



REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL
Room 121A, 1400 East Washington Avenue, Madison
Contact: Brittany Lewin (608) 266-2112
January 13, 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 November 19, 2015 (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 **(10-25)**
 - c) WRA Memo Regarding Commission Issues – Ash Park Case
 - 2) **WB-42 Amendment to Listing Contract**
 - a) Original Document **(26-27)**
 - b) Review of WRA Forms Committee Memo with Proposed Revisions to WB-42 **(28)**
 - 3) **WB-36 Buyer Agency/Tenant Representation Agreement**
 - a) Original Document **(29-34)**
 - b) Review of WRA Forms Committee Memo with Proposed Revisions to WB-36 **(35-37)**
- E. Public Comments**

ADJOURNMENT

**REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL
MEETING MINUTES
NOVEMBER 19, 2015**

PRESENT: Stephen Beers, Casey Clickner, Debra Conrad, John Drzewiecki (*joined the meeting at 9:41a.m.*), Michael Gordon, Cori Lamont (*joined the meeting at 9:37a.m.*), Kim Moermond, Michael Sewell, Jonathan Sayas, Gary Tritz, Thomas Weber, Pamela Widen

EXCUSED: Scott Minter, Richard Petershack

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

CALL TO ORDER

Stephen Beers, Chair, called the meeting to order at 9:36 a.m. A quorum of ten (10) members was confirmed.

ADOPTION OF AGENDA

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

APPROVAL OF MINUTES

MOTION: Thomas Weber moved, seconded by Debra Conrad, to approve the minutes of September 30, 2015 as published. Motion carried unanimously.

Cori Lamont joined the meeting at 9:37a.m.

John Drzewiecki joined the meeting at 9:41a.m.

ADJOURNMENT

MOTION: Michael Gordon moved, seconded by Cori Lamont, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 1:29 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 ~~242-250xxx-xxx~~ or attach as an addendum per lines ~~251-254xxx-xxx~~.

6 ■ LIST PRICE: _____ Dollars (\$ _____).

7 ■ INCLUDED IN LIST PRICE: Seller is including in the list price the Property, all Fixtures not excluded on lines ~~44-~~
8 ~~44xx-xx~~, and the following items: _____

9 _____
10 _____
11 _____
12 _____

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

15 _____
16 _____
17 _____
18 _____

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

21 ■ LIST PRICE: _____ Dollars (\$ _____).

22 ■ MARKETING: Seller authorizes and the **Firm and its agents** agrees to use reasonable efforts to **market** the Property.
23 Seller agrees that the Firm **and its agents** may market Seller's personal property identified on lines ~~x-x~~ **7-9** during the
24 term of this Listing. The Firm's marketing may include: _____

25 _____
26 ~~Broker~~ **The Firm and its agents** may advertise the following special financing and incentives offered by Seller:

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

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

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

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

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

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

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

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

47 ~~Delivery address for Seller: _____~~

48 ~~Delivery address for Firm: _____~~

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

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

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

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

57 **■ OCCUPANCY:** Unless otherwise provided, Seller agrees to give buyer occupancy of the Property at time of closing

58 and to have the Property in broom swept condition and free of all debris and personal property except for personal
59 property belonging to current tenants, sold to buyer or left with buyer's consent.

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

67 _____ **CAUTION:**
68 **Limiting Broker's-the Firm's cooperation with other brokers-firms may reduce the marketability of the Property.**

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

72 **NOTE: If Seller fails to timely deliver this list to the Firm, then no Protected Buyers are excluded from this Listing**
73 **and Seller may potentially face paying commission to two listing firms.** The following other buyers
74 _____

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

78 ■ **COMMISSION:** -The Firm's commission shall be _____
79 _____
80 _____

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

- 83 1) RWA Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the
84 Property;
85 2) Seller grants an option to purchase all or any part of the Property which is subsequently exercised;
86 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Property;
87 4) A transaction occurs which causes an effective change in ownership or control of all or any part of the Property;
88 or
89 5) One seller owner of the Property sells, conveys, exchanges or options an interest in all or any part of the Property to
90 another owner, except by divorce judgment; or
91 6) A ready, willing and able buyer submits a bona fide written offer to Seller or Firm for the Property at, or above, the list
92 price and on substantially the same terms set forth in this Listing and the current WB-11 Residential Offer To
93 Purchase, even if Seller does not accept the buyer's offer.

94 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
95 transaction does not close, unless otherwise agreed in writing.

96 A percentage commission, if applicable, shall be calculated based on the total offered purchase price if commission is
97 earned under 1) above. A percentage commission, if earned, under -2) or 26) above, shall -or- calculated be calculated
98 based on the total consideration between the parties in the transaction. The percentage commission, if earned, shall be
99 calculated based on the list price under 3), 4) or 5). A percentage commission shall be calculated on the fair market value of
100 the Property exchanged under 43) if the exchange involves less than the entire Property or on the fair market value of the
101 Property to which an effective change in ownership or control takes place, under 54) if the transaction involves less than the
102 entire Property.

103 The Firm and its agents are not responsible under Wisconsin statutes or regulations to qualify a buyer's financial capability.

104 Seller may negotiate inclusion of a financing, proof of funds, financial pre-approval, sale of buyer's property, or other

105 contingency in any offer to purchase or contract if Seller has concerns about buyer's financial capability.

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

108 ■ **COMPENSATION TO OTHERS:** Broker-The Firm offers the following commission to cooperating brokersfirms: _____
109 _____ (Exceptions if any): _____

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

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

123 ■ **SELLER COOPERATION WITH MARKETING EFFORTS:** Seller agrees to cooperate with Broker-the Firm in

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

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

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

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

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

- 138 (a) The duty to provide brokerage services to you fairly and honestly.
- 139 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.
- 140 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request
141 it, unless disclosure of the information is prohibited by law.
- 142 (d) The duty to disclose to you in writing certain ~~M~~material ~~adverse fact~~Adverse Facts about a property, unless
143 disclosure of the information is prohibited by law. (See Lines ~~211-214xxx-xxx~~)
- 144 (e) The duty to protect your confidentiality. Unless the law requires it, the ~~broker-firm and its agents~~ will not disclose
145 your confidential information or the confidential information of other parties. (See Lines ~~147-163xxx-xxx~~)
- 146 (f) The duty to safeguard trust funds and other property the ~~broker-firm or its agents~~ holds.
- 147 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the
148 ~~(g)~~ advantages and disadvantages of the proposals.

