



REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL

Room 121A, 1400 East Washington Avenue, Madison

Contact: Brittany Lewin (608) 266-2112

April 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 February 25, 2016 (2-3)**
- C. Administrative Updates**
 - 1) Staff updates
- D. Review of Real Estate Contractual Forms for Revision:**
 - 1) **WB-36 Buyer Agency/Tenant Representation Agreement**
 - a) Original Document
 - 1. Draft 1 **(4-9)**
 - 2. Draft 2 **(10-15)**
 - b) Review of WRA Forms Committee Memo with Proposed Revisions to WB-36 **(16-25)**
- E. Public Comments**

ADJOURNMENT

The Next Scheduled Meeting is May 18, 2016.

**REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL
MEETING MINUTES
FEBRUARY 25, 2016**

PRESENT: Debra Conrad, John Drzewiecki (*joined the meeting at 9:50 a.m.*), Scott Minter (*excused from the meeting at 1:55 p.m.*), Kim Moermond, Richard Petershack (*excused from the meeting at 1:55 p.m.*), Michael Sewell, Jonathan Sayas, Gary Tritz, Thomas Weber (*joined the meeting at 12:42 p.m.*), Pamela Widen

EXCUSED: Stephen Beers, Casey Clickner, Michael Gordon, Cori Lamont

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

CALL TO ORDER

Gary Tritz called the meeting to order at 9:35 a.m. A quorum of eight (8) members was confirmed.

ADOPTION OF AGENDA

MOTION: Richard Petershack moved, seconded by Michael Sewell, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES

MOTION: Debra Conrad moved, seconded by Richard Petershack, to approve the minutes of January 13, 2016 as published. Motion carried unanimously.

John Drzewiecki joined the meeting at 9:50 a.m.

Thomas Weber joined the meeting at 12:42 p.m.

Richard Petershack and Scott Minter were excused from the meeting at 1:55 p.m.

REVIEW OF REAL ESTATE CONTRACTUAL FORMS FOR REVISION

WB-1 Residential Listing Contract – Exclusive Right to Sell

MOTION: Debra Conrad moved, seconded by John Drzewiecki, to recommend the Real Estate Examining Board adopt WB-1 and delegate authority to Stephen Beers to make any modifications and to report the revisions and recommendations to the Real Estate Examining Board. Motion carried unanimously.

WB-42 Amendment to Listing Contract

MOTION: John Drzewiecki moved, seconded by Thomas Weber, to recommend the Real Estate Examining Board adopt WB-42 and delegate authority to Stephen Beers to make any modifications and to report the revisions and recommendations to the Real Estate Examining Board. Motion carried unanimously.

ADJOURNMENT

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

The meeting adjourned at 3:06 p.m.

DRAFT

WB-36 BUYER AGENCY/TENANT REPRESENTATION AGREEMENT

DRAFT 1

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

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

■ PURCHASE PRICE RANGE: _____

■ EXCLUDED PROPERTIES:

■ Types of Excluded Properties: Identify types of properties excluded from this Agreement including geographic, size, capacity, or age of property limitations, or limitations on property type: _____

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 ■ ~~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, ADVANCE FEE, HOURLY FEE, ETC. AND INDICATE WHEN DUE
INSERT THE AMOUNT AND TYPE OF OTHER FEE, E.G. RETAINER FEE, OR HOURLY FEE

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

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

~~(Broker may accept compensation from owner or owner's agent if neither is struck.) Broker's compensation from Buyer will be reduced by any amounts received from owner or owner's agent.~~

NOTE: Prior written consent from all parties to the transaction is required if the Firm will be compensated by a party other than Buyer.

BROKER LIEN 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 Agreement. "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.

