



REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL
Room 121A, 1400 East Washington Avenue, Madison
Contact: Brittany Lewin (608) 266-2112
July 23, 2015

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 May 27, 2015 (2)**
- C. Administrative Updates**
 - 1) Staff updates
- D. Legislative and Administrative Rule Matters**
- E. Review of Real Estate Contractual Forms for Revision:**
 - 1) **Review of WRA Forms Committee Memo with Proposed Revisions to WB-40, WB-41, WB-42, WB-44, and WB-45 (3-6)**
 - a) WB-40 Amendment to Offer to Purchase
 - 1. Original Document **(7)**
 - b) WB-41 Notice Relating to Offer to Purchase
 - 1. Original Document **(8)**
 - c) WB-42 Amendment to Listing Contract
 - 1. Original Document **(9-10)**
 - d) WB-44 Counter-Offer
 - 1. Original Document **(11)**
 - e) WB-45 Cancellation Agreement & Mutual Release
 - 1. Original Document **(12)**
 - 2) **WB-1 Residential Listing Contract – Exclusive Right to Sell**
 - a) Original Document **(13-18)**
 - b) Wisconsin Realtors Association (WRA) Staff - Memo with Proposed Revisions **(19-26)**
 - c) State Bar of Wisconsin Article – Ash Park Case **(27-30)**
- F. Public Comments**

ADJOURNMENT

**REAL ESTATE CONTRACTUAL FORMS ADVISORY COMMITTEE
MEETING MINUTES
May 27, 2015**

PRESENT: Stephen Beers, Casey Clickner, Debra Conrad, Michael Gordon, Kim Moermond, Jonathan Sayas, Gary Tritz, Thomas Weber (*arrived at 9:39*), Pamela Widen

EXCUSED: John Drzewiecki, Cori Lamont, Scott Minter, Michael Sewell, Richard Petershack

STAFF: Brittany Lewin, Executive Director; Nilajah Madison-Head, Bureau Assistant

CALL TO ORDER

Stephen Beers, Chair, called the meeting to order at 9:36 a.m. A quorum of nine (9) members was confirmed.

ADOPTION OF AGENDA

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

APPROVAL OF MINUTES

MOTION: Casey Clickner moved, seconded by Debra Conrad, to approve the minutes of March 19, 2015 as published. Motion carried unanimously.

(Thomas Weber joined the meeting at 9:39 a.m.)

ADJOURNMENT

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

The meeting adjourned at 1:09 p.m.

FORM REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee

From: WRA Forms Committee

Date: July 14, 2015

RE: **WB-40 Amendment to Offer to Purchase**
WB-41 Notice Relating to Offer to Offer to Purchase
WB-42 Amendment to Listing Contract
WB-44 Counter-Offer
WB-45 Cancellation Agreement & Mutual Release

This memo relates to proposed changes to some of the “one-pagers.” The DSPS Real Estate Contractual Forms Advisory Committee reviewed these forms and had hoped to recommend the changes as final subject to approval by the REEB, however, the WRA Forms Committee has additional suggestions. The copies of the forms accompanying this memo show any suggested modifications in tracking.

Also with these forms the optional and mandatory use dates need to be established. The WRA respectfully requests dates that would facilitate training and coursework revisions. A mandatory use date of January 1, 2015, for instance, would be helpful.

WB-40 Amendment to Offer to Purchase

Possible areas of concern include lines 30-35 (drafted by, delivered by, presented by in the existing WB-40) and possibly 42-43 (rejection). After much discussion and review of several configurations, the WRA Committee was of a mind to simplify.

The DSPS Committee agreed to remove the delivered by item that had been on lines 32-33. The sequence would then be that the amendment is drafted by the agent working with the Party offering the amendment and the drafter identified, the WB-40 then is presumably sent to the other party and is presented to the other party by the licensee identified in the presented by item. If the amendment is accepted, it is delivered back but those details are not documented because at that point the form has been completed and in other forms, such as the offer, there is no documentation of the delivery – that is established independently as needed. Also, once the party accepting the amendment has signed, it may be difficult to fill in further information in the electronic platforms used by many agents.

◆ **Rejection (Lines 44-45):**

The Committee looked at whether there should be a prompt for a signature or initials here or is just having the party’s name filled in, presumably by an agent, sufficient to confirm the amendment proposed was rejected? The DSPS Committee also favored providing a place for initials.

Example based on the offer language:

This Amendment was rejected: _____
Party Initials ▲ Date ▲ Party Initials ▲ Date ▲

◆ **Closing Date (Line 4):**

Other changes suggested during the meeting were to modify the closing date language on line 4 so that it was the same as the language in the offers. The DSPS Committee believed that the blank lines should

remain as not in the form and that anyone who wished to write in “no later than” may do so. Extra space may be added to these lines to accommodate this practice for those who wish to do so.

◆ **Attached Addenda (Line 25):**

With regard to the proposed check box regarding attachments, the DSPS Committee decided to keep the line without a check box and to move it to appear at the end of the section of blank lines.

◆ **Occupancy Date and Charge Lines:**

The DSPS Committee believed that these lines were no longer necessary and removed them.

“Wisconsin” was added in line 3 for the property description.

With various items being removed, additional blank lines were added to the WB-40.

➤ **NEW PROPOSED CHANGE: Remove the check boxes on lines 4-6.**

WB-41 Notice Relating to Offer to Purchase

◆ **Contracts in Addition to Offer?**

One issue concerning the WB-41 is whether it should be more global: should the notice be available different contracts and agreements and not just offers? The DSPS Committee, after much discussion, decided it was best to leave it refer to the offer and agents can modify it if they wish to use the form with other contracts, as they presently do.

◆ **Disposition Lines (Lines 24-24):**

Similar to the issues on the Amendment, lines 37-38 (delivered by) and 41-42 (presented by) were reviewed to see if they might benefit with some clarification. After discussion and examination of different provisions the DSPS Committee decided first to distinguish between the parties: the party giving the notice is the Initiating Party and the other party is the Receiving Party. After the Initiating Party’s agent drafts the notice and it is signed by the Initiating Party, the agent for the Initiating Party delivers the notice. The presentation line was deleted.

➤ **NEW PROPOSED CHANGE: Remove the detail regarding the delivery on lines 35-36 because this information is not given on other forms and is proved, if needed, by other means.**

◆ **Specific Provisions:**

The DSPS Committee decided to remove all language regarding waiver of provisions or contingencies, and well as the proposed language for protected buyers, protected properties, and loan commitment delivery out of concern that if these provisions are here that the notice will become the sole method to carry out these functions and alternate ways of providing notice would not be used. More blank lines where various notices can be written in were favored.

◆ **Actual Receipt**

The DSPS Committee favored the idea of a section regarding Actual Receipt. At line 37 the ACTUAL RECEIPT heading was boxed. The concept is that once the notice is delivered there will frequently be a need to get that notice to the party since the delivery was likely to the agent as recipient for delivery. Therefore there is a section where the agent for the Receiving Party can indicate when and how the notice was sent to or forwarded to the Receiving Party. There is also an area where the Receiving Party may sign and provide the date when the Receiving Party actually, physically received the notice. This will be critical in the delivery of bump notices, seller termination notices, etc. At line 44 a place was added for

the Receiving Party to also print his or her name and provide the date of his or her signature although it would seem in most instances the Actual Receipt and the signature of the Receiving Party would occur on the same day.

- **NEW PROPOSED CHANGES: Make all of line 37 in bold to help establish a separate area of the form with a separate function – actual receipt. Modify lines 42-44 to read, “Acknowledgement of Actual Receipt on ____ at ____ a.m./p.m. [STRIKE ONE]” followed by a line for Initials of Receiving Party only.**

◆ **Attached Addenda (Line 23):**

With regard to the proposed check box regarding attachments, the DSPS Committee decided to keep the line without a check box and to move it to appear at the end of the section of blank lines.

WB-42 Amendment to Listing Contract

The changes shown adopted for the WB-42 are so that it 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.”