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

- 151 (a) The ~~broker-firm or one of its agents~~ will provide, at your request, information and advice on real estate matters that
152 affect your transaction, unless you release the ~~broker-firm~~ from this duty.
- 153 (b) The ~~broker-firm or one of its agents~~ must provide you with all material facts affecting the transaction, not just
154 ~~A~~adverse ~~F~~facts.
- 155 (c) The ~~broker-firm and its agents~~ will fulfill the ~~broker's-firm's~~ obligations under the agency agreement and fulfill your
156 lawful requests that are within the scope of the agency agreement.
- 157 (d) The ~~broker-firm and its agents~~ will negotiate for you, unless you release ~~them~~ broker from this duty.
- 158 (e) The ~~broker-firm and its agents~~ will not place their ~~broker's~~ interests ahead of your interests. The ~~broker-firm and its~~
159 ~~agents~~ will not, unless required by law, give information or advice to other parties who are not the ~~broker's-firm's~~ clients,
160 if giving the information or advice is contrary to your interests.
- 161 (f) If you become involved in a transaction in which another party is also the ~~broker's-firm's~~ client (a "multiple
162 representation relationship"), different duties may apply.

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

164 ■ A multiple representation relationship exists if a ~~broker-firm~~ has an agency agreement with more than one client who
165 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
166 clients in the transaction consent, the ~~broker-firm~~ may provide services ~~to the clients~~ through designated agency, ~~which~~
167 ~~is one type of multiple representation relationship.~~

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

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

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

184 **INITIAL CHECK ONLY ONE OF THE THREE LINES BELOW:**

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

187 _____ I consent to The same firm may represent me and the other party, but the firm must remain neutral
188 regardless if one or more different agents are involved. (multiple representation relationships, but I do not consent
189 to without designated agency);

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

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

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

207 **PLEASE REVIEW THIS INFORMATION CAREFULLY. An ~~broker or salesperson~~agent can answer your questions**
208 **about brokerage services, but if you need legal advice, tax advice, or a professional home inspection, contact an**
209 **attorney, tax advisor, or home inspector. This disclosure is required by section 452.135 of the Wisconsin statutes**
210 **and is for information only. It is a plain language summary of a ~~broker's~~the duties owed to you under section**
211 **452.133 (2) of the Wisconsin statutes.**

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

- 217 The following information is required to be disclosed by law:
- 218 1) Material ~~A~~adverse ~~F~~facts, as defined in section 452.01 (5g) of the Wisconsin statutes (lines 211-214xxx-xxx).
 - 219 2) Any facts known by the ~~Broker-Firm and its agents~~ that contradict any information included in a written inspection
220 report on the property or real estate that is the subject of the transaction.

221 To ensure that the ~~Broker-Firm and its agents~~ are aware of what specific information you consider confidential, you
222 may list that information below (see lines 458-460xxx-xxx). At a later time, you may also provide the ~~Broker-Firm~~ with
223 other information you consider to be confidential.

224 **CONFIDENTIAL INFORMATION:** _____
225 _____
226 _____

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

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

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

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

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

250 ■ **DEFINITIONS:**

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

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

257 obligations under a contract or agreement made concerning the transaction.

258 **DEADLINES – DAYS:** Deadlines expressed as a number of "days" from an event are calculated by excluding the day the

259 event occurred and by counting subsequent calendar days.

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

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

262 ~~2) depositing the document or written notice postage or fees prepaid or charged to an account in the U.S. Mail or a~~

263 ~~commercial delivery system, addressed to the party, at the party's address (See lines 265, 271 and 277.);~~

264 ~~3) electronically transmitting the document or written notice to the party's fax number (See lines 267, 273 and 279.); and,~~

265 ~~4) as otherwise agreed in additional provisions on lines 242-250 or in an addendum to this Listing.~~

266 **DEFECT:** "Defect" means a condition that would have a significant adverse effect on the value of the Property; that

267 would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or

268 replaced would significantly shorten or adversely affect the expected normal life of the premises.

269 **FIRM:** "Firm" means a licensed sole proprietor broker or a licensed broker business entity, and as appropriate in

270 context, licensees associated with the Firm.

271 **FIXTURES:** A "Fixture" is an item of property which is physically attached to or so closely associated with land or

272 buildings so as to be treated as part of the real estate, including, without limitation, physically attached items not easily

273 removable without damage to the premises, items specifically adapted to the premises, and items customarily treated

274 as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and

275 windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and

276 cooling units and attached equipment; water heaters and treatment systems; sump pumps; attached or fitted floor

277 coverings; awnings; attached antennas, garage door openers and remote controls; installed security systems; central

278 vacuum systems and accessories; in-ground sprinkler systems and component parts; built-in appliances; ceiling fans;

279 fences; storage buildings on permanent foundations and docks/piers on permanent foundations.

280 **CAUTION: Exclude any Fixtures to be retained by Seller or which are rented (e.g., water softener or other water**

281 **conditioning systems, home entertainment and satellite dish components, L.P. tanks, etc.) on lines 11-14xx-xx**

282 **and in the offer to purchase.**

283 **MATERIAL ADVERSE FACT:** A "Material Adverse Fact" means an A adverse Fact that a party indicates is of such

284 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable

285 party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or

286 affects or would affect the party's decision about the terms of such a contract or agreement.

287 **PERSON ACTING ON BEHALF OF BUYER:** "Person Acting on Behalf of Buyer" shall mean any person joined in interest

288 with buyer, or otherwise acting on behalf of buyer, including but not limited to buyer's immediate family, agents, servants,

289 employees, directors, managers, members, officers, owners, partners, incorporators and organizers, as well as any and all

290 corporations, partnerships, limited liability companies, trusts or other entities created or controlled by, affiliated with or

291 owned by buyer, in whole or in part whether created before or after expiration of this Listing.

