that this was more of an issue for the offer. A broker could include the zip code or other such information in the additional provisions lines or in an addendum, if desired. The idea to put a prompt in parentheses at the end of line 4 was rejected.

One change that the DSPS Real Estate Contractual Forms Advisory Council did make on November 19 was to move the List Price line so that it appears after the Property Description, Included in List Price and Not Included in List Price sections, and directly before Marketing. This will avoid having it break up the flow of these three sections which describe what the property is for purposes of the listing.

◆ **Marketing (Line 19):**

The first sentence of the Marketing section now says, “Seller authorizes and the Firm and its agents agrees to use reasonable efforts **market** the Property.”

◆ **Commission (Lines 28-55)**

Commission considerations

The *Ash Park* commission case decision by the Wisconsin Supreme Court is favorable, holding the broker is entitled to commission because the parties’ offer was an “enforceable contract” within the meaning of the listing contract where an individual can compel observance of the contract by seeking a remedy for a breach (as would be the case with virtually all accepted offers).

However, the concurring opinion by Chief Justice Roggensack raises some potential issues (although not sure her analysis of the case law is correct because she does not seem to take account of the fact that what had to be done to earn the commission varied over time because different listing contracts have different requirements and language, but nonetheless the sentiment is real). She expresses concern about sellers instead of brokers being responsible for investigating the financial ability of a proposed buyer, especially in residential transactions involving consumers not working with legal counsel. This is disconcerting because other than having a lender pre-approve a buyer or vet the buyer before the offer is entered into, brokers do not perform this function nor are they authorized to perform financial analyses of potential buyers. Having a financing contingency does not appear to solve the issue. *Ash Park* involved a one-party listing so that may be part of the reason for her comment.

She is also concerned that brokers could sue home sellers who have no idea that commission can be due if the home is not sold, per the WB-1 language. What this points out is that once a home seller is in contract with an accepted offer that the commission is earned per the *Ash Park* holding. However, in *Ash Park* the contract had all of its contingencies resolved. If an offer becomes null and void in accordance with the financing contingency, inspection contingency, etc., then there is no enforceable contract left so the commission is not earned. But the language in the WB-1 says commission is earned when the seller accepts the offer (an enforceable contract). See the Wisconsin State Bar article discussing the *Ash Park* decision and the decision at <http://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=143998>. Clearly attorneys who read their publications will be aware of the issues raised and may be very likely to advise all sellers to add language to listing contracts stating that commission is due only if there is a closing and the property is sold. They may also recommend other modifications, but attorneys do not often confer with sellers at the listing contract stage, especially with residential transactions.

- ❖ Should the commission language be made clearer – it is complex and convoluted! Should there be more caution or warning language for the consumer?
- ❖ Should the definition of “enforceable contract” from the *Ash Park* case be added to the WB-1? An “enforceable contract” is one where an individual can compel observance of the contract by seeking a remedy for a breach.
- ❖ Other ideas?

Below is the reworked COMMISSION section (shown in tracking in the WB-1 draft) where the DSPS Committee ended at its last meeting. Some additional ideas are shown in tracking and discussed below.

The commission “due and payable” item was taken out of the middle of the paragraph where it was before and placed directly after the list of commission triggering events that now includes the item for when one owner buys out the other, except by divorce judgment. In addition, the definition of “Procure” was

collapsed into the commission event number 6 and the word “Procure” itself has otherwise been eliminated from the WB-1 draft.

UPDATE: On January 13 the DSPS Real Estate Contractual Forms Advisory Council took what had been item 5) below and put it back as text below the list of commission trigger events because it is not a separate trigger event. If there is a sale or an option or an exchange those transfers would be processed under the numbered items already there. The Committee also worked on the language describing how to calculate the percentage commission in various situations and an attempt was made to consolidate that language. Finally a request was made to organize the different sections of the Commission section and a preliminary attempt is shown in the draft – this is open to comment and discussion. Further formatting appears in the accompanying draft -- that is the place to look. Below is what had been in the Commission section previously.

■ **COMMISSION:** The Firm's commission shall be _____

EARNED: Seller shall pay the Firm's commission, which shall be earned, if, during the term of this Listing:

- 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Property;
- 2) Seller grants an option to purchase all or any part of the Property which is subsequently exercised;
- 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Property;
- 4) A transaction occurs which causes an effective change in ownership or control of all or any part of the Property;
- 5) or a ready, willing and able buyer submits a bona fide written offer to Seller or Firm for the Property at, or above, the list price and on substantially the same terms set forth in this Listing and the current WB-11 Residential Offer To Purchase, even if Seller does not accept the buyer's offer.

The Firm's commission shall be earned if, during the term of the Listing, one seller of the Property sells, conveys, exchanges or options, as described above, an interest in all or any part of the Property to another owner, except by divorce judgment.

DUE AND PAYABLE: Once earned, the Firm's commission is due and payable in full at the earlier of closing or the date set for closing, even if the transaction does not close, unless otherwise agreed in writing.

CALCULATION: A percentage commission, if earned above, shall be calculated based on the following:

Under 1) or 2) the total consideration between the parties in the transaction.

Under 3) or 4) the list price if the entire Property is involved.

Under 3) if the exchange involves less than the entire Property or under 4) if the effective change in ownership or control involves less than the entire Property, the fair market value of the Property.

Under 5) the total offered purchase price.

BUYER FINANCIAL CAPABILITY: The Firm and its agents are not responsible under Wisconsin statutes or regulations to qualify a buyer's financial capability. Seller may negotiate inclusion of a financing, proof of funds, financial pre-approval, sale of buyer's property, or other contingency in any offer to purchase or contract if Seller has concerns about buyer's financial capability.

NOTE: If a commission is earned for a portion of the Property it does not terminate the Listing as to any remaining Property.

UPDATE: On November 19 the DSPS Real Estate Contractual Forms Advisory Council made changes with regard to the “ready, willing and able” issue. The definition was eliminated and the phrase as it appears in commission trigger 5) is left to case law interpretation – see the accompanying draft of the WB-1 and the case law snippets below.

Lines 56-59 of the Draft (has been moved for purposes of discussion only): Buyer Financial Capability:

The Firm and its agents are not responsible under Wisconsin statutes or regulations to qualify a buyer's financial capability. Seller may negotiate inclusion of a financing, proof of funds, financial pre-approval, sale of buyer's property, or other contingency in any offer to purchase or contract if Seller has concerns about buyer's financial capability.

“if Seller has concerns about buyer's financial capability” could that be restated as “if Seller wishes to verify/confirm buyer's financial ability”? “If Seller has inquiries relating to buyer's financial capability?”

The WRA Forms Committee restructured this language to say;

The Firm and its agents are not responsible under Wisconsin statutes or regulations to qualify a buyer's financial capability. If Seller wishes to confirm a buyer's financial ability, Seller may negotiate inclusion of a contingency for financing, proof of funds, qualification from a lender, sale of buyer's property, or other confirmation in any offer to purchase or contract.

There are a couple of people who still want to remove the sentence reassuring the seller of the steps that may be taken to find out about the buyer's finances, the bulk of the WRA Forms Committee was happy with this. There also was a late suggestion (after the Committee met) to move this subsection without any indication of where it might be placed.

⇒ **Is this language above (and in the draft) acceptable or are there modifications or clarifications?**

⇒ **Should the Buyer Financial Capability section be moved to another position in the form? For purposes of discussion only this is shown being moved to the top of the second page (lines 56-59) and can be moved back to its original position directly before the NOTE at the end of the Commission section, as this Committee prefers.**

Although the WRA Forms Committee as a whole was satisfied with the Commission section, we have had a few 11th hour suggestions. One was to add in a sentence explaining what "ready, willing and able" means rather than leave it to the courts (see the following pages of this memo for a sample of what they say). Such a sentence might say, "A buyer is ready, willing and able when the buyer submitting the written offer has the ability to complete the buyer's obligations under the written offer, or reasonably could have command or access to sufficient resources to complete the buyer's obligations under the written offer." This could be placed in the definitions section, or perhaps at the end of commission earned item 5.

⇒ **Should a sentence defining ready, willing and able" be added back into the WB-1 draft? If so, where is the most desirable placement? For purposed of discussion only this is shown being added to item 5 and can be removed or moved to the definition section, as desired.**

There also was a comment that there is too much space to write in the commission and a request to remove one of the blank lines.

⇒ **In the commission section should line 30 (blank line) be removed because one and one-half blank lines is enough (don't forget electronic use of forms wherein you sometimes do not have as much room to write as you might think)?**

The teachings of case law

On this page and on pages 6-7 of this memorandum are snippets of what "procure" and "ready, willing and able" mean to the courts.