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

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

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

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

59 Buyer: (_____) Firm: (_____)

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

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

66 Delivery address for Buyer: _____

67 Delivery address for Firm: _____

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

72 E-Mail address for Buyer: _____

73 E-Mail address for Firm: _____

74 **FIRM'S DUTIES** ■ ~~BROKER'S DUTIES~~: In consideration for Buyer's agreements, ~~Broker~~ **the Firm and its Agents**

75 agrees to use professional knowledge and skills, and reasonable efforts, in accordance with applicable law, to:

76 1) ~~locate~~ Locate an interest in Property, unless ~~Broker~~ the Firm is being retained solely to Negotiate the
77 Acquisition ~~procurement~~ of an interest in a specific Property, and

78 2) Negotiate the procurement ~~Acquisition~~ of an interest in Property, as required, ~~by giving advice to Buyer within the~~
79 ~~scope of Broker's license, facilitating or participating in the discussions of the terms of a potential contract, completing~~
80 ~~appropriate contractual forms, presenting either party's contractual proposal with an explanation of the proposal's~~
81 ~~advantages and disadvantages and other efforts including but not limited to the following:~~

82 _____, unless ~~Broker~~ the Firm is retained solely to Locate an interest in
83 Property.

84 **EARNEST MONEY** ■ ~~EARNEST MONEY~~: If ~~Broker~~ the Firm holds trust funds in connection with the transaction, they shall

85 be retained by ~~Broker~~ the Firm in ~~Broker's~~ the Firm's trust account. ~~Broker~~ The Firm may refuse to hold earnest money or other
86 trust funds. Should ~~Broker~~ the Firm hold the earnest money, the Firm shall hold and disburse earnest money funds in
87 accordance with Wis. Stat. Ch. 452 and Wis. Admin. Code Ch. REEB 18. ~~Buyer authorizes Broker to disburse the earnest~~
88 ~~money as directed in a written earnest money disbursement agreement signed by all parties having an interest in the trust~~
89 ~~funds.~~ If the transaction fails to close and the earnest money is disbursed to Buyer, then upon disbursement to Buyer the

90 earnest money shall be paid first to reimburse ~~Broker~~ the Firm for cash advances made by ~~Broker~~ the Firm on behalf of Buyer.
91 This payment to the Firm shall not terminate this Agreement.

92 **NON DISCRIMINATION** ■ ~~NON DISCRIMINATION~~: Buyer and ~~Broker~~ the Firm and its Agents agree that they will not

93 discriminate based on race, color, sex, sexual orientation as defined in Wisconsin Statutes § 111.32(13m), disability,
94 religion, national origin, marital status, lawful source of income, age, ancestry, family~~ial~~ status, status as a victim of
95 domestic abuse, sexual assault, or stalking, or in any other unlawful manner.

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

97 Under Wisconsin law, a brokerage firm (hereinafter Firm) and its brokers and salespersons (hereinafter Agents) owe
98 certain duties to all parties to a transaction:

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

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

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

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

105 (e) The duty to protect your confidentiality. Unless the law requires it, the Firm and its Agents will not disclose your
106 confidential information or the confidential information of other parties. (see lines xxx-xxx)

107 (f) The duty to safeguard trust funds and other property the Firm or its Agents holds.

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

110 **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A FIRM, YOU ARE THE FIRM'S CLIENT.**

111 **A FIRM OWES ADDITIONAL DUTIES TO YOU AS A CLIENT OF THE FIRM:**

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

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

116 (c) The Firm and its Agents will fulfill the Firm's obligations under the agency agreement and fulfill your lawful requests
117 that are within the scope of the agency agreement.
118 (d) The Firm and its Agents will negotiate for you, unless you release them from this duty.
119 (e) The Firm and its Agents will not place their interests ahead of your interests. The Firm and its Agents will not, unless
120 required by law, give information or advice to other parties who are not the Firm's clients, if giving the information or advice is
121 contrary to your interests.

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

124 **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY**

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

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

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

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

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

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

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

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

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

154 **SUBAGENCY**

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

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

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

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

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

- 170 1. Material ~~A~~adverse ~~F~~facts, as defined in ~~section-Wis. Stat. § 452.01(5g) of the Wisconsin statutes-(s~~See lines 170-
171 ~~473xxx-xxx)~~.
- 172 2. Any facts known by the ~~broker-Firm and its Agents~~ that contradict any information included in a written inspection
173 report on the property or real estate that is the subject of the transaction.

174 To ensure that the ~~broker-Firm and its Agents is-are~~ aware of what specific information you consider confidential, you
175 may list that information below (~~s~~See lines 149-120xxx-xxx). At a later time, you may also provide the ~~broker-Firm~~ with
176 other information you consider to be confidential.