- **NEW PROPOSED CHANGES: The check boxes should be removed from lines 5-11**

The language on line 39 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. Further tweaking may be necessary because line 43 refers to the Broker/Firm and thus it is inconsistent.

- **NEW PROPOSED CHANGES: The language on line 39 should be further modified: “CAUTION: This Listing belongs to the Firm. Agents for the Firm do not”**

The signature block spacing was shifted/reformatted a bit and lines were added for the printed names, but the most significant change was that instead of referring to sellers only, the signature blocks are for sellers and owners.

- **NEW PROPOSED CHANGES: On line 44 the term “Broker” is removed so it just refers to Firm. On line 47, it now says “By Agent.”**

WB-44 Counter-Offer

The WRA Forms Committee rejected the notion of making the WB-44 more generic to relate to “counter-proposals” relating to all variety of bilateral contracts negotiated by licensees, and believed that the Counter-Offer is such a term of art that it should be left alone, and the DSPS Committee agreed. They also didn’t believe that there should be another separate “counter-proposals” form that could be used for leases, amendments, options, CAMRs, etc.

The NOTE regarding the numbering of Counter-Offers was moved from the very bottom to the top of the form. On lines 4-6, the CAUTION now comes first on lines 4-5 [CAUTION: This Counter-Offer does not include the terms or conditions in any other Counter-Offer unless incorporated by reference.] followed on lines 6 by “All terms and conditions remain the same as stated in the Offer to Purchase except the following:”

- **NEW PROPOSED CHANGES: On lines 4-5 the phrase “or multiple counter-proposal” is inserted after the second “Counter-Offer.” The bold was removed from line 6 since it is not part of the CAUTION and a “baby line” was added on line 6.**

◆ **Attached Addenda (Line 29):**

With regard to the proposed check box regarding attachments, the DSPS Committee decided to keep the line without a check box and to move it to appear at the end of the section of blank lines.

◆ **Disposition and Delivery Lines (Lines 37-46):**

Changes to the existing lines near the end of the form were rejected, the Committee believing the Counter-Offer basically worked well as it now is.

The other change was to make the signature blocks appear on the WB-44 in the same manner as on other REEB forms. The signature blocks for one party should be stacked vertically and not appear horizontally as they do in the existing WB-44.

WB-45 Cancellation Agreement & Mutual Release

◆ **Introductory Language/Identification of Contract:**

The DSPS Committee's only changes on lines 1-5 was to change the phrase "contract of sale" to "offer to purchase" and change "Agreement" to "Contract" throughout. At line 1 the word "UNDERSIGNED" was taken out of all caps

◆ **Earnest Money Disbursement Liability Release Language (Lines 6-11)**

On lines 6-11 of the existing WB-45 (disbursement of trust funds) there has been confusion due mostly to the spacing within the WB-45 layout: the last line (line 11) is interpreted to relate only to the immediately preceding lines 9-10 instead of inclusively to lines 6-10. To fix this the language regarding the release of the brokers by the parties was moved from the end of this subsection to the beginning to make it clear that all disbursements filled in within this section would release the brokers from liability with regard to the disbursements.

◆ **Withdrawal Note (Lines 16-17)**

The DSPS Committee added a Note similar to the one in the WB-44 Counter-Offer reminding the parties that the CAMR may be withdrawn prior to acceptance and delivery back to the party proposing the CAMR.

◆ **Drafted By Line**

Another possibility would be to include a drafted by line at the end of the WB-45 or delivery lines. These ideas were rejected by the DSPS Committee.

Starting at line 12, the WB-45 adopts the familiar acronym CAMR for this form and uses it for the balance of the form.

WB-40 AMENDMENT TO OFFER TO PURCHASE

**CAUTION: Use A WB-40 Amendment if both Parties will be agreeing to modify the terms of the Offer.
Use A WB-41 Notice if a Party is giving a Notice which does not require the other Party's agreement.**

1 Buyer and Seller agree to amend the Offer dated _____, and accepted _____, for
2 the purchase and sale of real estate at _____
3 _____, **Wisconsin** as follows:
4 Closing date is changed from _____, _____, to _____, _____.
5 Purchase price is changed from \$ _____ to \$ _____.
6 Other: _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____

28 The attached _____ is/are made part of this Amendment.
29 ALL OTHER TERMS OF THE OFFER TO PURCHASE AND ANY PRIOR AMENDMENTS REMAIN THE SAME.
30 This Amendment is binding upon Seller and Buyer only if a copy of the accepted Amendment is delivered to the Party
31 offering the Amendment on or before _____ (Time is of the Essence). Delivery
32 of the accepted Amendment may be made in any manner specified in the Offer to Purchase, unless otherwise provided
33 in this Amendment.
34 **NOTE: The Party offering this Amendment may withdraw the offered Amendment prior to acceptance and**
35 **delivery as provided at lines 30-33.**

36 This Amendment was drafted by _____ on _____
37 Licensee and Firm ▲ Date ▲

38 This Amendment was presented by _____ on _____
39 Licensee and Firm ▲ Date ▲

40 (x) _____ (x) _____
41 Buyer's Signature ▲ Date ▲ Seller's Signature ▲ Date ▲
42 Print name ► Print name ►

43 (x) _____ (x) _____
44 Buyer's Signature ▲ Date ▲ Seller's Signature ▲ Date ▲
45 Print name ► Print name ►

46 This Amendment was rejected _____
47 Party Initials ▲ Date ▲ Party Initials ▲ Date ▲

WB-41 NOTICE RELATING TO OFFER TO PURCHASE

**CAUTION: Use A WB-41 Notice if a Party is giving a Notice which does not require the other Party's agreement.
Use A WB-40 Amendment if both Parties will be agreeing to modify the terms of the Offer.**

1 This Notice by (Seller)(Buyer)~~STRIKE ONE~~ relates to the Offer to Purchase dated _____, _____
2 and accepted _____, _____, for the purchase and sale of real estate at _____
3 _____, Wisconsin.
4 Notice is given that (Attach supporting documents, if required): _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____

25 The attached _____ is/are made part of this Notice.

26 This Notice was drafted by _____ on _____
27 Licensee and Firm for Initiating Party▲ Date ▲

28 **CAUTION: Once delivered, a Notice cannot be withdrawn by the Initiating Party without the written consent of**
29 **the Receiving Party.**

30 (x) _____ (x) _____
31 Signature of Party Initiating Notice ▲ Date ▲ Signature of Party Initiating Notice ▲ Date ▲
32 Print name ► Print name ►

33 This Notice was delivered by _____ on _____
34 Licensee and Firm for Initiating Party▲ Date ▲

35 at _____ a.m./p.m. ~~STRIKE ONE~~ using the following method of delivery: U.S. Mail, commercial delivery,
36 e-mail, fax, personal delivery, other _____ **CHECK AS APPLICABLE**.

37 **ACTUAL RECEIPT** The following optional provision may be completed if the Offer requires Actual Receipt.

38 This Notice was sent to the Receiving Party by _____ on _____
39 Licensee and Firm for Receiving Party▲ Date▲

40 at _____ a.m./p.m. ~~STRIKE ONE~~ using the following method of delivery: U.S. Mail, commercial delivery,
41 e-mail, fax, personal delivery, other _____ **CHECK AS APPLICABLE**.

42 ~~Acknowledgement of Actual Receipt (physical possession by any Receiving Party) occurred on _____~~
43 at _____ a.m./p.m. ~~STRIKE ONE~~

44 (x) _____
45 ~~Signature of Initials of Receiving Party ▲ Print name ► Date▲~~

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
7 midnight _____.

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 _____
35 _____
36 _____
37 _____

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

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

43 _____ (x) _____
44 ~~Broker/Firm~~ ▲ Date ▲ Seller's/Owner's Signature ▲ Date ▲
45 Print name ►

46 (x) _____ (x) _____
47 By Agent ▲ Date ▲ Seller's/Owner's Signature ▲ Date ▲

48 Print name ▶

Print name ▶

WB-44 COUNTER-OFFER

Counter-Offer No. _____ by (Buyer/Seller) **STRIKE ONE**

NOTE: Number this Counter-Offer sequentially, e.g. Counter-Offer No. 1 by Seller, Counter-Offer No. 2 by Buyer, etc.