1. Multiple cases state that a "broker, employed 'to procure a purchaser' for real estate, is entitled to his commission when he produces a person ready, willing and able to purchase upon the terms specified by the owner in the brokerage contract." **This is essentially what the full price offer item 1 in the draft states, except that the word procure has been removed altogether from the WB-1 draft. It seems that "procure a purchaser" triggers the "ready, willing and ready" standard which it may be well to avoid because this seemingly leads the courts to indicate that licensees must ensure the buyer has financial ability to purchase.**

2. Financial ability.

Case law says that, 'Pecuniarily able' in this connection, must of course have a reasonable construction. It cannot mean that the proposed purchaser must necessarily have all the money in his pocketbook or to his

credit at the bank, but that he is **able to command the necessary money to close the deal** on reasonable notice, or within the time limited by the vendor, if a time be limited. Aside from immediate cash payments, **the ability of a purchaser is not to be judged exclusively with reference to money in his possession or to his credit in a bank; consideration should also be given to his assets, credit, financial rating, enforceable agreements for loans, and anything else indicating ability or lack of ability on his part to command the requisite funds at the required time.** A purchaser may have ability to meet the terms of the contract of sale notwithstanding it is inconvenient for him to raise money or he owns real estate on which a homestead has been taken out. On the other hand, a customer is not invested with the requisite financial ability by an unenforceable offer or promise of a third person to furnish funds or make a loan to him, . . . Therefore, it is the established rule in this state that the purchaser does not need the necessary cash in hand but must be able to ‘command’ the necessary funds. . . . A proposed purchaser cannot be said to be able to purchase when he is dependent upon third parties who are in no way bound to furnish the funds.” **This interpretation of financial ability seems to be fairly logical.**

Shell Oil Co. v. Kapler, 235 Minn. 292, 298, 50 N.W.2d 707, 712 (1951) states:

‘Generally speaking, a purchaser is financially ready and able to buy: (1) If he has the needed cash in hand, or (2) if he is personally possessed of assets-which in part may consist of the property to be purchased-and a credit rating which enable him with reasonable certainty to command the requisite funds at the required time, or (3) if he has definitely arranged to raise the necessary money-or as much thereof as he is unable to supply personally-by obtaining a binding commitment for a loan to him for that purpose by a financially able third party, irrespective of whether such loan be secured in part by the property to be purchased. . . .’

3. Wis. Stat. § 240.10 “Real estate agency contracts. (1) Every contract to pay a commission to a real estate agent or broker or to any other person for selling or buying real estate shall be void unless such contract or note or memorandum thereof describes that real estate; expresses the price for which the same may be sold or purchased, the commission to be paid and the period during which the agent or broker shall procure a buyer or seller; is in writing; and is subscribed by the person agreeing to pay such commission, except that a contract to pay a commission to a person for locating a type of property need not describe the property.” **We cannot completely escape the “procure” standard since it appears in this statute, but it does not appear in Wis. Stat. ch. 452 or in the REEB rules except with reference to buyer/tenant representatives providing brokerage services for the procurement of an interest in property (see Wis. Admin. Code § REEB 16.02(1m), (2m) & (2s)).**
4. The listing contract whereby the broker contracts to ‘procure a purchaser’ does not require final consummation of the sale. Generally it is stated that when a real estate broker procures a purchaser and a valid and enforceable contract is entered into between them the commission for procuring a purchaser is earned, even though the purchaser may later default. **This is similar to the enforceable contract standard from *Ash Park*.**
5. For example, in *Wauwatosa Realty Co. v. Paar*, 274 Wis. 7, 15-16, 79 N.W.2d 125, 130 (1956), . . . this court stated: “(I)f a contract provides that a broker shall be entitled to a commission when he has procured a purchaser ready, willing, and able to buy, then when the broker acts in good faith, and the principal accepts his customer and enters into a valid and enforceable contract with him for the purchase of the property, the matter of the customer’s ability, readiness, and willingness is no longer open to question.” In *Walter Kassuba, Inc., v. Bauch*, 38 Wis.2d 648, 653, 158 N.W.2d 387, 390 (1968), this court intimated that an “acceptance of the purchaser by the seller is conclusive on the issue of readiness, willingness, and ability.” However, this is not so when the offer to purchase, as here, contains a “subject to financing clause.” Subject to financing clauses are common and have frequently been construed by this court as constituting a condition

precedent to the **buyer's** performance. *Gerruth Realty Co. v. Pire*, 17 Wis. 2d 89, 91, 115 N.W.2d 557 (1962)... As such, the condition operates to delay “the enforceability of the contract until the condition precedent has taken place.” *Locke v. Bort*, 10 Wis.2d 585, 588, 103 N.W.2d 555, 558 (1960); Restatement of Contracts, s 250(a) (1932). **This tells us that ready, willing and able issue should go away when there is an accepted offer; and that an offer with an unsatisfied contingency is not yet an enforceable contract.**

◆ **Disclosure to Clients (Lines 65-132):**

There will be statutory changes coming to this language to make it more user friendly and understandable for the property owners. This section now shows in tracking the changes expected to be proposed. **Note that have been a few more modifications since the first draft of the WB-1. Look at the section where the client selects an agency model and the note following thereafter for the most notable language changes.**

◆ **Cooperation, Access to Property or Offer Presentation (Lines 149-156):**

The suggestion to add language indicating that the broker cannot guarantee that a party named on these lines who should not have access for showings doesn't still get in, for example, if they are not truthful or have a fake ID, was **declined** as it was not a frequently experienced problem that needs contract language to address it:

NOTE: If names of buyer prospects are listed on lines xx-xx, Seller understands that despite good faith efforts that the Firm and its agents cannot guarantee that a named buyer might not gain access by deception.

◆ **Modifications to Exclusions section (Lines 157-165):**

The following warns the seller that failing to give the list of protected buyers from a prior listing could result in double commission:

■ **EXCLUSIONS:** All persons who may acquire an interest in the Property who are Protected Buyers under a prior listing contract are excluded from this Listing to the extent of the prior firm's legal rights, unless otherwise agreed to in writing. Within **seven** days of the date of this Listing, Seller agrees to deliver to the Firm a written list of all such Protected Buyers.

NOTE: If Seller fails to timely deliver this list to the Firm, then no Protected Buyers are excluded from this Listing and Seller may potentially face paying commission to two listing firms.

The following other buyers _____ are excluded from this Listing until _____ [INSERT DATE]. These other buyers are no longer excluded from this Listing after the specified date unless, on or before the specified date, Seller has either accepted a written offer from the buyer or sold the Property to the buyer.

⇒ **Is seven days enough if the time for giving a protected buyer's list is changed from three to five days?**

◆ **Definitions (Lines 166-215):**

Since the term “defects” is mentioned in lines 236-245, the definition of “Defects” from the offer was included in the WB-1. Note: the definition below is identical to the one used in the WB-11 Residential Offer to Purchase. It is also the same as the language appearing in the Real Estate Condition Report language laid out in Wis. Stat. § 709.03 but for the initial caps on the word “Property.”

DEFECT: “Defect” means a condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

⇒ Accepted by both Committees

FIRM: “Firm” means a licensed sole proprietor broker or a licensed broker business entity.

⇒ Accepted by both Committees

FIXTURES: A “Fixture” is an item of property which is physically attached to or so closely associated with land or buildings so as to be treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the premises, items specifically adapted to the premises, and items customarily treated as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and cooling units and attached equipment; water heaters, water softeners, and treatment systems; sump pumps; attached or fitted floor coverings; awnings; attached antennas and satellite dishes, television wall mounting brackets, garage door openers and remote controls; installed security systems; central vacuum systems and accessories; in-ground sprinkler systems and component parts; built-in appliances; ceiling fans; fences; storage buildings on permanent foundations and docks/piers on permanent foundations.

CAUTION: Exclude any Fixtures to be retained by Seller or which are rented (e.g., water softener or other water conditioning systems, home entertainment and satellite dish components, L.P. tanks, etc.) on lines xx-xx and in the offer to purchase.

The DSPS Committee added to the list of specific examples of fixtures by adding water softeners, satellite dishes, and television wall mounting brackets as these were the items causing the most controversy in their estimation.

⇒ Is this acceptable or are there additional changes? The WRA Forms Committee questioned whether language should be added clarifying that while the television wall mounting brackets are fixtures that the television itself is not necessarily a fixture unless listed as being included. For instance, “television wall mounting brackets (not the television unless included on lines 6-11)?” This is shown in the draft and may be removed if this Committee does not agree.

⇒ There also was a suggestion to qualify water softeners as “non-rental water softeners” which would presumably remove the need to list rented water softeners on the first page of the WB-1 as excluded. Would this Committee like to make this change (shown in the draft for discussion purposes only)?

PERSON ACTING ON BEHALF OF BUYER: “Person Acting on Behalf of Buyer” shall mean any person joined in interest with buyer, or otherwise acting on behalf of buyer, including but not limited to buyer's immediate family, agents, ~~servants~~, employees, directors, managers, members, officers, owners, partners, incorporators and organizers, as well as any and all corporations, partnerships, limited liability companies, trusts or other entities created or controlled by, affiliated with or owned by buyer, in whole or in part whether created before or after expiration of this Listing.

⇒ Accepted by both Committees – DSPS removed the word “servants”

The definition of Procure has been removed. In the draft part of the definition of “Procure” was folded into the unaccepted full price offer commission item and the balance has been eliminated.

For the Protected Buyer definition, shouldn't the buyer be considered protected if the seller shows the property to the buyer, for instance, the buyer who drives by and sees the sign and stops in when no broker is around? It would be easier to prove that the buyer saw the house with the seller than it is to establish that they had a conversation meeting the criteria for “negotiation.”