177 CONFIDENTIAL INFORMATION: _____
178 _____
179 _____ **NON-**
180 CONFIDENTIAL INFORMATION (The following may be disclosed by Broker the Firm and its Agents): _____
181 _____
182 _____

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

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

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

204 **PROPERTY DIMENSIONS** ~~■ PROPERTY DIMENSIONS:~~ Buyer acknowledges that property dimensions, total square
205 footage and total acreage information provided to Buyer may be approximate due to rounding and may vary due to
206 different formulas which can be used to calculate these figures. Unless otherwise indicated, property dimension figures
207 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** ~~■ DEFINITIONS:~~

211 **ADVERSE FACT:** An "Aadverse Ffact" 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
219 in real estate or a business opportunity by purchase, ~~lease,~~ option, exchange or any other manner.

220 **DEADLINES-DAYS:** Deadlines expressed as a number of "days" from an event, such as acceptance, are calculated
221 by 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 **FIRM:** "Firm" means a licensed sole proprietor broker or a licensed broker business entity.

229 **INTEREST IN PROPERTY:** ~~The~~ "Interest in Property" ~~to be obtained by Buyer~~ includes a purchase, ~~leasehold,~~ option,
230 exchange ~~agreement~~ or any other ~~procured~~ interest in real property unless restricted at lines ~~44-2xx-xx0~~, in additional provisions
231 (lines ~~182-190xxx-xxx~~) or elsewhere in this Agreement. ~~This does not include any rental or leasehold interests.~~

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

235 **MATERIAL ADVERSE FACT:** A "Material Aadverse Ffact" means an Aadverse Ffact that a party indicates is of such
236 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party,

237 that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects
238 or would affect the party's decision about the terms of such a contract or agreement.

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

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

258 **ADDITIONAL PROVISIONS** ■ ~~ADDITIONAL PROVISIONS:~~ _____
259 _____
260 _____
261 _____
262 _____
263 _____
264 _____
265 _____
266 _____

267 **ADDENDA** The attached ~~Addenda~~ _____
268 _____ is/are made a part of this Agreement.

269 **TERM OF THE AGREEMENT** ■ ~~TERM OF THE AGREEMENT:~~ From the _____ day of
270 _____, _____ up to and including midnight of the _____ day of
271 _____, _____. Notwithstanding lines ~~193-194xxx-xxx,~~ ~~Broker the Firm~~ and Buyer agree
272 that this Agreement (shall)/(shall not) **STRIKE ONE** ~~{STRIKE ONE}~~ end (~~"shall"~~ if neither ~~struck, this Agreement shall~~
273 ~~end~~~~is stricken~~) when Buyer ~~procures-acquires~~ an ~~l~~interest in ~~P~~roperty.

274 **TERMINATION OF AGREEMENT** ■ ~~TERMINATION OF AGREEMENT:~~ Neither Buyer nor ~~Broker the Firm~~ has the legal
275 right to unilaterally terminate this Agreement absent a material breach of contract by the other party. Buyer understands that the
276 parties to this Agreement are Buyer and the ~~Broker F(firm).~~ Agents ~~(salespersons)~~ for ~~Broker the F(firm)~~ do not have the
277 authority to terminate this Agreement, amend the compensation terms or shorten the term of this Agreement, without the written
278 consent of the ~~A~~agent(s)' supervising broker. Buyer and ~~Broker the Firm~~ agree that any termination of this Agreement by
279 either party before the date stated on lines ~~194-xxx-xxx~~ shall be ~~effective by Buyer only if stated in writing and delivered~~
280 ~~to the Firm in accordance with lines xx-xx and effective by the Firm only if stated in writing by the supervising broker and~~
281 ~~delivered to Buyer in accordance with lines xx-xx. indicated to the other party in writing and shall not be effective until~~
282 ~~delivered to the other party in accordance with lines 158-163.~~

283 **CAUTION:** Early termination of this Agreement may be a breach of contract, causing the terminating party to
284 **potentially be liable for damages.**