1 The Offer to Purchase dated _____ and signed by Buyer _____
2 for purchase of real estate at _____
3 _____ is rejected and the following Counter-Offer is hereby made.

4 **CAUTION: This Counter-Offer does not include the terms or conditions in any other Counter-Offer or multiple**
5 **counter-proposal unless incorporated by reference.**

6 All terms and conditions remain the same as stated in the Offer to Purchase except the following: _____

7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____

28 The attached _____ is/are made part of this Counter-Offer.
29 Any warranties, covenants and representations made in this Counter-Offer survive the closing of this transaction.
30 This Counter-Offer is binding upon Seller and Buyer only if a copy of the accepted Counter-Offer is delivered to the
31 Party making the Counter-Offer on or before _____ (Time is
32 of the Essence). Delivery of the accepted Counter-Offer may be made in any manner specified in the Offer to Purchase,
33 unless otherwise provided in this Counter-Offer.
34 **NOTE: The Party making this Counter-Offer may withdraw the Counter-Offer prior to acceptance and delivery**
35 **as provided at lines 30-33.**

36 This Counter-Offer was drafted by _____ on _____
37 Licensee and Firm ▲ Date ▲

38 (x) _____ (x) _____
39 Signature of Party Making Counter-Offer ▲ Date ▲ Signature of Party Accepting Counter-Offer ▲ Date ▲
40 Print name ► Print name ►

41 (x) _____ (x) _____
42 Signature of Party Making Counter-Offer ▲ Date ▲ Signature of Party Accepting Counter-Offer ▲ Date ▲
43 Print name ► Print name ►

44 This Counter-Offer was presented by _____ on _____
45 Licensee and Firm ▲ Date ▲

46 This Counter-Offer is **(rejected)(countered)** **STRIKE ONE** (Party's Initials) _____ (Party's Initials) _____

47 **NOTE: Provisions from a previous Counter-Offer may be included by reproduction of the entire provision or**
48 **incorporation by reference. Provisions incorporated by reference may be indicated in the subsequent Counter-**
49 **Offer by specifying the number of the provision or the lines containing the provision. In transactions involving**
50 **more than one Counter-Offer, the Counter-Offer referred to should be clearly specified.**

WB-45 Cancellation Agreement & Mutual Release

1 The **undersigned** Parties agree that the _____
2 **insert type of contract, e.g., offer to purchase, lease, option, etc.** (Contract) dated _____, for
3 the property located at _____,
4 in the _____ of _____, State of Wisconsin, be canceled and the Parties
5 hereby release all of their right, title, and interest in and to the Contract, and any and all claims arising out of the
6 transaction.

7 The Parties hereby release the broker(s) from any and all liability for disbursing the trust funds as directed and hereby
8 authorize and direct the broker(s) to disburse the trust funds held on behalf of the Parties as follows:

9 \$ _____ shall be disbursed to _____ at
10 the following address _____,

11 \$ _____ shall be disbursed to _____ at
12 the following address _____.

13 This Cancellation Agreement and Mutual Release (CAMR) shall be effective only if all Parties to the Contract have
14 signed an identical copy of this CAMR (including signatures on separate but identical copies of the CAMR), and if the
15 fully-executed CAMR has been delivered to the Party initiating the CAMR on or before _____
16 _____. Delivery may be made in any manner authorized in the Contract.

17 **NOTE: The Party initiating this CAMR may withdraw the CAMR prior to acceptance and delivery as provided at**
18 **lines 12-15.**

19 (X) _____
20 Party's Signature ▲ Print Name Here ► Date ▲

21 (X) _____
22 Party's Signature ▲ Print Name Here ► Date ▲

23 (X) _____
24 Party's Signature ▲ Print Name Here ► Date ▲

25 (X) _____
26 Party's Signature ▲ Print Name Here ► Date ▲

27 (X) _____
28 Party's Signature ▲ Print Name Here ► Date ▲

29 (X) _____
30 Party's Signature ▲ Print Name Here ► Date ▲

31 (X) _____
32 Party's Signature ▲ Print Name Here ► Date ▲

WB-1 RESIDENTIAL LISTING CONTRACT - EXCLUSIVE RIGHT TO SELL

1 **SELLER GIVES ~~THE BROKER FIRM (SOLE PROPRIETOR BROKER OR LICENSED BROKER BUSINESS ENTITY)~~ THE**
2 **EXCLUSIVE RIGHT TO SELL THE PROPERTY ON THE FOLLOWING TERMS:**

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

5 in the _____ of _____, County of _____, Wisconsin. Insert additional
6 description, if any, at lines ~~242-250xxx-xxx~~ or attach as an addendum per lines ~~251-254xxx-xxx~~.

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

8 ■ **INCLUDED IN LIST PRICE:** Seller is including in the list price the ~~Property real estate described on lines x-x~~, all
9 Fixtures not excluded on lines ~~41-44xx-xx~~, and the following items: _____
10 _____
11 _____
12 _____
13 _____

14 ■ **NOT INCLUDED IN LIST PRICE:** ~~Seller is not including in the list price any of Seller's personal property (unless~~
15 ~~included on lines x-xx or at lines xxx-xxx or attached as an addendum per lines xxx-xxx), and the following items:~~
16 ~~CAUTION: Identify Fixtures to be excluded by Seller or which are rented and will continue to be owned by the lessor.~~
17 ~~(See _____ lines _____ 199-210):~~
18 _____
19 _____
20 _____
21 _____

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

24 ■ **MARKETING:** Seller authorizes and ~~Broker the Firm~~ agrees to use reasonable efforts to ~~find procure~~ a buyer for the
25 Property. Seller agrees that ~~the Firm Broker~~ may market Seller's personal property identified on lines 7-9 during the term
26 of this Listing. ~~The Firm Broker's~~ marketing may include: _____
27 _____

28 ~~Broker The Firm~~ may advertise the following special financing and incentives offered by Seller: _____
29 _____

30 Seller has a duty to cooperate with ~~the Firm Broker's~~ marketing efforts. See lines ~~74-80xx-xx~~ regarding ~~the Firm Broker's~~
31 role as marketing agent and Seller's duty to notify ~~the Firm Broker~~ of any potential buyer known to Seller. Seller agrees
32 that ~~the Firm Broker~~ may market other properties during the term of this Listing.

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

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

38 ~~Seller's recipient for delivery (optional): _____~~

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

40 ~~(2) Fax: fax transmission of the document or written notice to the following telephone number:~~
41 ~~Seller: (_____) Firm: (_____)~~

42 ~~(3) Commercial Delivery: depositing the document or written notice fees prepaid or charged to an account with a~~
43 ~~commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line 38 or~~
44 ~~39, for delivery to the Party's delivery address at line xx or xx.~~

45 ~~(4) U.S. Mail: depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the~~
46 ~~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~~
47 ~~xx or xx.~~

48 ~~Delivery address for Seller: _____~~

49 ~~Delivery address for Firm: _____~~

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

54 ~~E-Mail address for Seller: _____~~

55 ~~E-Mail address for Firm: _____~~

56 ■ **DELIVERY/ACTUAL RECEIPT** ~~Delivery to, or Actual rReceipt by, any named Seller constitutes delivery to, or Actual~~
57 ~~rReceipt by, all Sellers. Delivery to, or receipt by, any agent of the Firm constitutes delivery to, or receipt by, the Firm.~~

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

61 ■ **COOPERATION, ACCESS TO PROPERTY OR OFFER PRESENTATION:** The parties agree that ~~Broker-the Firm~~
62 will work and cooperate with other ~~brokers-firms~~ in marketing the Property, including ~~brokers from other~~ firms acting as
63 subagents (~~agents from other companies-firms~~ engaged by ~~Broker-the Firm~~ - See lines ~~438xxx-441xxx~~) and ~~brokers~~
64 ~~firms~~ representing buyers. Cooperation includes providing access to the Property for showing purposes and presenting
65 offers and other proposals from these ~~brokers-firms~~ to Seller. Note any ~~brokers-firms~~ with whom ~~Broker-the Firm~~ shall
66 not cooperate, any ~~brokers-firms~~ or buyers who shall not be allowed to attend showings, and the specific terms of offers
67 which should not be submitted to Seller: _____
68 _____.