1. Therefor a protected buyer may also arise if the buyer views the Property with the Seller.

2. The word “discussing” was changed to “communicating” because it was thought this was broader and would clearly encompass electronic communication such as email, texts, tweets, etc. and this would avoid any argument that “discussing” required a face-to-face communication.
3. Also note that the DSPS Committee has extended the time frame for providing a list of protected buyers – see line 209 of the draft – from **three** days to **five** days. **The time frame for providing lists of names of protected buyers was extended to help practitioners in those sticky situations where they receive a text from the seller that they are going to rent the property and not sell it. Additional time is given to sort that out and hopefully get written documentation lined up that gives a clearer indication of the termination date if the Seller really intends to terminate and cannot be convinced otherwise.**
4. Language was also added at line 210 to make clear that the five days run from either the expiration of the listing contract or any early termination properly done per the Termination section.

See this and the other language changes made shown in tracking below:

PROTECTED BUYER: “Protected Buyer” means a buyer who personally, or through any Person Acting on Behalf of Buyer, during the term of this Listing: 1) delivers to Seller or ~~Broker-the Firm or its agents~~ a written offer to purchase, exchange or option on the Property; 2) views the Property with the Seller or negotiates directly with Seller by ~~discussing-communicating~~ with Seller ~~the-regarding any~~ potential terms upon which buyer might acquire an interest in the Property; or 3) attends an individual showing of the Property or ~~discusses-communicates~~ with agents of Broker-the Firm or cooperating ~~brokers-firms~~ the potential terms upon which buyer might acquire an interest in the Property, but only if ~~Broker-the Firm or its agents~~ delivers the buyer’s name to Seller, in writing, no later than ~~three-five~~ days after the expiration or termination (lines 264-273) of the Listing. The requirement in 3), to deliver the buyer’s name to Seller in writing, may be fulfilled as follows: a) If the Listing is effective only as to certain individuals who are identified in the Listing, by the identification of the individuals in the Listing; or b) if a buyer has requested that the buyer’s identity remain confidential, by delivery of a written notice identifying the ~~broker-firm or agents~~ with whom the buyer negotiated and the date(s) of any individual showings or other negotiations. A Protected Buyer also includes any Person Acting on Behalf of Buyer joined in interest with or otherwise acting on behalf of a Protected Buyer, who acquires an interest in the Property during the extension of listing period as noted on lines xxx-xxx.

The WRA Forms Committee discussed the Protected Buyer definition and the process for termination of the listing and the timeframe for giving lists of protected buyers and it appears there is not a unanimous position or understanding.

- ⇒ **If the listing is terminated early before its expiration or the end of the stated term, and if the termination is done in accordance with the Termination of Listing section and is in writing and properly delivered, then when does the counting of the days for delivery of a list of protected buyers begin? For the sake of transparency and mutual understanding would it not be best that this be stated?**
- ⇒ **On line 210 should this say five days after the expiration or termination (lines 264-273) of the Listing”? Is the line reference helpful? It was inserted to clarify and emphasize that if there is an early termination that the time for giving notice of protected buyers and the one-year override period (see lines 223-225 of the Extension of Listing section) both run from the date of the termination as described in the Termination of Listing section on lines 260-262, i.e., the date written termination is delivered.**
- ⇒ **Because of the timing change should the seven days on line 159 in the Exclusions section be lengthened?**

One further suggestion was made based upon a WRA Forms Committee member's concern that the supervising brokers are not aware when a seller is attempting to bring a listing contract to a conclusion before the end of the contract term. The suggestion is to modify the **Termination of Listing section (lines 264-273)** as follows:

"Seller and the Firm agree that any termination of this Listing by either party before the date stated on lines XXX-XXX shall be **effective by the Seller only if stated in writing and delivered to the agent and Supervising Broker and effective by the Firm only if stated in writing by the Supervising Broker and delivered by the Seller in accordance with lines xxx-xxx.**"

It is not clear what it means to deliver the termination notice to the agent in the above passage and perhaps it should say instead "the Firm" if this Committee decides such a change is desirable. The above was proposed as an attempt to compromise (presumably in exchange for removing the reference to termination in the Protected Buyer definition), and address the inevitable situation where a "writing" comes in but is not categorical enough to know for sure whether it's a "termination" or not and change the procedure so that at least a supervising broker gets to see it (and the parallel is that only a supervising broker should be able to terminate from the broker's position as well). Another way that the above might be stated that attempts to distinguish between termination upon mutual agreement (an amendment) versus termination without mutual consent (unilateral):

Neither Seller nor the Firm has the legal right to unilaterally terminate this Listing absent a material breach of contract by the other party. Seller understands that the parties to the Listing are Seller and the Firm. Agents for the Firm do not have the authority to enter into a mutual agreement to terminate the Listing, amend the commission amount or shorten the term of this Listing, without the written consent of the agent(s)' supervising broker. Seller and the Firm agree that any termination of this Listing **without mutual agreement** before the date stated on lines xxx-xxx shall be indicated to the other party in writing and shall not be effective until delivered to the other Party in accordance with lines xxx-xxx. **Written termination by Seller without mutual agreement must additionally be delivered to the Supervising Broker to the contact information stated at line xxx. Written termination by the Firm without mutual agreement must be signed by the Supervising Broker.**

This has the advantage that the Supervising Broker is better aware of changes being made or proposed regarding listings, but it also seems to make it more difficult for a seller to follow script and deliver a written termination notice. If these changes are made, a line where the supervising broker would be named and contact information would be given would need to be added to the form, as shown in the draft at the very end on line 337.

For those concerned about supervising brokers being made aware that a seller is expressing reservations or upset and talking about bringing the listing contract to a conclusion before the end of the contract term, this also may be seen as a training issue rather than a contract language situation. Agents could be trained to contact their supervisor in any such situation where the seller is unhappy or outright angry ("firing the broker") and discuss potential strategies:

1. Talk with the seller to see if the concern can be addressed and get them to change their mind and stay
2. If the seller wants to end the listing and the broker does not wish to have any further contact, then enter into a CAMR
3. If the seller and the broker reach a mutual agreement to end the listing, use a WB-42 to change the expiration date to a current date, preserving the ability to give a list of Protected Buyers
4. If the seller wishes to terminate and the broker does not agree/objects, the broker may give the seller a notice acknowledging that the seller gave notice to terminate. The notice might expressly

inform the seller that broker might sue for breach of contract and damages. This notice might also include the list of protected buyers.

⇒ **Should the proposed changes for the Termination of Listing section (lines 264-273) and the naming of the Supervising Broker be made?**

◆ **Fair Housing (Lines 217-220)**: the protected class of status as a victim of domestic abuse, sexual assault or stalking was added.

◆ **Extension of Listing (Lines 221-225)**: The Extension of Listing section was moved to directly follow the Protected Buyer definition – after formatting it is fairly close to that.

⇒ **Is the line reference inserted at the end of the Extension of Listing section helpful or should it be removed? It was inserted to clarify that if there is an early termination that the one-year override period runs from the date of the early termination as described in the Termination of Listing section on lines 264-273, i.e., the date written termination is delivered.**

◆ **Notice About Sex Offender Registry (Lines 234-236)**: The corrected web address should be inserted:

■ **NOTICE ABOUT SEX OFFENDER REGISTRY**: You may obtain information about the sex offender registry and persons registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at <http://www.doc.wi.gov> <http://www.widocoffenders.org> or by telephone at (608)240-5830.

⇒ **Is this acceptable or are there additional changes?**

◆ **Seller Cooperation with Marketing Efforts (Lines 247-253)**:

Should sellers have to tell brokers about all prospects they talk to about the property for sale without the conversation having to meet the standards for “negotiation?” This Committee preferred to leave this standard as it is now and rejected language that the seller report potential purchasers who contact seller for fear it would become too great a task and unreasonable for the seller to report to the broker every time a person at the grocery store or church asks about the home being for sale, although idle inquiries would not be from potential purchasers. The problem may be how to tell them apart unless there is serious conversation, i.e. negotiation.

The WRA Forms Committee was concerned that a seller would not know what “negotiate” is intended to mean or assign it the meaning used by the courts in protected buyer cases. In the cases, the courts are interpreting the language used for protected buyers when discussing what negotiate means.

For instance, in *First Weber Group v. Guyant*, 2011 WI App 84 at <http://www.wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=64865>, a prospective buyer stopped by the property after seeing it online and asked if the sellers would sell without a REALTOR[®]. After expiration, Mrs. Guyant called the prospect and arranged a showing. The home was listed with another brokerage, and the prospect bought the home. To determine whether the buyer was protected under the first listing, the court applied the listing contract definition of “negotiate” to the facts: did the Guyants and the prospect discuss potential terms by which the prospect might purchase the property? The court found the requisite two-way communication within their discussion of: 1) whether the prospect would purchase the home if a broker was involved, and 2) when such a sale might occur (the sellers were to contact the prospect after the listing expired). The potential purchase terms discussed do

not need to include price, the court noted, although the extent of broker involvement potentially affects price. Note that the elements of “negotiate” in the case are the bare-bones minimum.

Should the language “any potential purchasers with whom Seller negotiates” be clarified so the home seller would better know who to report to the broker?

UPDATE: On January 13 the DSPS Real Estate Contractual Forms Advisory Council reordered the end of the section so that it now says: “Seller shall promptly refer all persons making inquiries concerning the Property to the Firm and notify the Firm in writing of any potential buyers with whom Seller negotiates during the term of this Listing.” In other respects the Committee chose to leave the language as it is.