292 **PROCURE:** A buyer is procured when, during the term of the Listing, an enforceable contract of sale is entered into between

293 the Seller and the buyer or when a ready, willing and able buyer submits to the Seller or the Listing Broker a written offer at

294 the price and on substantially the terms specified in this Listing. A buyer is ready, willing and able when the buyer submitting

295 the written offer has the ability to complete the buyer's obligations under the written offer. (See lines 46-49)

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

297 real estate described at lines 2-4.

298 **PROTECTED BUYER:** Means a buyer who personally, or through any Person A-acting on Behalf of for such Buyer,

299 during the term of this Listing: 1) delivers to Seller or Broker the Firm or its agents a written offer to purchase, exchange or

300 option on the Property during the term of this Listing; 2) views the Property with Seller or negotiates directly with Seller by

301 discussing-communicating with Seller the-regarding potential terms upon which buyer might acquire an interest in the

302 Property; or 3) attends an individual showing of the Property or discusses with agents of Broker the Firm or cooperating

303 brokers-firms the potential terms upon which buyer might acquire an interest in the Property, but only if Broker the Firm or its

304 agents delivers the buyer's name to Seller, in writing, no later than three days after the expiration of the Listing. The

305 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

306 as to certain individuals who are identified in the Listing, by the identification of the individuals in the Listing; or, b) if a buyer

307 has requested that the buyer's identity remain confidential, by delivery of a written notice identifying the broker firm or agents

308 with whom the buyer negotiated and the date(s) of any individual showings or other negotiations. A Protected Buyer also

309 includes any Person Acting on Behalf of Buyer joined in interest with or otherwise acting on behalf of a Protected Buyer, who

310 acquires an interest in the Property during the extension of listing period as noted on lines xxx-xxx.

311 ■ READY, WILLING AND ABLE: A buyer is "Ready, Willing and Able" for purposes of lines xx-xx when the submitted offer is

312 a bona fide offer and the Firm has no actual knowledge that the buyer does not have the ability to complete the buyer's

313 obligations under the written offer. The Firm is not responsible under Wisconsin statutes or regulations to qualify a buyer's

314 financial capability. Seller may negotiate inclusion of a financing, proof of funds, financial pre-approval, sale of buyer's

315 property, or other contingency in any offer to purchase or contract if Seller has concerns about buyer's financial capability.

316 ■ EXTENSION OF LISTING: The Listing term is extended for a period of one year as to any Protected Buyer. Upon

317 receipt of a written request from Seller or a broker who has listed the Property, the Firm agrees to promptly deliver to

318 Seller a written list of those buyers known by the Firm and its agents to whom the extension period applies. Should this

319 Listing be terminated by Seller prior to the expiration of the term stated in this Listing, this Listing shall be extended for

320 Protected Buyers, on the same terms, for one year after the Listing is terminated.

321 ■ FAIR HOUSING: Seller and Broker the Firm and its agents agree that they will not discriminate against any

322 prospective buyer on account of race, color, sex, sexual orientation as defined in Wisconsin Statutes, Section

323 111.32-(13m), disability, religion, national origin, marital status, lawful source of income, age, ancestry, familial

324 family status, status as a victim of domestic abuse, sexual assault, or stalking, or in any other unlawful

325 manner.

326 ■ **EARNEST MONEY:** If ~~Broker-the Firm~~ holds trust funds in connection with the transaction, they shall be retained by ~~Broker~~
327 ~~the Firm~~ in ~~Broker's-the Firm's~~ trust account. ~~Broker-The Firm~~ may refuse to hold earnest money or other trust funds. Should
328 ~~Broker-the Firm~~ hold the earnest money, ~~the Firm shall hold and disburse earnest money funds in accordance with Wis. Stat.~~
329 ~~Ch. 452 and Wis. Admin. Code Ch. REEB 18. Seller authorizes Broker to disburse the earnest money as directed in a written~~
330 ~~earnest money disbursement agreement signed by or on behalf of all parties having an interest in the trust funds. If the~~
331 ~~transaction fails to close and the earnest money is disbursed to Seller, then upon disbursement to Seller the earnest money~~
332 ~~shall be paid first to reimburse Broker for cash advances made by Broker on behalf of Seller and one half of the balance, but~~
333 ~~not in excess of the agreed commission, shall be paid to Broker as Broker's full commission in connection with said purchase~~
334 ~~transaction and the balance shall belong to Seller. This payment to Broker shall not terminate this Listing.~~

335 ■ **ADDITIONAL PROVISIONS:** _____
336 _____
337 _____
338 _____
339 _____
340 _____
341 _____
342 _____
343 _____
344 _____
345 _____
346 _____
347 _____

349 ■ **ADDENDA:** The attached addenda _____
350 _____
351 _____
352 _____ is/are made part of this Listing.

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

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

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

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

364 _____
365 Seller's Address ▲ _____ Seller's Phone # ▲ _____

366 _____
367 Seller's Fax # ▲ _____ Seller's E-Mail Address ▲ _____

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

370 _____
371 Seller's Address ▲ _____ Seller's Phone # ▲ _____

372 _____
373 Seller's Fax # ▲ _____ Seller's E-Mail Address ▲ _____

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

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

380 Seller Entity Name (if any): _____

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

384 (x) _____
385 Agent for ~~Broker~~ Firm ▲ Print Name Here: ▲ ~~Broker~~ Firm Name ▲ Date ▲

386 _____
387 ~~Broker~~ Firm Address ▲ ~~Broker~~ Firm Phone # ▲

388 _____
389 ~~Broker~~ Firm Fax # ▲ ~~Broker~~ Firm E-Mail Address ▲

WB-1 REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Council
From: WRA Forms Committee
Date: January 6, 2016
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), as noted below. The line numbers in this memo refer to the line numbers in the accompanying draft of proposed WB-1 modifications (20151119 REF WB-1Firm-agents).