69 **CAUTION: Limiting ~~Broker's-the Firm's~~ cooperation with other**
70 **~~brokers-firms~~ may reduce the marketability of the Property.**

71 ■ **EXCLUSIONS:** All persons who may acquire an interest in the Property ~~as-who are~~ Protected Buyers under a prior
72 listing contract are excluded from this Listing to the extent of the prior ~~broker's-firm's~~ legal rights, unless otherwise agreed to
73 in writing. Within seven days of the date of this Listing, Seller agrees to deliver to ~~Broker-the Firm~~ a written list of all such
74 ~~prospective-Protected Bbuyers~~. **NOTE: If Seller fails to timely deliver this list to the Firm, then no Protected Buyers are**
75 **excluded from this Listing and Seller may potentially face paying commission to two listing firms.** The following other buyers
76 _____ are excluded from this Listing until _____ [INSERT DATE];
77 _____
78 _____.

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

81 ■ **COMMISSION:** ~~Broker's-The Firm's~~ commission shall be _____
82 _____
83 _____
84 _____.

85 Seller shall pay ~~Broker's-the Firm's~~ commission, which shall be earned, if, during the term of this Listing:
86 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Property;
87 2) Seller grants an option to purchase all or any part of the Property which is subsequently exercised;
88 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Property;
89 4) A transaction occurs which causes an effective change in ownership or control of all or any part of the Property;
90 4)5) ~~Seller enters into lease(s) involving all or any part of the Property during the term of this Listing, other than in the~~
91 ~~ordinary course of business;~~ or
92 5)6) A buyer is ~~P~~procured for the Property by ~~Brokerthe Firm~~, by Seller, or by any other person, at no less than the
93 price and on substantially the same terms set forth in this Listing and in the standard provisions of the current
94 WB-11 RESIDENTIAL OFFER TO PURCHASE, even if Seller does not accept this buyer's offer. (See lines ~~245-~~
95 ~~248xxx-xxx~~ regarding ~~P~~procurement.)

96 A percentage commission, if applicable, shall be calculated based on the purchase price if commission is earned under 1)
97 or 2) above, or calculated based on the list price under 3), 4) or 5). A percentage commission shall be calculated on the fair
98 market value of the Property exchanged under 3) if the exchange involves less than the entire Property or on the fair market
99 value of the Property to which an effective change in ownership or control takes place, under 4) if the transaction involves
100 less than the entire Property. Once earned, ~~Broker's-the Firm's~~ commission is due and payable in full at the earlier of
101 closing or the date set for closing, unless otherwise agreed in writing. ~~Broker's-The Firm's~~ commission shall be earned if,
102 during the term of the Listing, one owner of the Property sells, conveys, exchanges or options an interest in all or any part of
103 the Property to another owner, except by divorce judgment.

104 **NOTE: A sale, option, exchange or ~~P~~procurement of a buyer for a portion of the Property does not terminate the**
105 **Listing as to any remaining Property.**

106 ■ **COMPENSATION TO OTHERS:** ~~Broker-The Firm~~ offers the following commission to cooperating ~~brokersfirms~~: _____
107 _____ (Exceptions if any): _____.

108 ■ **EXTENSION OF LISTING:** The Listing term is extended for a period of one year as to any Protected Buyer. Upon
109 receipt of a written request from Seller or a broker who has listed the Property, ~~Broker-the Firm~~ agrees to promptly
110 deliver to Seller a written list of those buyers known by ~~Broker-the Firm~~ to whom the extension period applies. Should
111 this Listing be terminated by Seller prior to the expiration of the term stated in this Listing, this Listing shall be extended
112 for Protected Buyers, on the same terms, for one year after the Listing is terminated.

113 ■ **TERMINATION OF LISTING:** Neither Seller nor ~~Broker-the Firm~~ has the legal right to unilaterally terminate this Listing
114 absent a material breach of contract by the other party. Seller understands that the parties to the Listing are Seller and the
115 ~~Broker-(F)firm~~. Agents (~~salespersons~~) for ~~Broker-the (F)firm~~ do not have the authority to enter into a mutual agreement to
116 terminate the Listing, amend the commission amount or shorten the term of this Listing, without the written consent of the
117 agent(s)' supervising broker. Seller and ~~Broker-the Firm~~ agree that any termination of this Listing by either party before
118 the date stated on lines ~~259-xxx-xxx~~ shall be indicated to the other party in writing and shall not be effective until
119 delivered to the other Party in accordance with lines ~~493-498xxx-xxx~~. **CAUTION: Early termination of this Listing may**
120 **be a breach of contract, causing the terminating party to potentially be liable for damages.**

121 ■ **SELLER COOPERATION WITH MARKETING EFFORTS:** Seller agrees to cooperate with ~~Broker-the Firm~~ in
122 ~~Broker's-the Firm's~~ marketing efforts and to provide ~~Broker-the Firm~~ with all records, documents and other material in
123 Seller's possession or control which are required in connection with the sale. Seller authorizes ~~Broker-the Firm~~ to do
124 those acts reasonably necessary to effect a sale and Seller agrees to cooperate fully with these efforts which may

125 include use of a multiple listing service, Internet advertising or a lockbox system on Property. Seller shall promptly notify
126 ~~Broker the Firm~~ in writing of any potential buyers ~~with whom who contact~~ Seller ~~negotiates~~ during the term of this Listing
127 and shall promptly refer all persons making inquiries concerning the Property to ~~Broker the Firm~~.

128 ■ **LEASED PROPERTY:** If Property is currently leased and lease(s) will extend beyond closing, Seller shall assign Seller's
129 rights under the lease(s) and transfer all security deposits and prepaid rents (subject to agreed upon proration) thereunder
130 to buyer at closing. Seller acknowledges that Seller remains liable under the lease(s) unless released by tenants.

131 **CAUTION: Seller should consider obtaining an indemnification agreement from buyer for liabilities under the**
132 **lease(s) unless released by tenants.**

133 ■ **~~BROKER DISCLOSURE TO CLIENTS:~~**

134 **UNDER WISCONSIN LAW, A BROKERAGE FIRM (HEREINAFTER FIRM) AND ITS BROKERS AND**
135 **SALESPERSONS (HEREINAFTER AGENTS) OWES CERTAIN DUTIES TO ALL PARTIES TO A TRANSACTION:**

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

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

138 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request
139 it, unless disclosure of the information is prohibited by law. Page 3 of 5, WB-1

140 (d) The duty to disclose to you in writing certain ~~Mmaterial~~ **adverse fact** ~~Adverse Facts~~ about a property, unless
141 disclosure of the information is prohibited by law. (See Lines ~~211-214xxx-xxx~~)

142 (e) The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential
143 information or the confidential information of other parties. (See Lines ~~147-163xxx-xxx~~)

144 (f) The duty to safeguard trust funds and other property the ~~broker-firm or it agents~~ holds.

The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the
145 advantages and disadvantages of the proposals.

146 ■ **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A BROKERFIRM, YOU ARE THE**
147 **BROKER'S-FIRM'S CLIENT. A BROKER-FIRM OWES ADDITIONAL DUTIES TO YOU AS A CLIENT OF THE FIRM:**

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

150 (b) The ~~broker-firm or one of its agents~~ must provide you with all material facts affecting the transaction, not just
151 ~~A~~ **adverse F** ~~facts~~.

152 (c) The ~~broker-firm and its agents~~ will fulfill the ~~broker's-firm's~~ obligations under the agency agreement and fulfill your
153 lawful requests that are within the scope of the agency agreement.