285 **EXTENSION OF AGREEMENT TERM** ■ ~~EXTENSION OF AGREEMENT TERM:~~ The Agreement term is extended for
286 a period of one year as to any property which during the term of this Agreement was: 1) located or negotiated for by
287 ~~Broker, Broker's agent~~ ~~the Firm or its Agents,~~ Buyer or any person acting on behalf of Buyer, or 2) which was the subject
288 of a written ~~offer to purchase proposal~~ submitted by Buyer or any ~~P~~erson ~~A~~acting on ~~B~~ehalf of Buyer. If this extension is
289 based on ~~the Firm's or the Firm's Agent(s)' Broker's or Broker's agent's L~~location of an ~~Interest in Property~~ or
290 ~~N~~egotiation of the ~~Acquisition an Interest in Property,~~ this extension shall only be effective if a written description of the
291 property is delivered to Buyer no later than three days after ~~termination or~~ expiration of this Agreement.

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

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

298 Dated this _____ day of _____,

299 (x) _____
300 Buyer's Signature ▲ Print Name Here: ▲ Date ▲
301 _____
302 Buyer's Signature ▲ Print Name Here: ▲ Date ▲
303 Buyer's Address ▲ Buyer's Phone # ▲
304 _____
305 Buyer's Signature ▲ Print Name Here: ▲ Date ▲
306 Buyer's Fax # ▲ Buyer's E-Mail Address ▲

307 (x) _____
308 Buyer's Signature ▲ Print Name Here: ▲ Date ▲
309 Buyer Entity Name (if any): _____
310 _____ Print Name Here: ▲
311 _____
312 Buyer's Address ▲ Buyer's Phone # ▲

313 (x) _____
314 Authorized Signature ▲ Print Name & Title Here ► Date ▲
315 _____
316 Buyer's Fax # ▲ Buyer's E-Mail Address ▲

317 (x) _____
318 Agent for Broker/Firm ▲ Print Name Here: ▲ Broker/Firm Name ▲ Date ▲
319 _____
320 Broker/Firm Address ▲ Broker/Firm Phone # ▲
321 _____
322 Broker/Firm Fax # ▲ Broker/Firm E-Mail Address ▲

WB-36 BUYER AGENCY AGREEMENT

DRAFT 2

1 **■ EXCLUSIVE AUTHORITY TO ACT AS BUYER’S AGENT:** Buyer (see lines xxx-xxx) gives the Firm and its Agents the
2 exclusive right to act as Buyer’s Agent to Locate an Interest in Property and to Negotiate the Acquisition an Interest in
3 Property for Buyer, except as excluded under lines xx-xx. Except for excluded properties described in lines xx-xx, Buyer
4 agrees that during the term of this Agreement, Buyer will not enter into any other agreements to retain any other buyer’s
5 agent.

6 **NOTE: If Buyer works directly with a property owner or a firm or agents representing a property owner in**
7 **Locating and/or Negotiating the Acquisition of an Interest in Property, Buyer may be responsible to pay the**
8 **Firm’s full compensation if Buyer’s contacts with a property owner or a firm or agents of a property owner result**
9 **in no compensation being received by the Firm from a property owner (such as a seller) or a firm or agents of a**
10 **property owner (such as a listing broker).**

11 **■ PURCHASE PRICE RANGE:** _____

12 **EXCLUDED PROPERTIES** All properties in which Buyer may acquire an interest that are Protected Properties under a
13 prior buyer agency agreement are excluded from this Agreement to the extent of the prior firm's legal rights, unless
14 otherwise agreed to in writing. Within seven days of the date of this Agreement, Buyer agrees to deliver to the Firm a
15 written list of all such Protected Properties.

16 **NOTE: If Buyer fails to timely deliver this list to the Firm, Buyer may be liable to the Firm for damages and costs.**

17 The following other properties _____

18 _____
19 _____ are excluded from this Agreement until _____ [INSERT DATE].

20 The Buyer further excludes the following types of property (add geographic or other limitations, if any) from this
21 Agreement: _____

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

23 **COMPENSATION** The Firm’s compensation shall be: **COMPLETE AS APPLICABLE**

24 **COMMISSION:** _____.

25 **OTHER COMPENSATION:** _____.

26 _____.