One suggestion was made after the WRA Forms Committee meeting that “viewing” be added to this provision to make it parallel to the Protected Buyer definition. For instance,

Seller shall promptly refer all persons making inquiries concerning the Property to the Firm and notify the Firm in writing of any potential buyers with whom Seller negotiates **or who view the Property with Seller during the term of this Listing.**

⇒ **Is this language (shown in the draft for discussion purposes only) acceptable and are there modifications or clarifications?**

◆ **Earnest Money (Lines 274-281):** The first change is from the WB-6. The inserted language is broader and refers to license law standards rather than making it sound as if the only way the broker can disburse earnest money is with a written earnest money disbursement agreement – there are several safe harbors for disbursement in Wis. Admin. Code § REEB 18.09(1) in addition to a CAMR.

Also the DSPS Committee decided to retain and then modify the provision regarding the division of the earnest money between the broker and the seller. There are pros and cons but it is useful because it shows that the commission the seller has to pay in a failed transaction is relatively small and not out of pocket for the seller in those cases where the earnest money comes to the seller. These disbursements do create issues in terms of what must go on the CAMR in these instance, although one committee member suggested that one way to overcome that is to write in “per listing contract” in the CAMR.

Language was added to mirror the language in the offer whereby if the buyer is in default and the seller wants the earnest money, the seller can terminate the offer and request the earnest money as liquidated damages – that concept was inserted below with the additional proviso that the earnest money be received before the division instructions kick in. The provision below shows the modifications made in tracking.

■ **EARNEST MONEY** If ~~Broker- the Firm~~ holds trust funds in connection with the transaction, they shall be retained by ~~Broker-the Firm~~ in ~~Broker’s-the Firm’s~~ trust account. ~~Broker-The Firm~~ may refuse to hold earnest money or other trust funds. Should ~~Broker-the Firm~~ hold the earnest money, ~~Broker-the Firm shall hold and disburse earnest money funds in accordance with Wis. Stat. Ch. 452 and Wis. Admin. Code Ch. REEB 18.~~ If the transaction fails to close and ~~the Seller requests and receives the earnest money as the total liquidated damages, the earnest money is disbursed to Seller,~~ then upon disbursement to Seller the earnest money shall be paid first to reimburse ~~Broker-the Firm~~ for cash advances made by ~~Broker-the Firm~~ on behalf of Seller and one half of the balance, but not in excess of the agreed commission, shall be paid to ~~Broker-the Firm~~ as ~~Broker’s~~ full commission in connection with said purchase transaction and the balance shall belong to Seller. This payment to ~~Broker-the Firm~~ shall not terminate this Listing.

⇒ **Is this acceptable or are there additional changes?**

- ◆ **Delivery (lines 282-304):** Add in the Delivery of Documents and Written Notices from the WB-6 Business Listing Contract. Delete the Delivery definition. As shown in tracking below, one line was removed from the e-mail subsection of the Delivery provisions to simplify the provision and make it more generic without removing the meaning and required action item.

DELIVERY OF DOCUMENTS AND WRITTEN NOTICES: Unless otherwise stated in this ~~Offer~~Listing, delivery of documents and written notices to a Party shall be effective only when accomplished by one of the methods specified at lines xx-xx.

(1) **Personal Delivery:** giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at line xx or xx.

Seller's recipient for delivery (optional): _____

~~Broker's Firm's~~ recipient for delivery (optional): _____

(2) **Fax:** fax transmission of the document or written notice to the following telephone number:

Seller: (_____) _____ ~~BrokerFirm:~~ (_____) _____

(3) **Commercial Delivery:** depositing the document or written notice fees prepaid or charged to an account with a commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line 38 or 39, for delivery to the Party's delivery address at line xx or xx.

(4) **U.S. Mail:** depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the Party, or to the Party's recipient for delivery if named at line xx or xx, for delivery to the Party's delivery address at line xx or xx.

Delivery address for Seller: _____

Delivery address for ~~BrokerFirm:~~ _____

(5) **E-Mail:** electronically transmitting the document or written notice to the Party's e-mail address, if given below at line xx or xx. If this is a consumer transaction where the property being purchased or the sale proceeds are used primarily for personal, family or household purposes, each consumer providing an e-mail address below has first consented electronically ~~to the use of electronic documents, e-mail delivery and electronic signatures in the transaction,~~ as required by federal law.

E-Mail address for Seller ~~(optional):~~ _____

E-Mail address for ~~BrokerFirm(optional):~~ _____

- ◆ **Addenda (Lines 311-314):** Are so many blank lines needed here? If we need more space to make the form fit within 6 pages can one or two of these lines be removed?

- ◆ **Term of the Contract (Lines 315-317):** Language was added to try to clarify that the listing contract ends once the property is conveyed, in other words, upon closing. At present this is not addressed and may be helpful when dealing with consumers or in court to have a clear indication when the Firm's duties end in a transaction timeline. For instance, a Firm should not continue to have duties to disclose material adverse facts and material information until the contract termination date – that should end upon closing.

~~**TERM OF THE CONTRACT:** From the _____ day of _____, _____, up to the earlier of midnight of the _____ day of _____, _____, or the conveyance of the entire Property.~~

⇒ **Is this acceptable or are there additional changes? Should this say “the entire Property” given the language in the Commission section about transfers of a portion versus the entire Property?**

- ◆ **Signature block (Lines 321-336):** This should be modified because contact information need not be here – it has been replaced with the delivery information in the Delivery section. Is it helpful to include the firm's contact information for any reason? **No per the WRA Forms Committee.** Would seem it is not necessary in our world of technology – what do you think? Should there be spaces for sellers who are

entities? Yes, per the WRA Forms Committee, for example, for a trust. Is one entity signature block enough?

(x) _____
Seller's Signature ▲ Print Name Here: ▲ Date ▲

Seller's Address ▲ Seller's Phone # ▲

Seller's Fax # ▲ Seller's E-Mail Address ▲

(x) _____
Seller's Signature ▲ Print Name Here: ▲ Date ▲

Seller's Address ▲ Seller's Phone # ▲

Seller's Fax # ▲ Seller's E-Mail Address ▲

(x) _____
Seller's Signature ▲ Print Name Here: ▲ Date ▲

(x) _____
Seller's Signature ▲ Print Name Here: ▲ Date ▲

Seller Entity Name (if any):

(x) _____
Authorized Signature ▲ Print Name & Title Here ► Date ▲

(x) _____
Agent for ~~Broker-Firm~~ ▲ Print Name Here ▲ ~~Broker/Firm Name~~ ▲ Date ▲

~~Broker/Firm Address~~ ▲ ~~Broker/Firm Phone #~~ ▲

~~Broker/Firm Fax #~~ ▲ ~~Broker/Firm E-Mail Address~~ ▲

⇒ Is this acceptable or are there additional changes?

◆ **Attorney Fees Provision?** There used to be attorney's fees provisions in many of the Department listings years ago. That provision was removed from the other listing contracts when they were updated in 2008-2009. Should an attorney's fees provision be added again, such as "In the event either party hereto shall commence legal proceedings against the other to enforce the terms hereof, or to declare rights hereunder, as a result of a breach of any covenant or condition of this Contract, the prevailing party in any

such proceeding shall be entitled to recover from the losing party its costs of suit, including reasonable attorney's fees, as may be fixed by the court." The prior provision in the 1999 listing said: "ATTORNEY FEES: SHOULD LITIGATION ARISE BETWEEN THE PARTIES IN CONNECTION WITH THIS LISTING, THE PREVAILING PARTY SHALL HAVE THE RIGHT TO RECOVER REASONABLE ATTORNEY FEES." **NOTE:** We should keep attuned to the legislature because there is a bill that would effectively remove the ability to make the seller responsible to pay the broker's attorney's fees. See 2015 Senate Bill 61, proposed § 134.495(2)(b) at <http://docs.legis.wisconsin.gov/2015/related/proposals/sb61>. There has been no movement on this bill since last February (2015).

The WRA Forms Committee was in favor of leaving attorney fees out.

⇒ **Is this acceptable or are there additional changes?**

NOTE: We also need to proof the WB-1 to make sure that all defined terms have initial caps, as has become the custom of this Committee.

WB1RevisionsDSPS2-25-16

WB-42 AMENDMENT TO LISTING CONTRACT

1 It is agreed that the Listing Contract dated _____, between the undersigned, for sale/rental of the
2 property known as (Street Address/Description) _____

3 _____ in the _____ of
4 _____, County of _____, Wisconsin, is amended as follows:

5 The list price is changed from \$ _____ to \$ _____.

6 The expiration date of the contract is changed from midnight _____, _____ to midnight
7 _____, _____.

8 The following items are (added to)(deleted from) **STRIKE ONE** the list of property to be included in the list price:

9 _____
10 _____.

11 Other: _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

20 _____

21 _____

22 _____

23 _____

24 _____

25 _____

26 _____

27 _____

28 _____

29 _____

30 _____

31 _____

32 _____

33 _____

34 ALL OTHER TERMS OF THIS CONTRACT AND ANY PRIOR AMENDMENTS REMAIN UNCHANGED.

35 _____ (x) _____

36 Firm ▲ Date ▲ Seller's/Owner's Signature ▲ Date ▲

37 Print name ►

38 (x) _____ (x) _____

39 By Agent ▲ Date ▲ Seller's/Owner's Signature ▲ Date ▲

40 Print name ► Print name ►

41 **CAUTION: This Listing belongs to the Firm. Agents for Firm do not have the authority to enter into a mutual**
42 **agreement to terminate a listing contract, amend the commission amount or shorten the term of a listing**
43 **contract, without the written consent of the Agent(s)' supervising broker.**

44 This written consent may be obtained with the supervising broker's signature below or a separate consent.

45 (x) _____

46 Supervising Broker's Signature ▲ Print name ► Date ▲

WB-42 REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee
From: WRA Forms Committee
Date: February 17, 2016
RE: **WB-42 Amendment to Listing Contract**

This memo relates to proposed changes to the WB-42 Amendment to Listing Contract. See the draft labeled 20150723 REF WB-42wra0216.