NEW SUGGESTION: a Committee member has suggested that a mandatory arbitration and class action waiver provision be added to the listings and buyer agency agreements. This provision was initially suggested:

ARBITRATION AGREEMENT: Seller and Broker agree resolve any dispute or equitable or legal claim (“Claim(s)”) between them using binding arbitration conducted by the American Arbitration Association (AAA), using its Consumer Arbitration Rules or other AAA rules as may be agreed in writing. This agreement to arbitrate will be interpreted under the Federal Arbitration Act, 9 U.S.C. § 1, et. seq. Seller and Broker will have all the rights and benefits of arbitration, but are hereby giving up their rights to resolve their Claims in a court or jury trial. Neither Seller nor Broker will have the right to join or consolidate Claims by or against other parties, or to include in the arbitration any Claim where Seller or another party seeks to act or acts as (a) a representative or member of a class; (b) in the interest of the general public; or (c) in any capacity as a private attorney general. Any final arbitration result, determination, finding, or award will be final and binding on Seller and Broker, and either party may confirm and enforce any of them in court. For Claims between Seller nor Broker that do not exceed the jurisdictional limit of a small-claims court, either party may elect to bring those Claims in a small-claims court instead of an arbitration under this paragraph. More information about arbitration is at www.adr.org.

It costs \$750 to get a list of 5 arbitrator names from AAA and the arbitrators are paid by the hour typically, that is just the ground level starting point. It is not clear what other costs would be involved or how many qualified arbitrators knowledgeable about commission and fee disputes under Wisconsin law and contracts are available there. The process is intended to be less expensive, more private, and faster than litigation and provide an opportunity for creative solutions, but it is not clear what the real savings might be because this does not necessarily mean that a party would still not have legal counsel. More information is needed about how long the process takes, are there forms to use, etc. There are resources from the AAA at www.adr.org.

In general terms, arbitration is the dispute resolution process most closely related to a lawsuit. In arbitration, a neutral decision maker, known as an “arbitrator,” is selected by the parties or by a neutral dispute resolution service provider. Sometimes arbitration takes place with a panel of three arbitrators, rather than a single arbitrator. Evidence is presented to the arbitrator(s) at a formal hearing similar to the presentation of evidence in a lawsuit, although the rules that apply in court are somewhat relaxed. Parties in arbitration may be represented by lawyers, who present evidence and legal arguments to the arbitrator(s) on behalf of their clients. The arbitrator(s) then make a decision, most often called an

“award.” An arbitration award generally is a final decision, subject only to limited review by a court as allowed by law.

Also note that there are other attorneys and groups that provide arbitration services.

See <http://marketplace.wisbar.org/classifieds/Pro-Services-Experts/Pages/default.aspx> and:

- State Bar of Wisconsin's Lawyer Referral and Information Service, www.wisbar.org/lris, (800) 362-9082
- Wisconsin Association of Mediators, (608) 277-1771, <http://www.wisconsinmediators.org/>
- American Arbitration Association, www.adr.org, (800) 671-2678
- Association for Conflict Resolution, www.acrnet.org, (202) 667-9700
- CPR Institute for Dispute Resolution, www.cpradr.org, (212) 949-6490

Another consideration would be whether this provision, if it is favored for inclusion in the listing contract, would have a check box in front of it so that it can be included on a case by case basis. The Florida and California samples below both ask the parties to initial to signify whether they agree to binding arbitration. Unless the parties at least have a choice there may be a concern would be that this could be perceived as a liability shield used by brokerage firms against consumers such as home sellers to discourage them from pursuing their rights. It may be advisable to include some sort of warning or caution alerting consumers that the provision means they are giving up their rights to go to court, other than possibly a small claims court case, because we know that the Wisconsin Supreme Court is sensitive that consumers understand the contracts they sign. The California sample below has quite a bit of cautionary language in bold type. That would be especially so if the provision is mandatory and among other boilerplate language.

The WRA contacted NAR and Katie Johnson, Senior Vice President and General Counsel, indicated the NAR is not aware of any trend or recommendation for adding mandatory arbitration and class action waivers to listing contracts. NAR has, however, been recommending such provisions for independent contractor agreements.

The WRA is working to find additional information regarding the efficacy of this process and the included costs and timeline. Ideally there may be real life examples to illustrate the savings and ease of administration and implementation.

The following are provisions from a few associations where there is an arbitration provision included in listing contracts. These are simply samples and examples of alternatives should this type of provision be desired:

Florida Exclusive Brokerage Listing Agreement

Dispute Resolution: This Agreement will be construed under Florida law. All controversies, claims, and other matters in question between the parties arising out of or relating to this Agreement or the breach thereof will be settled by first attempting mediation under the rules of the American Mediation Association or other mediator agreed upon by the parties. If litigation arises out of this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees and costs, unless the parties agree that disputes will be settled by arbitration as follows:

Arbitration: By initialing in the space provided, Seller (____) (____), Sales Associate (____), and Broker (____) agree that disputes not resolved by mediation will be settled by neutral binding arbitration in the county in which the Property is located in accordance with the rules of the American Arbitration Association or other arbitrator agreed upon by the parties. Each party to any arbitration (or litigation to enforce the arbitration provision of this Agreement or an arbitration award) will pay its own fees, costs, and expenses, including attorney's fees, and will equally split the arbitrator's fees and administrative fees of arbitration.

California Association of REALTORS® Exclusive Listing Agreement

DISPUTE RESOLUTION:

A. MEDIATION: Seller and Broker agree to mediate any dispute or claim arising between them regarding the obligation to pay compensation under this Agreement, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. Exclusions from this mediation agreement are specified in paragraph 19C.

B. ARBITRATION OF DISPUTES:

Seller and Broker agree that any dispute or claim in law or equity arising between them regarding the obligation to pay compensation under this Agreement, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate law experience, unless the parties mutually agree to another arbitrator. The parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 19C.

“NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO ARBITRATE IS VOLUNTARY.”

“WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION TO NEUTRAL ARBITRATION.”

Seller’s Initials x _____ / x _____ Broker’s Initials _____ / _____

C. ADDITIONAL MEDIATION AND ARBITRATION TERMS: The following matters shall be excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code § 2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic’s lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, or order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation and arbitration provisions.

Chicago Association of REALTORS®

The parties agree that any dispute, controversy, or claim arising out of or relating to this exclusive listing agreement, or any breach thereof by either party, shall be resolved by arbitration in accordance with the Code of Ethics and Arbitration Manual of the National Association of REALTORS®, as amended from time to time, through the facility of the Chicago Association of REALTORS®. The parties agree to be bound by any award rendered by any professional standards arbitration hearing panel of the Chicago Association of REALTORS® and further agree that judgment upon any award rendered by professional standards arbitration hearing panel of the Chicago Association of REALTORS® may be entered in any court having jurisdiction thereof. The parties agree to execute any arbitration agreements and documents as may be required by the Chicago Association of REALTORS® to facilitate any arbitration.

RECAP (agreed upon by both committees):

◆ 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 the terminology is selected.

◆ **Property Definition (Lines 296-297):**

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 lines 290-291:

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 13-20 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 5 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.

◆ **Delivery (lines 32-56):** Add in the Delivery of Documents and Written Notices from the WB-6 Business Listing Contract. Delete the Delivery definition from lines 259-264. 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: (_____) _____ ~~Broker Firm~~: (_____) _____

(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 ~~Broker Firm~~: _____

(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 ~~Broker Firm~~ ~~(optional)~~: _____

NEW SUGGESTION: Lines 60-68 regarding access to the Property.

Note any firms with whom the Firm shall not cooperate, any firms **or agents** or buyers who shall not be allowed to attend showings, and the specific terms of offers which should not be submitted to Seller:

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

The suggestion is 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:

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 69-77):**

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 ~~as a~~who are Protected Buyers 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 a written offer from the buyer or sold the Property to the buyer.

◆ **Commission (Lines 78-107)**

The DSPS Committee removed the following commission item for leases from the Commission section that the WRA Committee had approved. They thought it was best to allow licensees to rely on the effective change in ownership in those cases where it applies, and also thought that the specific lease language may be appropriate for the commercial listing but not for residential – will create too much confusion. If there will be residential rentals the parties should use the WB-37.

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.

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 listing contract direct the listing Firm to not entertain any offers not accompanied by a pre-approval or at least a pre-qualification? **WRA Forms Committee said no.**
- ❖ 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.
- ❖ Should there be a definition for what is a “ready, willing and able buyer?” **See proposed preliminary definition below.**
- ❖ 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 November 19 the DSPS Real Estate Contractual Forms Advisory Council shifted the full price item from first (1) to last (6) on the list of commission triggers, the definition of “ready, willing and able” buyer was removed and information about the Firm’s role in financially qualifying buyers, some of which had been in the “Ready, Willing and Able” definition of the prior draft, is now on lines 103-105 of the accompanying draft. See the tracking below:

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

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

- ~~1) A ready, willing and able buyer submits to Seller or Firm a written offer for the Property at the 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 this buyer's offer.~~
- ~~2)1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Property;~~
- ~~3)2) Seller grants an option to purchase all or any part of the Property which is subsequently exercised;~~
- ~~4)3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Property;~~
- ~~5)4) A transaction occurs which causes an effective change in ownership or control of all or any part of the Property; or~~
- ~~6)5) One seller of the Property sells, conveys, exchanges or options an interest in all or any part of the Property to another owner, except by divorce judgment.~~
- 6) A ready, willing and able buyer submits a bona fide written offer to Seller or Firm for the Property at, or above, the 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 this buyer's offer.

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.

A percentage commission, if applicable, shall be calculated based on the **total offered purchase price** if commission is earned under 1), 2) or 6) above, or calculated based on the list price under 3), 4) or 5). A percentage commission shall be calculated on the fair market value of the Property exchanged under 3) if the exchange involves less than the entire Property or on the fair market value of the Property to which an

effective change in ownership or control takes place, under 4) if the transaction involves less than the entire Property.

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.

The percentage commission provisions above need to be modified again because of the shift/reordering and it is proposed that this say:

A percentage commission, ~~if applicable, shall be calculated based on the purchase price if commission is earned under 1), 2) or 56) above, shall be calculated based on the total consideration between the parties in the transaction. The percentage commission, if earned, shall be~~ ~~or~~ calculated based on the list price under 2) 3), ~~or 4) or 5).~~ A percentage commission shall be calculated on the fair market value of the Property exchanged under 3) if the exchange involves less than the entire Property or on the fair market value of the Property to which an effective change in ownership or control takes place, under 4) if the transaction involves less than the entire Property. A percentage commission, if applicable, shall be calculated based on the total offered purchase price if commission is earned under 6) above.

⇒ **Is this language correct?**

⇒ **Should the WB-1 continue to use the “ready, willing and able” language, and if so, should it be defined in the WB-1 or should it left to case law to supply the meaning? On November 19 the DSPS Real Estate Contractual Forms Advisory Council decided that it should be left to case law (and common sense) to supply the meaning.**

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 6) is left to case law interpretation – see the accompanying draft of the WB-1, the tracking above and the case law snippets below.

⇒ **Is this language below on lines 103-105 of the WB-1 draft acceptable? Better language? Too many examples of contingencies?**

The Firm is 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.

The teachings of case law

On the bottom of this page and on pages 9-10 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.**

◆ **Marketing Language (Line 22):**

The first sentence of this section says, “Seller authorizes and ~~Broker~~ the Firm agrees to use reasonable efforts to **Procure** 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. 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.

The word “market” is used in place of “procure a buyer for,” such that the sentence on line 22 of the WB-1 draft says, “Seller authorizes and the Firm agrees to use reasonable efforts to market the Property.”