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

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

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

160 ■ **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY:**

161 ■ A multiple representation relationship exists if a ~~broker-firm~~ has an agency agreement with more than one client who
162 is a party in the same transaction. ~~In a multiple representation relationship, if all of the broker's~~ ~~if you and the firm's other~~
163 clients in the transaction consent, the ~~broker-firm~~ may provide services ~~to the clients~~ through designated agency, ~~which~~
164 ~~is one type of multiple representation relationship.~~

165 ■ Designated agency means that different ~~salespersons employed by the broker~~ ~~agents with the firm~~ will negotiate on
166 behalf of you and the other client or clients in the transaction, and the ~~broker's-firm's~~ duties ~~to you as a client~~ will remain
167 the same. Each ~~salesperson-agent~~ will provide information, opinions, and advice to the client for whom the ~~salesperson~~
168 ~~agent~~ is negotiating, to assist the client in the negotiations. Each client will be able to receive information, opinions, and
169 advice that will assist the client, even if the information, opinions, or advice gives the client advantages in the
170 negotiations over the ~~broker's-firm's~~ other clients. ~~An salesperson-agent~~ will not reveal any of your confidential
171 information to another party unless required to do so by law.

172 ■ If a designated agency relationship is not ~~in-effect~~ ~~authorized by you or other clients in the transaction~~ you may ~~still~~
173 authorize or reject a ~~different type of~~ multiple representation relationship. ~~If you authorize a multiple representation~~
174 ~~relationship in which~~ the ~~broker-firm~~ may provide brokerage services to more than one client in a transaction but neither
175 the ~~broker-firm~~ nor any of the ~~broker's-salespersons~~ ~~its agents~~ may assist any client with information, opinions, and
176 advice which may favor the interests of one client over any other client. ~~If you do not consent to a multiple~~
177 ~~representation relationship the broker will not be allowed to provide brokerage services to more than one client in the~~
178 ~~transaction. Under this neutral approach, the same agent may represent more than one client in a transaction.~~

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

181 **INITIAL ONLY ONE OF THE THREE LINES BELOW:**

182 ~~I consent to~~ The same firm may represent me and the other party as long as the same agent is not
183 ~~representing us both. (multiple representation relationship with designated agency).~~

184 ~~I consent to~~ the same firm may represent me and the other party, but the firm must remain neutral
185 ~~regardless if one or more different agents are involved. (multiple representation relationships, but I do not consent~~
186 ~~to~~ ~~without~~ designated agency).

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

189 **NOTE: You may withdraw this consent by written notice to the firm at any time. Your firm is required to**
190 **disclose to you in your agency agreement the commission or fees that you may owe to your firm. If you have**
191 **any questions about the commission or fees that you may owe based upon the type of agency relationship you**
192 **select with your firm, you should ask your firm before signing the agency agreement. YOU MAY WITHDRAW**
193 **YOUR CONSENT TO DESIGNATED AGENCY OR TO MULTIPLE REPRESENTATION RELATIONSHIPS BY**
194 **WRITTEN NOTICE TO THE BROKER AT ANY TIME. YOUR BROKER IS REQUIRED TO DISCLOSE TO YOU IN**
195 **YOUR AGENCY AGREEMENT THE COMMISSION OR FEES THAT YOU MAY OWE TO YOUR BROKER. IF YOU**
196 **HAVE ANY QUESTIONS ABOUT THE COMMISSION OR FEES THAT YOU MAY OWE BASED UPON THE TYPE**
197 **OF AGENCY RELATIONSHIP YOU SELECT WITH YOUR BROKER YOU SHOULD ASK YOUR BROKER BEFORE**
198 **SIGNING THE AGENCY AGREEMENT.**

199 ■ **SUBAGENCY:** ~~The broker Your firm~~ may, with your authorization in the agency agreement, engage other ~~brokers-firms~~
200 ~~(subagent firms) to who~~ assist your ~~broker-firm~~ by providing brokerage services for your benefit. A subagent ~~firm and the~~
201 ~~agents with the subagent firm~~ will not put the ~~subagent's-their~~ own interests ahead of your interests. A subagent ~~firm will not,~~
202 unless required by law, provide advice or opinions to other parties if doing so is contrary to your interests.

203 **PLEASE REVIEW THIS INFORMATION CAREFULLY. An broker or salesperson agent can answer your questions**
204 **about brokerage services, but if you need legal advice, tax advice, or a professional home inspection, contact an**
205 **attorney, tax advisor, or home inspector. This disclosure is required by section 452.135 of the Wisconsin statutes**
206 **and is for information only. It is a plain language summary of a broker'sthe duties owed to you under section**
207 **452.133 (2) of the Wisconsin statutes.**

208 ■ **CONFIDENTIALITY NOTICE TO CLIENTS:** ~~Broker-The Firm~~ will keep confidential any information given to ~~Broker-the~~
209 ~~Firm~~ in confidence, or any information obtained by ~~Broker-the Firm~~ that ~~he or she knows~~ a reasonable person would
210 want to be kept confidential, unless the information must be disclosed by law or you authorize ~~Brokerthe Firm~~ to
211 disclose particular information. ~~Broker-The Firm~~ shall continue to keep the information confidential after ~~Broker-the Firm~~
212 is no longer providing brokerage services to you.

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

- 214 1) Material ~~A~~adverse ~~F~~facts, as defined in section 452.01 (5g) of the Wisconsin statutes (lines ~~214-214xxx-xxx~~).
- 215 2) Any facts known by the ~~Broker-Firm~~ that contradict any information included in a written inspection report on the
216 property or real estate that is the subject of the transaction.

217 To ensure that the ~~Broker-Firm~~ is aware of what specific information you consider confidential, you may list that
218 information below (see lines ~~158-160xxx-xxx~~). At a later time, you may also provide the ~~Broker-Firm~~ with other
219 information you consider to be confidential.

220 **CONFIDENTIAL INFORMATION:** _____

221 _____

222 _____

223 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by ~~Brokerthe Firm~~): _____

224 _____

225 _____

226 ■ **REAL ESTATE CONDITION REPORT:** Seller agrees to complete the real estate condition report provided by ~~Broker~~
227 ~~the Firm~~ to the best of Seller's knowledge. Seller agrees to amend the report should Seller learn of any ~~D~~defect(s) after
228 completion of the report but before acceptance of a buyer's offer to purchase. Seller authorizes ~~Broker-the Firm~~ to
229 distribute the report to all interested parties and agents inquiring about the Property. Seller acknowledges that ~~Broker-the~~
230 ~~Firm~~ has a duty to disclose all ~~M~~material ~~A~~adverse ~~F~~facts as required by law.

231 ■ **SELLER REPRESENTATIONS REGARDING DEFECTS:** Seller represents to ~~Broker-the Firm~~ that as of the date of
232 this Listing, Seller has no notice or knowledge of any ~~D~~defects affecting the Property other than those noted on the real
233 estate condition report.

234 **WARNING: IF SELLER REPRESENTATIONS ARE INCORRECT OR INCOMPLETE, SELLER MAY BE LIABLE FOR**
235 **DAMAGES AND COSTS.**

236 ■ **OPEN HOUSE AND SHOWING RESPONSIBILITIES:** Seller is aware that there is a potential risk of injury, damage
237 and/or theft involving persons attending an "individual showing" or an "open house." Seller accepts responsibility for
238 preparing the Property to minimize the likelihood of injury, damage and/or loss of personal property. Seller agrees to
239 hold ~~Broker-the Firm~~ harmless for any losses or liability resulting from personal injury, property damage, or theft
240 occurring during "individual showings" or "open houses" other than those caused by ~~Broker's-the Firm's~~ negligence or
241 intentional wrongdoing. Seller acknowledges that individual showings and open houses may be conducted by licensees
242 other than ~~Brokerthe Firm~~, that appraisers and inspectors may conduct appraisals and inspections without being
243 accompanied by ~~Broker-the Firm~~ or other licensees, and that buyers or licensees may be present at all inspections and
244 testing and may photograph or videotape Property unless otherwise provided for in additional provisions at lines ~~xxx-~~
245 ~~xxx~~ or in an addendum per lines ~~xxx-xxx~~.