WB-42 Amendment to Listing Contract

Changes were made so the WB-42 may be used to amend the WB-37 Residential Listing Contract – Exclusive Right to Rent and commercial lease listings. Line 2 is changed to refer to the “sale/rental” instead of just “sale.”

➤ **PRIOR CHANGES: The check boxes were removed from lines 5-11**

The language on line 37 was modified in anticipation of the Wis. Stat. chapter 452 revisions wherein the proposed terminology would refer to a firm to mean either a broker entity or a sole proprietor broker.

- **PRIOR CHANGES: The language on line 37 was modified: “CAUTION: This Listing belongs to the Firm. Agents for the Firm do not”**
- **PRIOR CHANGES: On line 41 the term “Broker” is removed so it just refers to Firm. On line 44, it now says “By Agent.”**

It is the understanding of the WRA Forms Committee that the remaining issue has to do with whether there should be a place on the WB-42 Amendment to Listing Contract where a supervising broker could sign to give written consent if there was an amendment to terminate a listing contract, change the commission amount or shorten the term of a listing contract. The WRA Committee was favorable to that concept and proposed a signature section at the very bottom of the form after the other signatures so that no one would get the wrong impression that a supervising broker had to sign every amendment.

- **NEW PROPOSALS: The CAUTION that had been on lines 37-39 was moved to follow the signature blocks for the Firm and the Seller at lines 35-40. A sentence was added to say, “This written consent may be obtained with the supervising broker’s signature below or a separate consent.” And this is followed by a signature line for the supervising broker.**

The intent was to indicate that the supervising broker’s signature on the WB-42 was optional and not the only way that this written consent could be obtained.

Note: a couple of the blank lines were removed to make room to fit all of the material on one page.

WB-36 BUYER AGENCY/TENANT REPRESENTATION AGREEMENT

~~■ BROKER THE SOLE AUTHORITY TO ACT FOR BUYER AS A BUYER'S AGENT:~~ Buyer (see lines 154-155xxx-xxx) gives ~~Broker the Firm and its agents~~ the exclusive right to act as Buyer's agent to locate an interest in property and to negotiate the procurement of the Acquisition an interest in property for Buyer, except as excluded under lines 44-20xx-xx. Except for excluded properties described in lines 44-20xx-xx, Buyer agrees that during the term of this Agreement, Buyer will not enter into any other agreements to retain any other buyer's agent.

NOTE: IF BUYER WORKS WITH OWNER OR AGENTS OF OWNER IN LOCATING AND/OR NEGOTIATING AN INTEREST IN PROPERTY, BUYER MAY BE RESPONSIBLE FOR THE BROKER'S FIRM'S FULL COMPENSATION IF BUYER'S CONTACTS WITH OWNER OR OWNER'S AGENT RESULT IN NO COMPENSATION BEING RECEIVED BY BROKER-THE FIRM FROM OWNER OR OWNER'S AGENT.

■ PURCHASE PRICE RANGE: _____

■ EXCLUDED PROPERTIES:

■ Types of Excluded Properties: Identify types of properties excluded from this Agreement including geographic, size, capacity, or age of property limitations, or limitations on property type (residential, commercial, retail, vacant land, new construction, condominium, etc.):

Insert additional addresses or descriptions, if any, at lines xxx-xxx or attach as an addendum per lines xxx-xxx.

■ Specific Excluded Properties: The following specific properties are excluded from this Agreement. Indicate if the exclusion is not for the duration of the Agreement and expires upon a certain date. until _____ [INSERT DATE]

Insert additional addresses or descriptions, if any, at lines xxx-xxx or attach as an addendum per lines xxx-xxx.

■ COMPENSATION: Broker's-The Firm's compensation shall be: CHECK ONE OR BOTH AS APPLICABLE Check "SUCCESS FEE", "OTHER COMPENSATION", OR BOTH, as applicable

SUCCESS FEE: _____ % of the purchase price or _____ whichever is greater.

OTHER COMPENSATION: _____

[INSERT AMOUNTS AND TYPES OF FEES, E.G. RETAINER FEE, HOURLY FEE, ETC.]

[INSERT THE AMOUNT AND TYPE OF OTHER FEE, E.G. RETAINER FEE, OR HOURLY FEE]

If this Agreement calls for a success fee, it is agreed that Broker-the Firm has earned the success fee if, during the term of this Agreement (or any extension of it), Buyer or any person acting on behalf of Buyer acquires an interest in property or enters into an enforceable written contract between owner and Buyer to acquire an interest in property, at any terms and price acceptable to owner and Buyer. Broker's-The Firm's compensation remains due and payable if an enforceable written contract entered into by Buyer per lines 26-29xx-xx fails to close. Once earned, Broker's-the Firm's compensation is due and payable at the earlier of closing or the date set for closing, even if the transaction does not close, unless otherwise agreed in writing.

Broker-Buyer shall pay the Firm's compensation, reduced by any amounts the Firm receives from owner or owner's agent. The Firm (may) (may not) STRIKE ONE ("may" if neither is stricken) accept compensation from owner or owner's agent. (Broker may accept compensation from owner or owner's agent if neither is struck.) Broker's compensation from Buyer will be reduced by any amounts received from owner or owner's agent.

NOTE: Both parties to the contract must consent if the Firm will be compensated by a party other than Buyer.

NOTICE: Broker has the authority under section 779.32 of the Wisconsin Statutes to file a broker lien for commissions or compensation earned but not paid when due against the commercial real estate, or the interest in the commercial real estate, if any, that is the subject of this Listing. "Commercial real estate" includes all real estate except (a) real property containing 8 or fewer dwelling units, (b) real property that is zoned for residential purposes and that does not contain any buildings or structures, and (c) real property that is zoned for agricultural purposes.

■ DELIVERY OF DOCUMENTS AND WRITTEN NOTICES: Unless otherwise stated in this Agreement Offer, delivery of documents and written notices to a Party shall be effective only when accomplished by one of the methods specified at

55 lines xx-xx.

56 (1) Personal Delivery: giving the document or written notice personally to the Party, or the Party's recipient for delivery if
57 named at line xx or xx.

58 Buyer's recipient for delivery (optional): _____

59 Firm's recipient for delivery (optional): _____

60 (2) Fax: fax transmission of the document or written notice to the following telephone number:

61 Buyer: (_____) Firm: (_____)

62 (3) Commercial Delivery: depositing the document or written notice fees prepaid or charged to an account with a
63 commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line xx or xx,
64 for delivery to the Party's delivery address at line xx or xx.

65 (4) U.S. Mail: depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the
66 Party, or to the Party's recipient for delivery if named at line xx or xx, for delivery to the Party's delivery address at line xx
67 or xx.

68 Delivery address for Buyer: _____

69 Delivery address for Firm: _____

70 (5) E-Mail: electronically transmitting the document or written notice to the Party's e-mail address, if given below at
71 line xx or xx. If this is a consumer transaction where the property being purchased or the sale proceeds are used
72 primarily for personal, family or household purposes, each consumer providing an e-mail address below has first
73 consented electronically as required by federal law.

74 E-Mail address for Buyer: _____

75 E-Mail address for Firm: _____

76 ■ **BROKER'S FIRM'S DUTIES:** In consideration for Buyer's agreements, ~~Broker the Firm~~ and its agents agrees to use
77 professional knowledge and skills, and reasonable efforts, in accordance with applicable law, to:

78 1) ~~locate~~ Locate an interest in Pproperty, unless ~~Broker the Firm~~ is being retained solely to ~~N~~negotiate the
79 Acquisition/procurement of an interest in a specific Pproperty, and

80 2) ~~N~~negotiate the procurement/Acquisition of an interest in Pproperty, as required, ~~by giving advice to Buyer within the~~
81 ~~scope of Broker's license, facilitating or participating in the discussions of the terms of a potential contract, completing~~
82 ~~appropriate contractual forms, presenting either party's contractual proposal with an explanation of the proposal's~~
83 ~~advantages and disadvantages and other efforts including but not limited to the following:~~
84 _____, unless ~~Broker the Firm~~ is retained solely to ~~L~~locate an interest in

85 Pproperty.

86 ■ **EARNEST MONEY:** If ~~Broker the Firm~~ holds trust funds in connection with the transaction, they shall be retained by ~~Broker~~
87 ~~the Firm~~ in ~~Broker's the Firm's~~ trust account. ~~Broker The Firm~~ may refuse to hold earnest money or other trust funds. Should
88 ~~Broker the Firm~~ hold the earnest money, ~~the Firm shall hold and disburse earnest money funds in accordance with Wis. Stat.~~
89 ~~Ch. 452 and Wis. Admin. Code Ch. REEB 18. Buyer authorizes Broker to disburse the earnest money as directed in a written~~
90 ~~earnest money disbursement agreement signed by all parties having an interest in the trust funds.~~—If the transaction fails to
91 close and the earnest money is disbursed to Buyer, then upon disbursement to Buyer the earnest money shall be paid first to
92 reimburse ~~Broker the Firm~~ for cash advances made by ~~Broker the Firm~~ on behalf of Buyer.