27 **INSERT AMOUNTS AND TYPES OF FEES, E.G. RETAINER FEE, ADVANCE FEE, HOURLY FEE, ETC. AND INDICATE WHEN DUE**

28 **■ COMMISSION EARNED:** The Firm has earned the Firm’s commission if, during the term of this Agreement (or any
29 extension of it), Buyer or any Person Acting on Behalf of Buyer acquires an Interest in Property or enters into an enforceable
30 written contract to acquire an Interest in Property, at any terms and price acceptable to owner and Buyer. The Firm’s
31 commission remains due and payable if an enforceable written contract entered into by Buyer per lines xx-xx fails to close.

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

34 Buyer shall pay the Firm’s compensation, reduced by any amounts the Firm receives from owner or owner's agent.

35 **■ PAYMENT BY OWNER OR OWNER’S AGENT:** The Firm is hereby authorized to seek payment of commission from the
36 owner (e.g., seller) or the owner’s agent (e.g., listing broker) provided that all parties to the transaction give prior written
37 consent. If the owner (e.g., seller) or the owner’s agent (e.g., listing broker) does not pay the full amount due, Buyer agrees
38 to pay any remaining amount due. If the amount of the commission paid by the owner (e.g., seller) or the owner’s agent
39 (e.g., listing broker) is less than the commission on line xx, Buyer agrees to pay the difference to the Firm. If the amount paid
40 is more than the commission on line xx, (Buyer authorizes the Firm to receive and retain such excess commission) (the Firm
41 shall rebate such excess amount to Buyer) (Buyer and the Firm shall split such excess amount) **STRIKE TWO** (the Firm
42 shall retain such excess commission if two are not stricken).

43 **NOTE: Prior written consent from all parties to the transaction is required if the Firm will be compensated by a**
44 **party other than Buyer.**

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

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

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

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

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

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

59 Buyer: (_____) _____ Firm: (_____) _____

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

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

66 Delivery address for Buyer: _____

67 Delivery address for Firm: _____

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

72 E-Mail address for Buyer: _____

73 E-Mail address for Firm: _____

74 **BUYER'S DUTIES** In consideration for the agreements of the Firm and its Agents Buyer agrees as follows:

75 A. Signs or Advertisements for Property: If Buyer sees any signs or advertisements for Property being offered for
76 sale, Buyer will not contact the owner or the owner's agent but will first contact the Firm or its Agents who will
77 provide information about the property and make arrangements to see them.

78 B. Public Open Houses: In the event Buyer elects to visit an open house without the Firm or its Agents, Buyer agrees
79 to notify the party representing the owner of this signed buyer agency agreement.

80 C. New Home Builders and Open Houses: In order to avoid the possibility of confusion over the agency relationship
81 and misunderstandings about liability for compensation, Buyer agrees not to make a first visit to any new home
82 builder's model nor contact any agents representing the owner or builder without being accompanied by the Firm
83 or its Agents

84 D. Advise Others of Buyer Agency Relationship: Buyer will inform other firms, agents, sellers, property owners, etc.
85 that the Firm represents Buyer as buyer's agent for the purpose of acquiring property in the market area and refer
86 all such persons to the Firm.

87 **FIRM'S DUTIES** In consideration for Buyer's agreements, the Firm and its Agents agree to use professional knowledge
88 and skills, in accordance with applicable law, to:

89 A. Assist Buyer to Locate an Interest in Property and Negotiate the Acquisition of an Interest in Property, as
90 applicable.

91 B. Comply with other provisions of this Agreement and the duties stated herein.

92 **EARNEST MONEY** If the Firm holds trust funds in connection with the transaction, they shall be retained by the Firm in the
93 Firm's trust account. The Firm may refuse to hold earnest money or other trust funds. Should the Firm hold the earnest money,
94 the Firm shall hold and disburse earnest money funds in accordance with Wis. Stat. Ch. 452 and Wis. Admin. Code Ch. REEB
95 18. If the transaction fails to close and the earnest money is disbursed to Buyer, then upon disbursement to Buyer the earnest
96 money shall be paid first to reimburse the Firm for cash advances made by the Firm on behalf of Buyer. This payment to the
97 Firm shall not terminate this Agreement.