246 ■ **DEFINITIONS:**

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

- 248 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:
 - 249 1) Significantly and adversely affecting the value of the Property;
 - 250 2) significantly reducing the structural integrity of improvements to real estate; or
 - 251 3) presenting a significant health risk to occupants of the Property.
- 252 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her
253 obligations under a contract or agreement made concerning the transaction.

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

256 **DELIVERY:** ~~Delivery of documents or written notices related to this Listing may only be accomplished by:~~

- 257 1) ~~giving the document or written notice personally to the party;~~

258 ~~2) depositing the document or written notice postage or fees prepaid or charged to an account in the U.S. Mail or a~~
259 ~~commercial delivery system, addressed to the party, at the party's address (See lines 265, 271 and 277.);~~
260 ~~3) electronically transmitting the document or written notice to the party's fax number (See lines 267, 273 and 279.); and,~~
261 ~~4) as otherwise agreed in additional provisions on lines 242-250 or in an addendum to this Listing.~~
262 DEFECT: "Defect" means a condition that would have a significant adverse effect on the value of the Property; that
263 would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or
264 replaced would significantly shorten or adversely affect the expected normal life of the premises.
265 FIRM: "Firm" means a licensed sole proprietor broker or a licensed broker business entity, and as appropriate in
266 context, licensees associated with the Firm.
267 **FIXTURES:** A "Fixture" is an item of property which is physically attached to or so closely associated with land or
268 buildings so as to be treated as part of the real estate, including, without limitation, physically attached items not easily
269 removable without damage to the premises, items specifically adapted to the premises, and items customarily treated
270 as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and
271 windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and
272 cooling units and attached equipment; water heaters and treatment systems; sump pumps; attached or fitted floor
273 coverings; awnings; attached antennas, garage door openers and remote controls; installed security systems; central
274 vacuum systems and accessories; in-ground sprinkler systems and component parts; built-in appliances; ceiling fans;
275 fences; storage buildings on permanent foundations and docks/piers on permanent foundations.
276 **CAUTION: Exclude any Fixtures to be retained by Seller or which are rented (e.g., water softener or other water**
277 **conditioning systems, home entertainment and satellite dish components, L.P. tanks, etc.) on lines 44-44xx-xx**
278 **and in the offer to purchase.**
279 **MATERIAL ADVERSE FACT:** A "Material Adverse Fact" means an Aadverse Ffact that a party indicates is of such
280 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable
281 party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or
282 affects or would affect the party's decision about the terms of such a contract or agreement.
283 **PERSON ACTING ON BEHALF OF BUYER:** "Person Acting on Behalf of Buyer" shall mean any person joined in interest
284 with buyer, or otherwise acting on behalf of buyer, including but not limited to buyer's immediate family, agents, servants,
285 employees, directors, managers, members, officers, owners, partners, incorporators and organizers, as well as any and all
286 corporations, partnerships, limited liability companies, trusts or other entities created or controlled by, affiliated with or
287 owned by buyer, in whole or in part whether created before or after expiration of this Listing.
288 **PROCURE:** A buyer is Pprocured ~~when, during the term of the Listing, an enforceable contract of sale is entered into~~
289 ~~between the Seller and the buyer or~~ when a ready, willing and able buyer submits to the Seller or the Listing Broker-Firm a
290 written offer at the price and on substantially the terms specified in this Listing. A buyer is ready, willing and able when the
291 buyer submitting the written offer at that time has the ability to complete the buyer's obligations under the written offer. (See
292 lines 46xx-49xx)
293 **PROPERTY:** Unless otherwise stated, "Property", means all property included in the list price as described on lines x-xx~~the~~
294 ~~real estate described at lines 2-4.~~
295 **PROTECTED BUYER:** Means a buyer who personally, or through any Person A-acting on Behalf of ~~for such B~~uyer,
296 during the term of this Listing: 1) delivers to Seller or Broker-the Firm a written offer to purchase, exchange or option on the
297 Property ~~during the term of this Listing;~~ 2) sees the Property with the Seller or negotiates directly with Seller by discussing
298 with Seller the potential terms upon which buyer might acquire an interest in the Property; or 3) attends an individual showing
299 of the Property or discusses with Broker-the Firm or cooperating brokers-firms the potential terms upon which buyer might
300 acquire an interest in the Property, but only if Broker-the Firm delivers the buyer's name to Seller, in writing, no later than
301 three days after the expiration of the Listing. The requirement in 3), to deliver the buyer's name to Seller in writing, may be
302 fulfilled as follows: a) If the Listing is effective only as to certain individuals who are identified in the Listing, by the
303 identification of the individuals in the Listing; or, b) if a buyer has requested that the buyer's identity remain confidential, by
304 delivery of a written notice identifying the broker-firm with whom the buyer negotiated and the date(s) of any showings or
305 other negotiations. A Protected Buyer also includes any Person Acting on Behalf of Buyer joined in interest with or otherwise
306 acting on behalf of a Protected Buyer, who acquires an interest in the Property during the extension of listing period as noted
307 on lines xxx-xxx.
308 ■ **FAIR HOUSING:** Seller and Broker-the Firm agree that they will not discriminate against any prospective
309 buyer on account of race, color, sex, sexual orientation as defined in Wisconsin Statutes, Section 111.32-(13m),
310 disability, religion, national origin, marital status, lawful source of income, age, ancestry, familial-family status,
311 status as a victim of domestic abuse, sexual assault, or stalking, or in any other unlawful manner.
312 ■ **EARNEST MONEY:** If Broker-the Firm holds trust funds in connection with the transaction, they shall be retained by Broker
313 the Firm in Broker's-the Firm's trust account. Broker-The Firm may refuse to hold earnest money or other trust funds. Should
314 Broker-the Firm hold the earnest money, the Firm shall hold and disburse earnest money funds in accordance with Wis. Stat.
315 Ch. 452 and Wis. Admin. Code Ch. REEB 18. Seller authorizes Broker to disburse the earnest money as directed in a written
316 earnest money disbursement agreement signed by or on behalf of all parties having an interest in the trust funds. If the
317 transaction fails to close and the earnest money is disbursed to Seller, then upon disbursement to Seller the earnest money
318 shall be paid first to reimburse Broker for cash advances made by Broker on behalf of Seller and one half of the balance, but
319 not in excess of the agreed commission, shall be paid to Broker as Broker's full commission in connection with said purchase
320 transaction and the balance shall belong to Seller. This payment to Broker shall not terminate this Listing.
321 ■ **ADDITIONAL PROVISIONS:** _____
322 _____
323 _____
324 _____
325 _____
326 _____

327 _____
328 _____
329 _____
330 _____
331 _____
332 _____
333 _____
334 _____

335 ■ **ADDENDA:** The attached addenda _____
336 _____
337 _____

338 _____ is/are made part of this Listing.

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

342 ■ **TERM OF THE CONTRACT:** From the _____ day of _____,
343 up to ~~and including the earlier of~~ midnight of the _____ day of _____,
344 _____ ~~or the conveyance of the Property.~~

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

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

350 _____
351 Seller's Address ▲ _____ Seller's Phone # ▲ _____

352 _____
353 Seller's Fax # ▲ _____ Seller's E-Mail Address ▲ _____

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

356 _____
357 Seller's Address ▲ _____ Seller's Phone # ▲ _____

358 _____
359 Seller's Fax # ▲ _____ Seller's E-Mail Address ▲ _____

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

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

365 Seller Entity Name (if any): _____

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

370 (x) _____
371 Agent for ~~Broker/Firm~~ ▲ _____ Print Name Here: ▲ _____ ~~Broker/Firm Name~~ ▲ _____ Date ▲ _____

372 _____
373 ~~Broker/Firm Address~~ ▲ _____ ~~Broker/Firm Phone #~~ ▲ _____

374 _____
375 ~~Broker/Firm Fax #~~ ▲ _____ ~~Broker/Firm E-Mail Address~~ ▲ _____

WB-1 REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee

From: WRA Forms Committee

Date: July 14, 2015

RE: **WB-1 Residential Listing Contract – Exclusive Right to Sell**

The following are possible revisions to the WB-1 Residential Listing Contract – Exclusive Right to Sell (mandatory use date 7-1-08). The DSPS Real Estate Contractual Forms Advisory Committee did not yet review this memo or discuss these items. The line numbers in this memo refer to the line numbers in the accompanying draft of proposed WB-1 modifications.