93 ■ **NON DISCRIMINATION:** Buyer and ~~Broker the Firm and its agents~~ agree that they will not discriminate based on race,
94 color, sex, sexual orientation as defined in Wisconsin Statutes § 111.32(13m), disability, religion, national origin, marital
95 status, lawful source of income, age, ancestry, family/al status, ~~status as a victim of domestic abuse, sexual assault, or~~
96 ~~stalking,~~ or in any other unlawful manner.

97 ■ **BROKER DISCLOSURE TO CLIENTS:**

98 **Under Wisconsin law, a brokerage firm (hereinafter firm) and its brokers and salespersons (hereinafter agents)**
99 **owe certain duties to all parties to a transaction:**

100 (a) The duty to provide brokerage services to you fairly and honestly.

101 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.

102 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request it,
103 unless disclosure of the information is prohibited by law.

104 (d) The duty to disclose to you in writing certain Material Adverse Facts about a property, unless disclosure of the
105 information is prohibited by law. (See Lines xxx-xxx)

106 (e) The duty to protect your confidentiality. Unless the law requires it, the firm and its agents will not disclose your
107 confidential information or the confidential information of other parties. (See Lines xxx-xxx)

108 (f) The duty to safeguard trust funds and other property the firm or its agents holds.

109 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the
110 advantages and disadvantages of the proposals.

111 ■ **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A FIRM, YOU ARE THE FIRM'S**
112 **CLIENT. A FIRM OWES ADDITIONAL DUTIES TO YOU AS A CLIENT OF THE FIRM:**

113 (a) The firm or one of its agents will provide, at your request, information and advice on real estate matters that affect
114 your transaction, unless you release the firm from this duty.

115 (b) The firm or one of its agents must provide you with all material facts affecting the transaction, not just Adverse Facts.

116 (c) The firm and its agents will fulfill the firm's obligations under the agency agreement and fulfill your lawful requests
117 that are within the scope of the agency agreement.

118 (d) The firm and its agents will negotiate for you, unless you release them from this duty.

119 (e) The firm and its agents will not place their interests ahead of your interests. The firm and its agents will not, unless
120 required by law, give information or advice to other parties who are not the firm's clients, if giving the information or advice is
121 contrary to your interests.

122 (f) If you become involved in a transaction in which another party is also the firm's client (a "multiple representation
123 relationship"), different duties may apply.

124 **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY:**

125 ■ A multiple representation relationship exists if a firm has an agency agreement with more than one client who is a party
126 in the same transaction. If you and the firm's other clients in the transaction consent, the firm may provide services
127 through designated agency, which is one type of multiple representation relationship.

128 ■ Designated agency means that different agents with the firm will negotiate on behalf of you and the other client or
129 clients in the transaction, and the firm's duties to you as a client will remain the same. Each agent will provide
130 information, opinions, and advice to the client for whom the agent is negotiating, to assist the client in the negotiations.
131 Each client will be able to receive information, opinions, and advice that will assist the client, even if the information,
132 opinions, or advice gives the client advantages in the negotiations over the firm's other clients. An agent will not reveal
133 any of your confidential information to another party unless required to do so by law.

134 ■ If a designated agency relationship is not authorized by you or other clients in the transaction you may still authorize or
135 reject a different type of multiple representation relationship in which the firm may provide brokerage services to more
136 than one client in a transaction but neither the firm nor any of its agents may assist any client with information, opinions,
137 and advice which may favor the interests of one client over any other client. Under this neutral approach, the same agent
138 may represent more than one client in a transaction.

139 ■ If you do not consent to a multiple representation relationship the firm will not be allowed to provide brokerage services
140 to more than one client in the transaction.

141 **CHECK ONLY ONE OF THE THREE BELOW:**

142 The same firm may represent me and the other party as long as the same agent is not representing us
143 both. (multiple representation relationship with designated agency)

144 The same firm may represent me and the other party, but the firm must remain neutral regardless if one
145 or more different agents are involved. (multiple representation relationship without designated agency)

146 The same firm cannot represent both me and the other party in the same transaction. (I reject multiple
147 representation relationships)

148 **NOTE: All clients who are parties to this agency agreement consent to the selection checked above. You may**
149 **modify this selection by written notice to the firm at any time. Your firm is required to disclose to you in your**
150 **agency agreement the commission or fees that you may owe to your firm. If you have any questions about the**
151 **commission or fees that you may owe based upon the type of agency relationship you select with your firm, you**
152 **should ask your firm before signing the agency agreement.**

153 ■ **SUBAGENCY:** Your firm may, with your authorization in the agency agreement, engage other firms (subagent firms) to
154 assist your firm by providing brokerage services for your benefit. A subagent firm and the agents with the subagent firm will
155 not put their own interests ahead of your interests. A subagent firm will not, unless required by law, provide advice or
156 opinions to other parties if doing so is contrary to your interests.

157 **PLEASE REVIEW THIS INFORMATION CAREFULLY. An agent can answer your questions about brokerage**
158 **services, but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax**
159 **advisor, or home inspector. This disclosure is required by section 452.135 of the Wisconsin statutes and is for**
160 **information only. It is a plain language summary of the duties owed to you under section 452.133 (2) of the**
161 **Wisconsin statutes.**

162 ■ **CONFIDENTIALITY NOTICE TO CLIENTS:** ~~Broker-The Firm~~ and its agents will keep confidential any information
163 given to ~~Broker-the Firm or its agents~~ in confidence, or any information obtained by ~~Broker-the Firm and its agents~~ that
164 ~~he or she knows~~ a reasonable person would want to be kept confidential, unless the information must be disclosed by
165 law or you authorize ~~Broker-the Firm~~ to disclose particular information. ~~Broker-The Firm and its agents~~ shall continue to
166 keep the information confidential after ~~Broker-the Firm~~ is no longer providing brokerage services to you.

167 The following information is required to be disclosed by law:

- 168 1. Material ~~A~~adverse ~~F~~acts, as defined in section 452.01(5g) of the Wisconsin statutes (~~s~~See lines ~~170-173xxx-xxx~~).
- 169 2. Any facts known by the ~~broker-Firm and its agents~~ that contradict any information included in a written inspection
170 report on the property or real estate that is the subject of the transaction.

171 To ensure that the ~~broker-Firm and its agents is-are~~ aware of what specific information you consider confidential, you
172 may list that information below (~~s~~See lines ~~149-129xxx-xxx~~). At a later time, you may also provide the ~~broker-Firm~~ with
173 other information you consider to be confidential.

174 **CONFIDENTIAL INFORMATION:** _____

175 _____

176 _____

177 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by ~~Broker-the Firm and its agents~~): _____

178 _____

179 _____

180 ■ **WAIVER OF CONFIDENTIALITY:** Buyer may wish to authorize ~~Broker-the Firm and its agents~~ to disclose information which

181 might otherwise be considered confidential. An example of this type of information might be financial qualification information
182 which may be disclosed to strengthen Buyer's offer to purchase/lease proposal in the eyes of prospective sellers/landlords.
183 ~~Broker's~~ Buyer's authorization to disclose may be indicated at lines ~~421-422xxx-xxx~~. Unless otherwise provided at lines ~~449-~~
184 ~~420xxx-xxx~~, the Firm and its agents ~~Broker has~~ have permission to disclose Buyer's identity to an owner, owner's agents and
185 other third parties without prior consent from Buyer. Buyer acknowledges that pursuant to Wisconsin-Wis. Statute-Stat. §section
186 706.03(1)(b)(1m) a conveyance, such as an offer to purchase, is not binding if it is signed by a representative properly
187 authorized by Buyer (e.g., with a power of attorney) until such time as Buyer is identified in the conveyance.

188 ■ **NON-EXCLUSIVE RELATIONSHIP:** Buyer acknowledges and agrees that ~~Broker the Firm and its agents~~ may act for other
189 buyers in connection with the location of properties and may negotiate on behalf of such buyers with the owner or owner's
190 agent. In the event that ~~Broker the Firm or its agents~~ undertakes to represent and act for other buyers, ~~Broker the Firm and its~~
191 ~~agents~~ shall not disclose to Buyer, or any other buyer, any confidential information of any buyer, unless required by law.

192 ■ **COOPERATION:** Buyer agrees to cooperate with ~~Broker the firm and its agents~~ and to provide ~~Broker them~~ accurate
193 copies of all relevant records, documents and other materials in Buyer's possession or control which are required in
194 connection with the purchase, option, or exchange ~~or lease~~ of property. Buyer agrees to be reasonably available for
195 showings of properties. Buyer authorizes ~~Broker the Firm and its agents~~ to do those acts reasonably necessary to fulfill
196 ~~Broker's the Firm's~~ responsibilities under this Agreement including retaining subagents. Buyer shall promptly notify ~~Broker~~
197 ~~the Firm~~ in writing of the description of any property Buyer locates. Buyer shall also notify ~~Broker the Firm~~ of the identity of all
198 persons making inquiries concerning Buyer's objectives stated in this Agreement.