98 **NON DISCRIMINATION** Buyer and **the Firm and its Agents** agree that they will not discriminate based on race, color,
99 sex, sexual orientation as defined in Wisconsin Statutes § 111.32(13m), disability, religion, national origin, marital status,
100 lawful source of income, age, ancestry, family status, status as a victim of domestic abuse, sexual assault, or stalking, or
101 in any other unlawful manner.

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

107 **DISCLOSURE TO CLIENTS**

108 Under Wisconsin law, a brokerage firm (hereinafter Firm) and its brokers and salespersons (hereinafter Agents) owe
109 certain duties to all parties to a transaction:

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

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

- 112 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request it,
113 unless disclosure of the information is prohibited by law.
- 114 (d) The duty to disclose to you in writing certain Material Adverse Facts about a property, unless disclosure of the
115 information is prohibited by law. (see lines xxx-xxx)
- 116 (e) The duty to protect your confidentiality. Unless the law requires it, the Firm and its Agents will not disclose your
117 confidential information or the confidential information of other parties. (see lines xxx-xxx)
- 118 (f) The duty to safeguard trust funds and other property the Firm or its Agents holds.
- 119 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the
120 advantages and disadvantages of the proposals.

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

- 123 (a) The Firm or one of its Agents will provide, at your request, information and advice on real estate matters that affect
124 your transaction, unless you release the Firm from this duty.
- 125 (b) The Firm or one of its Agents must provide you with all material facts affecting the transaction, not just Adverse
126 Facts.
- 127 (c) The Firm and its Agents will fulfill the Firm's obligations under the agency agreement and fulfill your lawful requests
128 that are within the scope of the agency agreement.
- 129 (d) The Firm and its Agents will negotiate for you, unless you release them from this duty.
- 130 (e) The Firm and its Agents will not place their interests ahead of your interests. The Firm and its Agents will not, unless
131 required by law, give information or advice to other parties who are not the Firm's clients, if giving the information or advice is
132 contrary to your interests.
- 133 If you become involved in a transaction in which another party is also the Firm's client (a "multiple representation
134 relationship"), different duties may apply.

135 **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY**

- 136 ■ A multiple representation relationship exists if a firm has an agency agreement with more than one client who is a party
137 in the same transaction. If you and the firm's other clients in the transaction consent, the firm may provide services
138 through designated agency, which is one type of multiple representation relationship.
- 139 ■ Designated agency means that different agents with the firm will negotiate on behalf of you and the other client or
140 clients in the transaction, and the firm's duties to you as a client will remain the same. Each agent will provide
141 information, opinions, and advice to the client for whom the agent is negotiating, to assist the client in the negotiations.
142 Each client will be able to receive information, opinions, and advice that will assist the client, even if the information,
143 opinions, or advice gives the client advantages in the negotiations over the firm's other clients. An agent will not reveal
144 any of your confidential information to another party unless required to do so by law.
- 145 ■ If a designated agency relationship is not authorized by you or other clients in the transaction you may still authorize or
146 reject a different type of multiple representation relationship in which the firm may provide brokerage services to more
147 than one client in a transaction but neither the firm nor any of its agents may assist any client with information, opinions,
148 and advice which may favor the interests of one client over any other client. Under this neutral approach, the same agent
149 may represent more than one client in a transaction.
- 150 ■ If you do not consent to a multiple representation relationship the firm will not be allowed to provide brokerage services
151 to more than one client in the transaction.

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

- 153 The same firm may represent me and the other party as long as the same agent is not
154 representing us both (multiple representation relationship with designated agency).
- 155 The same firm may represent me and the other party, but the firm must remain neutral regardless
156 if one or more different agents are involved (multiple representation relationship without
157 designated agency).
- 158 The same firm cannot represent both me and the other party in the same transaction (I reject
159 multiple representation relationships).

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

165 **SUBAGENCY**

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

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

173 This disclosure is required by section 452.135 of the Wisconsin statutes and is for information only. It is a plain language

174 summary of the duties owed to you under section 452.133(2) of the Wisconsin statutes.

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

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

181 1. Material Adverse Facts, as defined in Wis. Stat. § 452.01(5g) (see lines xxx-xxx).