***** **THE DSPS COMMITTEE DID NOT GO BEYOND THIS POINT** *****

◆ **Modifications to Seller Cooperation section (Lines 123-129):**

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 is 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? “With any potential purchasers with whom Seller

discusses potential terms upon which buyer might acquire an interest in the Property?” Inquiries about potential purchase terms? Conversation about acquiring an interest in the Property or about purchase terms?

- ⇒ **Should the term “negotiate” be defined? That might be useful for this provision as well as the protected buyer provisions but it is also used in another sense at lines 104, 147, 157, 168, 171, 173, etc. so maybe a definition does not work.**
- ⇒ **What if a sentence was added saying, “For the purposes of this provision, seller negotiates with potential purchasers when Seller discusses potential purchase terms with a potential buyer.”?**

■ **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 Seller negotiates** during the term of this Listing and shall promptly refer all persons making inquiries concerning the Property to ~~Broker~~ the Firm.

◆ **Disclosure to Clients (Lines 135-211):**

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 – the tracking changes have been updated a touch. Look at the section where the client selects an agency model and the note following thereafter for the most notable language changes.**

◆ **Definitions (Lines 250-315):**

Since the term “defects” is mentioned in lines 230-237, should the definition of “Defects” from the offer be 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**

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, for example in the definition of Protected Buyer it mentions a buyer discussing potential terms with the Firm. The expected statutory definition contains only the language through the first comma below (in **yellow**), but not sure if that should be modified for purposes of this listing with the additional language.

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

- ⇒ **Questioned by the DSPS Committee. Especially since the language in the Disclosure to clients section refers to “the Firm and its agents” in several places, it may be that the Firm definition should not include the added reference to agent and that we will have to read**

through the WB-1 and suggest where additional language mentioning “the agents of the Firm” or the “Firm’s agents” should be inserted.

- ⇒ **UPDATE:** See the accompanying WB-1 draft marked “20151119 REF WB-1Firm-agents” and review the yellow-highlighted additions where language such as “the Firm and its agents” has been inserted. Please consider if additional modifications are needed or whether some of these may not be necessary.

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.

- ⇒ **Accepted by both Committees**

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.” 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.

After further discussion during the WRA Forms Committee, below is another alternative. A buyer is protected under three different circumstances: an offer is submitted (seller knows the name of the buyer from the offer), there is seller contact, or there is broker contact (showing or negotiations – broker must give seller the name of the buyer). A word other than “discussing” was wanted to make sure it included email, text or other exchanges – the idea is to not limit this to face-to-face conversations which might be suggested by “discussing.” However, the cases have included other communications when finding the requisite two-way exchange needed in the case law for negotiation.

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) **views the Property with Seller or** negotiates directly with Seller **by discussing communicating** with Seller ~~the regarding~~ 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.

- ⇒ **Questioned by this Committee which seemed to prefer leaving the current structure which requires either an individual showing or negotiation, but no clear resolution. It is true that the case law standard for negotiation is fairly low, only requiring a two way conversation about possible terms or conditions of a possible offer. This is based on the language from the current listings: “negotiates directly with Seller by discussing with Seller the potential terms upon which buyer might acquire an interest in the Property” so maybe this phrase should be left alone?**
- ⇒ **Believe we need final resolution of this section: status quo or include the additional qualifying event of the seller showing the property to the buyer; discussing or communicating? Do we need explanation for the seller regarding what negotiating means or is it best to leave that to the courts?**

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)

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

- ⇒ **Accepted by both Committees: delete the definition of “procure” since the word has been removed from the WB-1. In addition this Committee asked that the Extension of Listing section be moved and placed immediately after the Protected Buyer definition. See this in the draft highlighted in yellow at lines 316-320.**

◆ **Fair Housing (Lines 321-325):** the protected class of status as a victim of domestic abuse, sexual assault or stalking was added.

◆ **Earnest Money (Lines 326-334):** 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

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.

The WRA Forms Committee was in favor of leaving this out.

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

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

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.

WB1RevisionsDSPS1-13-16

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

37 **CAUTION: Agents (brokers and salespersons) for Broker (firm) do not have the authority to enter into a mutual**
38 **agreement to terminate a listing contract, amend the commission amount or shorten the term of a listing**
39 **contract, without the written consent of the Agent(s)' supervising broker.**

40 _____ (x) _____
41 ~~Broker/Firm~~ ▲ Date ▲ Seller's/Owner's Signature ▲ Date ▲
42 Print name ►

43 (x) _____ (x) _____
44 By Agent ▲ Date ▲ Seller's/Owner's Signature ▲ Date ▲
45 Print name ►

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

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

50 (x) _____
51 Supervising Broker's Signature ▲ Print name ► Date ▲

WB-42 REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee
From: WRA Forms Committee
Date: January 7, 2016
RE: **WB-42 Amendment to Listing Contract**

This memo relates to proposed changes to the WB-42 Amendment to Listing Contract.

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 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. There may be further discussion regarding this caution once the WB-1 revisions are completed so this form is being held back until then.

- **PRIOR CHANGES: The language on line 39 was modified: “CAUTION: This Listing belongs to the Firm. Agents for the Firm do not”**
- **PRIOR CHANGES: On line 44 the term “Broker” is removed so it just refers to Firm. On line 47, it now says “By Agent.”**

Now that the WRA committee has been through the WB-1 Residential Offer to Purchase, they took the opportunity to look at the WB-42 amendment to Listing contract once again. It was their understanding that the remaining issue had to do with whether there should be a place on the WB-42 where a supervising broker could sign to give written consent if there was an amendment to terminate a listing contract, amend 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 signature so that no one would get the wrong impression that a supervising broker had to sign every amendment.

- **NEW PROPOSALS: The CAUTION from lines 37-39 was moved to follow the signature block for the Firm and the Seller. 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.

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~~ the exclusive right to act as Buyer's agent to locate an interest in property and to negotiate the procurement of an interest in property, except as excluded under lines 11-20xx-xx. Except for excluded properties described in lines 11-20xx-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-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-Buyer shall pay the Firm's compensation, from Buyer will be~~ reduced by any amounts the Firm receives 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 lines xx-xx.