199 ■ **PROPERTY DIMENSIONS:** Buyer acknowledges that property dimensions, total square footage and total acreage
200 information provided to Buyer may be approximate due to rounding and may vary due to different formulas which can be
201 used to calculate these figures. Unless otherwise indicated, property dimension figures have not been verified by survey.

202 **CAUTION: Buyer should verify any property dimension or total square footage/acreage calculation which is**
203 **material to Buyer.**

204 ■ **DEFINITIONS:**

205 **ADVERSE FACT:** An "Aadverse Ffact" means any of the following:

206 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

- 207 1) Significantly and adversely affecting the value of the property;
- 208 2) Significantly reducing the structural integrity of improvements to real estate; or
- 209 3) Presenting a significant health risk to occupants of the property.

210 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations
211 under a contract or agreement made concerning the transaction.

212 **BUYER:** "Buyer", as used in this Agreement, is the party executing this Agreement and seeking to acquire an interest in
213 real estate or a business opportunity by purchase, ~~lease,~~ option, exchange or any other manner.

214 **DEADLINES-DAYS:** Deadlines expressed as a number of "days" from an event, such as acceptance, are calculated by
215 excluding the day the event occurred and by counting subsequent calendar days.

216 ~~DELIVERY: Delivery of documents or written notices related to this Agreement may only be accomplished by:~~

- 217 ~~1) giving the document or written notice personally to the party;~~
- 218 ~~2) depositing the document or written notice postage or fees prepaid or charged to an account in the U.S. Mail or a~~
219 ~~commercial delivery system, addressed to the party, at the party's address (See lines 220, 226 and 232);~~
- 220 ~~3) electronically transmitting the document or written notice to the party's fax number (See lines 222, 228 and 234); and~~
- 221 ~~4) as otherwise agreed in additional provisions on lines 182-190 or in an addendum to this Agreement.~~

222 **FIRM: "Firm" means a licensed sole proprietor broker or a licensed broker business entity.**

223 **INTEREST IN PROPERTY:** ~~The~~ "Iinterest in Property" ~~to be obtained by Buyer~~ includes a purchase, leasehold (?), option,
224 exchange agreement or any other procured interest in real property unless restricted at lines ~~44-2xx-xx0~~, in additional provisions
225 (lines ~~482-490xxx-xxx~~) or elsewhere in this Agreement.

226 **LOCATE AN INTEREST IN PROPERTY:** "Locate an Iinterest in Property" shall mean, ~~as used in this Agreement,~~ to
227 identify, evaluate according to the standards set by Buyer, and determine the availability of the Iinterest in Property
228 sought by Buyer ~~in a property~~.

229 **MATERIAL ADVERSE FACT:** A "Material Aadverse Ffact" means an Aadverse Ffact that a party indicates is of such
230 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party,
231 that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects
232 or would affect the party's decision about the terms of such a contract or agreement.

233 ~~NEGOTIATE THE PROCUREMENT OF THE ACQUISITION OF AN INTEREST IN PROPERTY:~~ "Negotiate the
234 procurement of the Acquisition of an Iinterest in Property" shall mean, ~~as used in this Agreement,~~ to contact the owner
235 of the property or the owner's agent to ascertain the terms and conditions upon which ~~the an~~ Iinterest in Property may be
236 obtained-acquired, and to provide the Buyer assistance within the scope of the knowledge, skills, and training required
237 under chapter 452 of the statutes in developing a proposal or agreement relating to a transaction, including: (a) acting as
238 an intermediary by facilitating or participating in communications between parties related to the parties' interests in a
239 transaction (providing advice or opinions on matters that are material to a transaction in which a person is engaged or
240 intends to engage or showing a party real estate does not, in and of itself, constitute acting as an intermediary by
241 facilitating or participating in communications between parties); (b) completing, when requested by Buyer, appropriate
242 board-approved forms or other writings to document the Buyer's proposal consistent with the Buyer's instructions;
243 (c) presenting to Buyer the proposals of other parties to the transaction and giving Buyer a general explanation of the

244 ~~provisions of the proposal; and (d) and to~~ otherwise assisting Buyer in reaching an agreement to ~~procure-acquire~~ the
245 ~~interest in Property~~ sought by Buyer ~~in the property as may be specified in this Agreement.~~

246 **PERSON ACTING ON BEHALF OF BUYER:** ~~"Person Acting on Behalf of Buyer"~~ ~~In this Agreement~~ ~~"Person acting on~~
247 ~~behalf of Buyer"~~ shall mean any person joined in interest with Buyer, or otherwise acting on behalf of Buyer, including but not
248 limited to Buyer's immediate family, agents, ~~servants,~~ employees, directors, managers, members, officers, owners, partners,
249 incorporators and organizers, as well as any and all corporations, partnerships, limited liability companies, trusts or other
250 entities controlled by, affiliated with or owned by Buyer in whole or in part whether created before or after expiration of this
251 Agreement (?).

252 ■ **ADDITIONAL PROVISIONS:** _____

253 _____

254 _____

255 _____

256 _____

257 _____

258 _____

259 _____

260 _____

261 ■ **ADDENDA:** The attached Addenda _____

262 _____ is/are made a part of this Agreement.

263 ■ **TERM OF THE AGREEMENT:** From the _____ day of _____,

264 up to and including midnight of the _____ day of _____.

265 Notwithstanding lines ~~193-194xxx-xxx~~, ~~Broker the Firm~~ and Buyer agree that this Agreement shall/shall not STRIKE ONE

266 ~~[STRIKE ONE]~~ end ("shall" if neither ~~struck, this Agreement shall end~~ is stricken) when Buyer ~~procures-acquires~~ an

267 interest in Pproperty.

268 ■ **TERMINATION OF AGREEMENT:** Neither Buyer nor ~~Broker the Firm~~ has the legal right to unilaterally terminate this

269 Agreement absent a material breach of contract by the other party. Buyer understands that the parties to this Agreement are

270 Buyer and the ~~Broker F(firm)~~. Agents (~~salespersons~~) for ~~Broker the F(firm)~~ do not have the authority to terminate this

271 Agreement, amend the compensation terms or shorten the term of this Agreement, without the written consent of the agent(s)

272 supervising broker. Buyer and ~~Broker the Firm~~ agree that any termination of this Agreement by either party before the

273 date stated on line ~~194-xxx~~ shall be indicated to the other party in writing and shall not be effective until delivered to the

274 other party in accordance with lines ~~158-163xx-xx~~.

275 **CAUTION: Early termination of this Agreement may be a breach of contract, causing the terminating party to**

276 **potentially be liable for damages.**

277 ■ **EXTENSION OF AGREEMENT TERM:** The Agreement term is extended for a period of one year as to any property

278 which during the term of this Agreement was: 1) located or negotiated for by ~~Broker, Broker's agent~~ the Firm or its agents,

279 Buyer or any person acting on behalf of Buyer, or 2) which was the subject of a written offer to purchase submitted by

280 Buyer or any Person Acting on Behalf of Buyer. If this extension is based on the Firm's or the Firm's agent(s) Broker's

281 or Broker's agent's Location of an Interest in Property or Negotiation of the Acquisition an Interest in Property, this

282 extension shall only be effective if a written description of the property is delivered to Buyer no later than three (five?)

283 days after expiration of this Agreement.

284 ■ **NOTICE ABOUT SEX OFFENDER REGISTRY:** You may obtain information about the sex offender registry and

285 persons registered with that registry by contacting the Wisconsin Department of Corrections on the Internet at

286 http://www.doc.wi.gov http://www.widocoffenders.org or by telephone at (608)240-5830.

287 ■ **READING/RECEIPT: BY SIGNING BELOW, BUYER ACKNOWLEDGES RECEIPT OF A COPY OF THIS**

288 **AGREEMENT AND THAT HE/SHE HAS READ ALL FIVE-_____ PAGES AS WELL AS ANY ADDENDA AND ANY**

289 **OTHER DOCUMENTS INCORPORATED INTO THIS AGREEMENT.**

290 Dated this _____ day of _____,

291 (x) _____

292 Buyer's Signature ▲ _____ Print Name Here: ▲ _____ Date ▲ _____

293 _____

294 Buyer's Address ▲ _____ Buyer's Phone # ▲ _____

295 _____

296 Buyer's Fax # ▲ _____ Buyer's E-Mail Address ▲ _____

297 (x) _____

298 Buyer's Signature ▲ _____ Print Name Here: ▲ _____ Date ▲ _____

299 _____

300 Buyer's Address ▲ _____ Buyer's Phone # ▲ _____

301 _____

302 Buyer's Fax # ▲ _____ Buyer's E-Mail Address ▲ _____

303 (x) _____
304 Agent for Broker ▲ Print Name Here: ▲ Broker/Firm Name ▲ Date ▲
305 _____
306 Broker/Firm Address ▲ Broker/Firm Phone # ▲
307 _____
308 Broker/Firm Fax # ▲ Broker/Firm E-Mail Address ▲

WB-36 REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee
From: WRA Forms Committee
Date: February 17, 2016
RE: **WB-36 Buyer Agency/Tenant Representation Agreement**

The following are possible revisions to the WB-36 Buyer Agency/Tenant Representation Agreement (mandatory use date 7-1-08). The line numbers in this memo refer to the line numbers in the accompanying draft of proposed WB-36 modifications, labeled wb-36 wraNov15draft.