- ◆ 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. We may need to add a definition of “Firm” to make it clear that this includes agents of the Firm acting on behalf of the Firm or something similar – this may need to be decided after working through the form a bit and adjusting to whatever terminology is selected. See one example under the definitions section.

◆ **Property Definition (Lines 3-23 & 293-294):**

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. In addition, different language is proposed for Not Included in List Price to try to help avoid agent with the impulse to write in “Seller’s personal property” in these lines. The CAUTION regarding fixtures was also moved to the end of this subsection in this proposal.

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.

INCLUDED IN LIST PRICE: Seller is including in the list price the Property real estate described on lines x-x, all Fixtures not excluded on lines ~~11-14~~xx-xx, and the following items:

■ **PROPERTY:** Unless otherwise stated, “Property” means ~~the real estate described at lines 4-7~~all property included in the list price as described on lines x-xx.

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

NOT INCLUDED IN LIST PRICE: ~~Seller is not including in the list price any of Seller’s personal property, (unless included on lines x-xx or at lines xxx-xxx or attached as an addendum per lines xxx-xxx), unless included on lines 7, and the following items: -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).

- ◆ **Delivery (lines 33-57):** Add in the Delivery of Documents and Written Notices from the WB-6 Business Listing Contract and the Personal Delivery/Actual Receipt provision from the WB-11 Residential Offer to Purchase with the word “personal” deleted. Delete the Delivery definition from lines 256-261. Also delete “Actual” receipt as that term is not used in the listing contract as it now stands. As shown in tracking, 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, 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): _____

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

DELIVERY/ACTUAL RECEIPT Delivery to, or ~~Actual r~~Receipt by, any named ~~Broker or~~ Seller constitutes delivery to, or ~~Actual r~~Receipt by, all ~~Brokers or~~ Sellers. Delivery to, or receipt by, any agent of the Firm constitutes delivery to, or receipt by, the Firm.

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

◆ **Modifications to Exclusions section (Lines 70-80):**

Think about whether there should be some teeth in play if the seller does not deliver a list of protected buyers to the second listing broker. Should the seller be alerted that they may have to pay a double commission if they cannot complete this task? Also the formatting was changed in the lines where the seller names seller exclusions (friends, neighbors, etc.) to give more room for buyer names and make these lines a bit clearer.

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

deliver to ~~Broker the Firm~~ a written list of all such ~~prospective-Protected B~~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 ~~an~~ written offer from the buyer or sold the Property to the buyer.

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

◆ **Commission (Lines 81-105)**

The WRA Forms Committee declined to adopt the commission language from the WB-6 Business Listing Contract with respect to a minimum dollar amount and the definition of purchase price. After discussion of minimum commissions, additional commission, administrative fees, etc., the WRA Forms Committee concluded it may be best to simply include a few lines where firms can write in whatever amounts, percentages, formulas, etc. that they may wish to use.

- ◆ The WRA Forms Committee requested that the commission item for leases from the WB-6 be added to the Commission section list of events that earn commission:

5) Seller enters into lease(s) involving all or any part of the Property during the term of this Listing, other than in the ordinary course of business.

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

Food for Thought

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, but nonetheless the sentiment is real). She expresses concern that 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. This would appear to be true regardless of what happened thereafter, although it may be possible to argue that if an offer becomes null and void in accordance with the financing contingency, inspection contingency, etc., that there 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 (enforceable)

See the decision at <http://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=143998>. Also see the copy of the Wisconsin State Bar article discussing the *Ash Park* decision that accompanies this memo. 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.

- ❖ Should there be consideration of having the residential listing contract say that no commission is due unless the transaction closes in cases where there is an accepted offer (or option, exchange, perhaps lease)?
- ❖ Should the listing contract direct the listing Firm to not entertain any offers not accompanied by a pre-approval or at least a pre-qualification?
- ❖ Should the commission language be made clearer – it is complex and convoluted! Should there be 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.
- ❖ Should the criteria regarding the enforceable contract be modified such that if an accepted offer becomes null and void later then no commission is due (even though there was initially an enforceable contract)? Commission would be due only if the seller accepts an offer that creates an enforceable contract that remain in force on the date set for closing?
- ❖ Should there continue to a commission for unaccepted full price offers? Should this be stated in a way other than the current language that brings financial ability into the mix?
- ❖ BIG PICTURE: what is the job the firm gets paid for? If the
- ❖ Other ideas?

THIS RAISES A LOT OF IN-DEPTH ISSUES AND CONSIDERATIONS AND AS SUCH IS NOT A MATTER THAT WE CAN EXPECT TO SOLVE IN ONE MEETING. IT IS SUGGESTED THAT WE BRIEFLY VISIT ABOUT THE COMMISSION ISSUES AND THEN MOVE ON TO OTHER PROVISIONS AND COME BACK TO THIS AT THE NEXT MEETING ONCE EVERYONE HAS THE TIME TO READ AND THINK ABOUT WHAT ACTIONS SHOULD TRIGGER A BROKER’S COMMISSION AND WILL THAT SATISFY THE PUBLIC AND BE DEFENSIBLE IN COURT.

*****This is as far as the WRA Forms Committee went *****

◆ **Marketing Language (Line 24):**

The first sentence of this section says, “Seller authorizes and ~~Broker-the Firm~~ agrees to use reasonable efforts to **Pprocure** a buyer for the Property.” The definition of “procure” interjects consideration of whether a buyer is “ready, willing and able” and thus brings the consideration of financial ability into the picture. Perhaps this provision should be modified to say the Firm will use reasonable efforts to “find” or “obtain” or “secure” or some other word. The existing language could be seen as suggesting it is part of the Firm’s job to bring only buyers who are financially able to complete the purchase to the table to write offers, meaning that brokers are authorized and capable of assessing a prospect’s financial capability.

◆ **Modifications to Seller Cooperation section (Lines 121-127):**

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?”

■ **SELLER COOPERATION WITH MARKETING EFFORTS:** Seller agrees to cooperate with ~~Broker-the Firm~~ in ~~Broker's-the Firm's~~ marketing efforts and to provide ~~Broker-the Firm~~ with all records,

documents and other material in Seller's possession or control which are required in connection with the sale. Seller authorizes ~~Broker-the Firm~~ to do those acts reasonably necessary to effect a sale and Seller agrees to cooperate fully with these efforts which may include use of a multiple listing service, Internet advertising or a lockbox system on Property. Seller shall promptly notify ~~Broker-the Firm~~ in writing of any potential purchasers ~~with whom~~who contact Seller ~~negotiates~~ during the term of this Listing and shall promptly refer all persons making inquiries concerning the Property to ~~Broker~~the Firm.

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

◆ **Disclosure to Clients (Lines 133-207):**

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.

◆ **Definitions (Lines 246-307):**

Since the term “defects” is mentioned in lines 226-233, should the definition of “Defects” from the offer be included in the WB-1?

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.

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

Should we add a definition of Firm? As you read through the draft, the language at times may seem like it is referring to agents of the listing Firm rather than the Firm itself.

FIRM: “Firm” means a licensed sole proprietor broker or a licensed broker business entity, and as appropriate in context, licensees associated with the Firm.

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

Should we add the definition of Person Acting on Behalf of Buyer and the modified definition of Protected Buyer from the WB-6? As you may recall, those changes were made to try to ward off protected buyers who create an LLC and then purchase the property, claiming that the LLC is not a protected buyer.