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

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

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

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

60 Buyer: (_____) Firm: (_____)

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

64 (4) U.S. Mail: depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the
65 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
66 or xx.

67 Delivery address for Buyer: _____

68 Delivery address for Firm: _____

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

73 E-Mail address for Buyer: _____

74 E-Mail address for Firm: _____

75 ■ **BROKER'S FIRM'S DUTIES:** In consideration for Buyer's agreements, ~~Broker the Firm~~ agrees to use professional
76 knowledge and skills, and reasonable efforts, in accordance with applicable law, to: 1) locate an interest in property,
77 unless ~~Broker the Firm~~ is being retained solely to negotiate the procurement of an interest in a specific property, and 2)
78 negotiate the procurement of an interest in property, as required, ~~by giving advice to Buyer within the scope of Broker's~~
79 ~~license, facilitating or participating in the discussions of the terms of a potential contract, completing appropriate~~
80 ~~contractual forms, presenting either party's contractual proposal with an explanation of the proposal's advantages and~~
81 ~~disadvantages and other efforts including but not limited to the following:~~ _____,
82 unless ~~Broker the Firm~~ is retained solely to locate an interest in property.

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

90 ■ **NON DISCRIMINATION:** Buyer and ~~Broker the Firm~~ agree that they will not discriminate based on race, color, sex,
91 sexual orientation as defined in Wisconsin Statutes §_111.32(13m), disability, religion, national origin, marital status,
92 lawful source of income, age, ancestry, family~~ial~~ status, status as a victim of domestic abuse, sexual assault, or stalking,
93 or in any other unlawful manner.

94 ■ **BROKER DISCLOSURE TO CLIENTS:**

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

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

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

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

101 (d) The duty to disclose to you in writing certain Mmaterial Aa adverse Ff facts about a property, unless disclosure of the
102 information is prohibited by law. (sSee lines 170-173xxx-xxx)

103 (e) The duty to protect your confidentiality. Unless the law requires it, the broker-firm and its agents will not disclose your
104 confidential information or the confidential information of other parties. (sSee lines 109-122xxx-xxx)

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

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

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

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

112 (b) The broker-firm or one of its agents must provide you with all material facts affecting the transaction, not just
113 Aa adverse Ff facts.

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

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

- 117 (e) The ~~broker-firm and its agents~~ will not place their ~~broker's~~ interests ahead of your interests. The ~~broker-firm and its~~
118 ~~agents~~ will not, unless required by law, give information or advice to other parties who are not the ~~broker's-firm's~~
119 clients, if giving the information or advice is contrary to your interests.
- 120 (f) If you become involved in a transaction in which another party is also the ~~broker's-firm's~~ client (a "multiple
121 representation relationship"), different duties may apply.

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

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

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

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

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

143 **INITIAL CHECK ONLY ONE OF THE THREE LINES BELOW:**

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

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

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

151 **NOTE: All clients who are parties to this agency agreement consent to the selection checked above. You may**
152 **modify this selection by written notice to the firm at any time. Your firm is required to disclose to you in your**
153 **agency agreement the commission or fees that you may owe to your firm. If you have any questions about the**
154 **commission or fees that you may owe based upon the type of agency relationship you select with your firm, you**
155 **should ask your firm before signing the agency agreement.** ~~You may withdraw your consent to designated~~
156 ~~agency or to multiple representation relationships by written notice to the broker at any time. Your broker is~~
157 ~~required to disclose to you in your agency agreement the commission or fees that you may owe to your broker.~~
158 ~~If you have any questions about the commission or fees that you may owe based upon the type of agency~~
159 ~~relationship you select with your broker you should ask your broker before signing the agency agreement.~~

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

164 **PLEASE REVIEW THIS INFORMATION CAREFULLY. An ~~broker or salesperson~~ agent can answer your questions**
165 **about brokerage services, but if you need legal advice, tax advice, or a professional home inspection, contact an**
166 **attorney, tax advisor, or home inspector. This disclosure is required by section 452.135 of the Wisconsin statutes**
167 **and is for information only. It is a plain language summary of a ~~broker's~~ the duties owed to you under section**
168 **452.133 (2) of the Wisconsin statutes.**

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

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

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

178 To ensure that the ~~broker-Firm~~ is aware of what specific information you consider confidential, you may list that
179 information below (See lines ~~119-120xxx-xxx~~). At a later time, you may also provide the ~~broker-Firm~~ with other
180 information you consider to be confidential.

181 **CONFIDENTIAL INFORMATION:** _____

182 _____

183 _____

184 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by ~~Broker~~the Firm): _____

185 _____

186 _____

187 ■ **WAIVER OF CONFIDENTIALITY:** Buyer may wish to authorize Broker to disclose information which might otherwise be
188 considered confidential. An example of this type of information might be financial qualification information which may be
189 disclosed to strengthen Buyer's offer to purchase/lease proposal in the eyes of prospective sellers/landlords. Broker's
190 authorization to disclose may be indicated at lines 121-122. Unless otherwise provided at lines 119-120, Broker has permission
191 to disclose Buyer's identity to owner, owner's agents and other third parties without prior consent from Buyer. Buyer
192 acknowledges that pursuant to Wisconsin Statute section 706.03(1)(b)(1m) a conveyance, such as an offer to purchase, is not
193 binding if it is signed by a representative properly authorized by Buyer (e.g., with a power of attorney) until such time as Buyer
194 is identified in the conveyance.

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

199 ■ **COOPERATION:** Buyer agrees to cooperate with Broker and to provide Broker accurate copies of all relevant records,
200 documents and other materials in Buyer's possession or control which are required in connection with the purchase, option,
201 exchange or lease of property. Buyer agrees to be reasonably available for showings of properties. Buyer authorizes
202 Broker to do those acts reasonably necessary to fulfill Broker's responsibilities under this Agreement including retaining
203 subagents. Buyer shall promptly notify Broker in writing of the description of any property Buyer locates. Buyer shall also
204 notify Broker of the identity of all persons making inquiries concerning Buyer's objectives stated in this Agreement.