DISCUSSION ITEMS: At present the WB-36 is used for buyers, both residential and commercial and everything in between, as well as for both residential and commercial tenants. The question is whether having one approved form for this is sufficient. If it is not, please explain why it is not and provide examples. If there were to be more than one form, would there be one just for tenants and one just for buyers, or one just for commercial and one for residential?

The WRA Forms Committee favors leaving the WB-36 for purchases and creating a separate approved form for tenant representation designed primarily for commercial situations but also capable of being used in residential situations. Commercial brokers need this badly; they say the WB-36 cannot be used for commercial tenants (which technically is not true), but it is easy to see why a business looking for commercial rental space would decline to enter into the WB-36 because the majority of the form is focused on buyers. In addition, using the WB-36 for tenant representation may be problematic in the Compensation section because the WB-36 is not structured to readily describe commission based upon a rental rather than a sale.

- ◆ Update the top of the form to say Approved by the Wisconsin Real Estate Examining Board.
- ◆ **Chapter 452 Terminology.** The terminology throughout this form is modified in anticipation of the Wis. Stat. chapter 452 revisions wherein the proposed terminology would refer to a Firm to mean either a broker entity or a sole proprietor broker. Those revisions additionally refer to salespersons, licensed individual brokers, and licensed broker entities, but here the choice was to refer to the Firm and the agents of the Firm. A definition of “Firm” was added to the draft.
- ◆ **First caption (Line 1):** The paragraph heading was simplified: ~~BROKER THE SOLE AUTHORITY TO ACT FOR BUYER AS A BUYER’S AGENT~~. There also is some new terminology in the section at lines 1-5. **WRA Forms Committee found this to be acceptable.**
 - ⇒ **Is this acceptable or are there additional changes?**
- ◆ **Note (Lines 6-9):** The format was modified but the language is that from the present WB-36 (except for terminology). This language emphasizes to the buyer that he or she is under contract to pay the buyer’s broker’s fee. If the fee cannot be collected from the owner or the owner’s agent, the buyer is obligated to pull out his or her checkbook. The buyer’s ability to work with others comes with a price: the buyer may have to pay a higher purchase price or additional broker compensation if the buyer works with an agent of the seller. **WRA Forms Committee found this to be acceptable.**
 - ⇒ **Is this acceptable or are there additional changes?**

◆ **Purchase Price Range (Line 10):** This item is necessary to meet the requirements of Wis. Stat. § 240.10(1) for an enforceable real estate contract that supports actions for the payment of fees or commissions: “Every contract to pay a commission to a real estate agent or broker or to any other person for selling or buying real estate shall be void unless such contract or note or memorandum thereof **describes that real estate; expresses the price for which the same may be sold or purchased**, the commission to be paid and the period during which the agent or broker shall procure a buyer or seller; is in writing; and is subscribed by the person agreeing to pay such commission, **except that a contract to pay a commission to a person for locating a type of property need not describe the property.**” **WRA Forms Committee found this to be acceptable.**

⇒ **Is this acceptable or are there additional changes?**

◆ **Excluded Properties (Lines 11-27):** In the current form this section attempts to perform numerous function all in one relatively small section. The language begins in a manner similar to the listing contract language where a seller excludes certain buyers from the listing, up until a certain date. These may be properties seen by the buyer already with another buyer’s broker (protected property), properties seen with listing or subagents (to avoid procuring cause disputes), or properties under contract with an option or offer.

It also describes the type of properties the buyer’s agent is authorized to look for -- by describing those types or specific properties the buyer’s agent is not authorized to search for or negotiate for. Note above that § 240.10(1) requires that the **type of property** the buyer’s agent is trying to locate needs to be indicated (unless there is a specific property identified) if the buyer’s agent wants to have an enforceable contract for commission or fees.

Many brokers seem to find the current structure with its backwards logic workable. One way they work with it is to exclude few properties or none at all and then have a conversation to identify what the buyer is looking for.

◆ The drafts attempts to separate out the different components and provide more prompts and detail to see if it seems clearer and more easy to understand (or not) – starting place for discussion. **WRA Forms Committee found this to be acceptable.**

⇒ **Is this acceptable or are there additional changes?**

*****AS FAR AS THE WRA FORMS COMMITTEE WENT*****

◆ **Compensation (Lines 28-46):** In the draft formatting and terminology is modified slightly. Lines 43-44 were modified and reorganized to make it clear that the buyer owes the compensation unless paid by the owner or another broker. A note regarding the need to have consent in the offer or other contract under Wis. Admin. Code § REEB 24.05(1) for the buyer’s broker to receive compensation from the owner/seller was added at line 46. A friendly reminder that you may or may not like – just an idea.

⇒ **Is this acceptable or are there additional changes?**

◆ **Commission Lien Notice (Lines 47-52):** The language needed as foundation for any claim for a commission lien has been added so as to preserve the broker’s ability to complete the process in Wis. Stat. § 779.32 and have a lien for unpaid commission filed and preserved.

⇒ **Is this acceptable or are there additional changes?**

◆ **Delivery (Lines 53-75):** Added in the Delivery of Documents and Written Notices from the WB-1 draft with terminology modifications. Deleted the Delivery definition from Definitions section.

◆ **Firm's Duties (Lines 76-85):** Do we want or need the long description of what negotiate means? The language used is from the statutes, but the Disclosure to Clients section covers much of this and lists the Firm's duties. Also see the proposed definition of "Negotiate the Acquisition an Interest in Property" at lines 233-245 which does incorporate the statutory definition of negotiate. Is that a better place for the details of what is involved in "negotiate?"

- ⇒ **Should the Firm's duties section be retained?**
- ⇒ **Is the definition of "Negotiate the Acquisition an Interest in Property" a better place to enumerate what is involved in negotiation – or should that be included at all?**
- ⇒ **Is the language in the draft acceptable or are there additional changes?**

◆ **Earnest Money (Lines 86-92):** The terminology was changed and the provision was made to mirror part of the Earnest Money provision in the WB-1 residential listing contract so that disbursement may be authorized in accordance with the law, especially Wis. Admin. Code § REEB 18.09(1) and not limited to a disbursement agreement.

- ⇒ **Is this acceptable or are there additional changes?**

◆ **Non Discrimination (Lines 93-96):** This was made to read the same as the provision in the WB-1 with regard adding the additional protected classes for victims.

- ⇒ **Is this acceptable or are there additional changes?**

◆ **Disclosure to Clients (Lines 97-179):**

There will be statutory changes coming to this language to make it more user-friendly and understandable for the property owners. This section now shows in tracking the changes expected to be proposed. It is the same as the same section in the WB-1 draft.

◆ **Waiver of Confidentiality (Lines 180-187):** This information is nice but not sure whether it is helpful or essential.

- ⇒ **Should this section be retained?**
- ⇒ **Is this acceptable or are there additional changes?**

◆ **Non-Exclusive Relationship (Lines 188-191):**

This information is nice but not sure whether it is helpful or essential.

- ⇒ **Should this section be retained?**
- ⇒ **Is this acceptable or are there additional changes?**

◆ **Cooperation (Lines 192-198):** This is somewhat of a parallel counterpart to the similar section in the WB-1. Should there be modifications to the last sentence which reads, "Buyer shall also notify the Firm of the identity of all persons making inquiries concerning Buyer's objectives stated in this Agreement." Should the buyer be notifying the Firm or referring the persons to the Firm?

- ⇒ **Is this acceptable or are there additional changes?**

◆ **Property Dimensions (Lines 199-203):**

- ⇒ **Should this section be retained?**
- ⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Adverse Fact (Lines 205-211):**

This is the same as before and the same as the definition in the WB-1.

- ⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Buyer (Lines 212-213):** This is the same as before except that the word “lease” was removed if there is going to be a separate tenant representation agreement.

⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Deadlines-Days (Lines 214-215):**

This is the same as before and the same as the definition in the WB-1.

⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Firm (Line 222):** This was added and is the same as the definition in the WB-1.

⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Interest in Property (Lines 223-225):**

This is the same as before. Should the word “leasehold” be deleted or should it remain as a safety net for those who start out to buy and end up renting?

⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Material Adverse Fact (Lines 229-232):** This is the same as before and the same as the definition in the WB-1.

⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Negotiate the Acquisition of an Interest in Property (Lines 233-245):**

The term was change to avoid the word procure as that seems to lead to the whole issue of financial capability. However, there is no discussion of vetting the buyer’s financial ability in the WB-36. If this is paranoid and the original term is acceptable and/or preferred it can be changed back!

Also the definition was modified to add the details of negotiation from the statutes as opposed to having it in the Firm’s Duties section.

⇒ **Is this acceptable or are there additional changes?**

◆ **Definition of Person acting on Behalf of Buyer (Lines 246-251):** This is the same as before with additions made that come from the WB-6 and the WB-1. Is the last phrase on lines 250-251 needed in the WB-36?

⇒ **Is this acceptable or are there additional changes?**

All for now – more next time

New Construction Issue: there is an issue in those situations when the buyer purchases a vacant lot and enters into a building/construction contract with a builder with the contract attached to the vacant land offer. Should the broker be paid based on the lot price or the total package price? Brokers have no authority to negotiate a construction contract which raises the question of why they should be paid based on a price that includes the construction price. Brokers can enter into a referral agreement with a builder and receive a referral fee outside of the WB-36, but some brokers assert they should be paid a success fee based upon the total price. One observation: when the contract is attached should be only as an attachment but not included in the total price for compensation? Any way to address this issue in the WB-36?