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.

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

Another thought about 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.” If this idea is favored we may need more eloquent language!

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 a

written offer to purchase, exchange or option on the Property; 2) sees the Property with the Seller or negotiates directly with Seller by discussing with Seller the potential terms upon which buyer might acquire an interest in the Property; or 3) attends an individual showing of the Property or discusses with 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 delivers the buyer's name to Seller, in writing, no later than three days after the expiration 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 with whom the buyer negotiated and the date(s) of any 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.

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

The deleted language below in the definition of Procure is redundant with line 78. See lines 83-86 where the term "procure" is used. The added language speaks to the point that brokers should not be responsible to ensure a buyer's financial capability into the future.

PROCURE: A buyer is procured ~~when, during the term of the Listing, an enforceable contract of sale is entered into between the Seller and the buyer or~~ when a ready, willing and able buyer submits to the Seller or the Listing Broker-Firm a written offer at the price and on substantially the terms specified in this Listing. A buyer is ready, willing and able when the buyer submitting the written offer at that time has the ability to complete the buyer's obligations under the written offer. (See lines xx-xx)

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

⇒ **Or should this definition and term be deleted to avoid the "ready, willing and able" language?**

- ◆ **Fair Housing (Lines 308-311):** the protected class of status as a victim of domestic abuse, sexual assault or stalking was added.
- ◆ **Earnest Money (Lines 312-320):** This is from the WB-6. The inserted language is broader and refers to license law standards rather than making is sound as if the only way the broker can disburse is with a written earnest money disbursement agreement – there are several safe harbors for disbursement in Wis. Admin. Code § REEB 18.09(1). Also should the other provisions shown as lined out be retained? Are they desirable and do they serve a purpose that benefits any one? Are they often used?

■ **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 earnest money is disbursed to Seller, then upon disbursement to Seller the earnest money shall be paid first to reimburse Broker for cash advances made by Broker on behalf of Seller and one half of the balance, but not in excess of the agreed commission, shall be paid to Broker as Broker's full commission in connection with said purchase transaction and the balance shall belong to Seller. This payment to Broker shall not terminate this Listing.

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

- ◆ **Notice About Sex Offender Registry (Lines 339-341):** 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?**

- ◆ **Term of the Contract (Lines 342-344):** 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.
- ◆ **Signature block:** This should be modified because the 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? Would seem it is not necessary in our world of technology – what do you think? Should there be spaces for sellers who are entities?

(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>

What other changes should be made to the WB-1?

WB1RevisionsDSPS7-23-15



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JULY
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No Sale, but Land Seller Must Still Pay Real Estate Broker's Commission, Supreme Court Rules

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July 10, 2015 – A real estate company will get a broker's commission of \$378,000 even though the procured buyer could not consummate the sale, the Wisconsin Supreme Court has ruled, because the seller had an "enforceable contract" against the buyer.

The supreme court, in *Ash Park LLC v. Re/Max Select LLC*, 2015 65 (July 7, 2015), also upheld an award for prejudgment interest, costs, and reasonable attorney fees.



The Listing Contract

Ash Park LLC (Ash Park) entered a one-party listing contract with real estate company Re/Max Select LLC (Re/Max) to help sell a parcel of vacant land in Brown County.

The standard form listing contract stated that Re/Max would receive a six percent commission on the purchase price if Ash Park "sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Property."

Alexander & Bishop Ltd. offered to purchase the land for \$6.3 million, and Ash Park accepted the offer. However, the offer was contingent

on Alexander & Bishop negotiating leases for the subject property within 120 days of acceptance.

Specifically, the buyer wanted to find tenants for a proposed retail shopping center development. Alexander & Bishop terminated the offer when it was unable to negotiate tenancy leases, but later signed an agreement to reinstate the offer, which turned into a binding purchase contract. The closing never happened, though, and Ash Park sued.

Re/Max Seeks Commission

Ash Park obtained a court judgment for specific performance of the purchase contract, but Alexander & Bishop never paid for or acquired the land.

The parties eventually settled the dispute for \$1.5 million. Prior to final adjudication, Re/Max intervened, seeking a commission of \$378,000. It said Ash Park had accepted an offer that created an "enforceable contract" for a purchase price of \$6.3 million.

The circuit court ruled that the purchase contract did not constitute an "enforceable contract," concluding Re/Max was not entitled to a commission. The judge noted the contract was not enforceable-in-fact; the buyer could not obtain the funds.

The appeals court reversed. It said Ash Park had an enforceable purchase contract with Alexander & Bishop, noting that Ash Park obtained a judgment for specific performance (the supreme court upheld the specific performance judgment in a 2010 decision). That is, the circuit judge had ruled that the contract was enforceable in ordering the remedy.

"[T]he law of the case doctrine applies to prevent Ash Park from arguing the contract it had with Alexander & Bishop was unenforceable," the appeals court noted. "Based on the specific performance judgment Ash Park sought and received in this case, Ash Park cannot now argue its contract with Alexander & Bishop was unenforceable."

Supreme Court Affirms

The Wisconsin Supreme Court unanimously affirmed (6-0), with one concurring opinion. It noted that the listing contract required a commission regardless of an actual sale, so long as Ash Park entered into an enforceable purchase contract with a buyer.

"We conclude that the purchase contract between Ash Park and

Alexander & Bishop constitutes an 'enforceable contract' within the meaning of the listing contract between Ash Park and Re/Max," wrote Justice Shirley Abrahamson.

The majority opinion notes that Ash Park obtained a specific performance judgment that was upheld in a previous appeal to the supreme court. "[T]his court made clear that the purchase contract between Ash Park and Alexander & Bishop is enforceable."

It rejected Ash Park's argument that the purchase contract is unenforceable because Ash Park never obtained what was ordered, specific performance, and a contract is enforceable only if a breaching party can be compelled to perform the contract.

"The enforceability of a contract turns on whether there is a remedy available for a breach, not whether a judgment issued in response to a breach is satisfied," Justice Abrahamson explained in the majority opinion.

The majority also rejected Ash Park's public policy argument that it should not be forced to pay a commission on a sale that was never consummated. Ash Park argued that Re/Max procured a buyer that could not perform, and will now be rewarded anyway.

"The result in the instant case does seem harsh to Ash Park. But the result would be harsh to Re/Max were we to hold in Ash Park's favor," Abrahamson noted. "Declining to order Ash Park to pay Re/Max its commission is not only contrary to the contract language; it is also unfair to Re/Max, which expended efforts to locate a buyer."

The majority noted that this contract was "freely negotiated," and courts cannot disregard contract language to achieve what one party views as a fairer result.

In addition, the majority noted that the contract between Ash Park and Re/Max was not "set in stone." Ash Park could have conditioned any commission upon actual sale, and prior courts have upheld commissions without a sale in the absence of such language.

Concurrence

Chief Justice Patience Roggensack agreed that the appeals court decision should be affirmed, because Ash Park was a sophisticated party who agreed that an actual sale was not required to trigger the commission. But she noted "grave concerns."

The chief justice noted prior decisions that required an agent, in order to receive a commission, to procure a buyer that was financially able to purchase the property. Without a financially "able" buyer, the seller

had a “defense” to paying the commission.

But one decision significantly departed from that line of cases, she noted, allowing a commission regardless of a buyer’s financial ability to comply with the contract.

This case, *Kruger v. Wesner*, 79 N.W.2d 354 (1956), shifted the burden of finding a financially able buyer from the real estate agent to the seller, Roggensack explained.

In this case, Ash Park was a sophisticated business represented by attorneys and could have investigated Alexander & Bishop’s financial ability to purchase the land, she noted. Those facts weighed in favor of affirming the court of appeals, Roggensack explained.

But she noted “concerns for the residential homeowner who lists his or her property using a standard form listing contract, without the aid of an attorney, and is unaware that he or she may be incurring an obligation to pay a commission when no sale occurs.” She said the court’s decision creates a potential hardship if “erroneously applied in a different context to an unsophisticated seller of real estate.”

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