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

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

210 ■ **DEFINITIONS:**

211 **ADVERSE FACT:** An "adverse fact" means any of the following:

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

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

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

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

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

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

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

228 **INTEREST IN PROPERTY:** The "interest in property" to be obtained by Buyer includes a purchase, leasehold, option,
229 exchange agreement or any other procured interest in real property unless restricted at lines 11-20, in additional provisions
230 (lines 182-190) or elsewhere in this Agreement.

231 **LOCATE AN INTEREST IN PROPERTY:** "Locate an interest in property" shall mean, as used in this Agreement, to
232 identify, evaluate according to the standards set by Buyer, and determine the availability of the interest sought by Buyer
233 in a property.

234 **MATERIAL ADVERSE FACT:** A "material adverse fact" means an adverse fact that a party indicates is of such
235 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party,
236 that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects
237 or would affect the party's decision about the terms of such a contract or agreement.

238 **NEGOTIATE THE PROCUREMENT OF AN INTEREST IN PROPERTY:** "Negotiate the procurement of an interest in
239 property" shall mean, as used in this Agreement, to contact the owner of the property or the owner's agent to ascertain
240 the terms and conditions upon which the interest may be obtained and to otherwise assist Buyer in reaching an
241 agreement to procure the interest sought by Buyer in the property as may be specified in this Agreement.

242 **PERSON ACTING ON BEHALF OF BUYER:** In this Agreement "Person acting on behalf of Buyer" shall mean any person
243 joined in interest with Buyer, or otherwise acting on behalf of Buyer, including but not limited to Buyer's immediate family,
244 agents, servants, employees, as well as any and all corporations, partnerships, limited liability companies or other entities
245 controlled by, affiliated with or owned by Buyer in whole or in part.

246 ■ **ADDITIONAL PROVISIONS:** _____
247 _____
248 _____
249 _____
250 _____
251 _____
252 _____
253 _____
254 _____

255 ■ **ADDENDA:** The attached Addenda _____
256 _____ is/are made a part of this Agreement.

257 ■ **TERM OF THE AGREEMENT:** From the _____ day of _____,
258 up to and including midnight of the _____ day of _____.
259 Notwithstanding lines 193-194, Broker and Buyer agree that this Agreement shall/shall not [STRIKE ONE] end [if neither
260 struck, this Agreement shall end] when Buyer procures an interest in property.

261 ■ **TERMINATION OF AGREEMENT:** Neither Buyer nor Broker has the legal right to unilaterally terminate this Agreement
262 absent a material breach of contract by the other party. Buyer understands that the parties to this Agreement are Buyer and the
263 Broker (firm). Agents (salespersons) for Broker (firm) do not have the authority to terminate this Agreement, amend the
264 compensation terms or shorten the term of this Agreement, without the written consent of the agent(s)' supervising broker.
265 Buyer and Broker agree that any termination of this Agreement by either party before the date stated on line 194 shall be
266 indicated to the other party in writing and shall not be effective until delivered to the other party in accordance with lines
267 158-163. CAUTION: Early termination of this Agreement may be a breach of contract, causing the terminating party to
268 potentially be liable for damages.

269 ■ **EXTENSION OF AGREEMENT TERM:** The Agreement term is extended for a period of one year as to any property
270 which during the term of this Agreement was: 1) located or negotiated for by Broker, Broker's agent, Buyer or any person
271 acting on behalf of Buyer, or 2) which was the subject of a written offer to purchase submitted by Buyer or any person
272 acting on behalf of Buyer. If this extension is based on Broker's or Broker's agent's location or negotiation, this extension
273 shall only be effective if a written description of the property is delivered to Buyer no later than three days after expiration
274 of this Agreement.

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

278 ■ **READING/RECEIPT: BY SIGNING BELOW, BUYER ACKNOWLEDGES RECEIPT OF A COPY OF THIS**
279 **AGREEMENT AND THAT HE/SHE HAS READ ALL FIVE PAGES AS WELL AS ANY ADDENDA AND ANY OTHER**
280 **DOCUMENTS INCORPORATED INTO THIS AGREEMENT.**

281 Dated this _____ day of _____,

282 (x) _____

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

284 _____

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

286 _____

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

288 (x) _____

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

290 _____

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

292 _____

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

294 (x) _____

295 Agent for Broker ▲ _____ Print Name Here: ▲ _____ Broker/Firm Name ▲ _____ Date ▲ _____

296 _____

297 Broker/Firm Address ▲ _____ Broker/Firm Phone # ▲ _____

298 _____

299 Broker/Firm Fax # ▲

Broker/Firm E-Mail Address ▲

WB-36 REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee
From: WRA Forms Committee
Date: January 17, 2015
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.

⇒ **Is this acceptable? Should a separate tenant representation form be drafted?**

- ◆ 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 the terminology is selected.
- ◆ **First caption (Line 1):** The paragraph heading was simplified: ~~BROKER-THE SOLE AUTHORITY TO ACT FOR BUYER-AS-A BUYER’S AGENT~~. 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. The WRA Forms Committee was somewhat in favor and will look at it again.

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

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

◆ **Compensation (Lines 28-45):** In the draft formatting and terminology is modified slightly. Lines 43-44 were modified 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 45. 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 46-51):** 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 52-75):** 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 75-82):** Do we want or need the long description of what negotiate means? The language used is from the statutes, which is well and good, but the Disclosure to Clients section covers much of this and lists the Firm's duties. Not sure if this is needed with lines 1-5 and the Disclosure to client section listing all the duties the Firm owes to the client, but it does no harm per se.

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

◆ **Earnest Money (Lines 83-89):** The terminology was changed and the provision was made to mirror the Earnest Money provision in the WB-6 business 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 90-93):** This was made to read the same as the provision in the WB-1 with regard to expanding the bases for disbursement authorizations to match Wis. Admin. Code § REEB 18.09(1).

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

◆ **Disclosure to Clients (Lines 94-168):**

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.

This is a start – more discussion to come 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?

WB36RevisionDSPS1-13-16