182 2. Any facts known by the Firm and its Agents that contradict any information included in a written inspection report on
183 the property or real estate that is the subject of the transaction.

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

187 **CONFIDENTIAL INFORMATION:** _____

188 _____

189 _____ **NON-**

190 **CONFIDENTIAL INFORMATION** (The following may be disclosed by the Firm and its Agents): _____

191 _____

192 _____

193 **WAIVER OF CONFIDENTIALITY** Buyer may wish to authorize the Firm and its Agents to disclose information which might
194 otherwise be considered confidential. An example of this type of information might be financial qualification information which
195 may be disclosed to strengthen Buyer's offer to purchase in the eyes of prospective sellers. Buyer's authorization to disclose
196 may be indicated at lines xxx-xxx. Unless otherwise provided at lines xxx-xxx, the Firm and its Agents have permission to
197 disclose Buyer's identity to an owner, owner's agents and other third parties without prior consent from Buyer. Buyer
198 acknowledges that pursuant to Wis. Stat. §706.03(1)(b)(1m) a conveyance, such as an offer to purchase, is not binding if it is
199 signed by a representative properly authorized by Buyer (e.g., with a power of attorney) until such time as Buyer is identified in
200 the conveyance.

201 **NON-EXCLUSIVE RELATIONSHIP** Buyer acknowledges and agrees that the Firm and its Agents may act for other buyers
202 in connection with the location of properties and may negotiate on behalf of such buyers with the owner or owner's agent. In the
203 event that the Firm or its Agents undertake to represent and act for other buyers, the Firm and its Agents shall not disclose to
204 Buyer, or any other buyer, any confidential information of any buyer, unless required by law.

205 **COOPERATION** Buyer agrees to cooperate with the firm and its agents and to provide them accurate copies of all
206 relevant records, documents and other materials in Buyer's possession or control which are required in connection with the
207 purchase, option, or exchange of property. Buyer agrees to be reasonably available for showings of properties. Buyer
208 authorizes the Firm and its agents to do those acts reasonably necessary to fulfill the Firm's responsibilities under this
209 Agreement including retaining subagents. Buyer shall promptly notify the Firm in writing of the description of any property
210 Buyer locates. Buyer shall also notify the Firm of the identity of all persons making inquiries concerning Buyer's objectives
211 stated in this Agreement.

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

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

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

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

219 1) Significantly and adversely affecting the value of the property;

220 2) Significantly reducing the structural integrity of improvements to real estate; or

221 3) Presenting a significant health risk to occupants of the property.

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

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

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

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

229 ■ **INTEREST IN PROPERTY:** "Interest in Property" includes a purchase, option, exchange or any other interest in real
230 property unless restricted at lines xx-xx, in additional provisions (lines xxx-xxx) or elsewhere in this Agreement. This does not
231 include any rental or leasehold interests.

232 ■ **LOCATE AN INTEREST IN PROPERTY:** "Locate an Interest in Property" shall mean to identify, evaluate according to
233 the standards set by Buyer, and determine the availability of the Interest in Property sought by Buyer.

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 ACQUISITION OF AN INTEREST IN PROPERTY:** "Negotiate the Acquisition of an Interest in
239 Property" shall mean to contact the owner of the property or the owner's agent to ascertain the terms and conditions
240 upon which an Interest in Property may be acquired, and to provide the Buyer assistance within the scope of the
241 knowledge, skills, and training required under chapter 452 of the statutes in developing a proposal or agreement relating
242 to a transaction, including: (a) acting as an intermediary by facilitating or participating in communications between parties
243 related to the parties' interests in a transaction (providing advice or opinions on matters that are material to a transaction
244 in which a person is engaged or intends to engage or showing a party real estate does not, in and of itself, constitute
245 acting as an intermediary by facilitating or participating in communications between parties); (b) completing, when
246 requested by Buyer, appropriate board-approved forms or other writings to document the Buyer's proposal consistent
247 with the Buyer's instructions; (c) presenting to Buyer the proposals of other parties to the transaction and giving Buyer a
248 general explanation of the provisions of the proposal; and (d) otherwise assisting Buyer in reaching an agreement to
249 acquire the Interest in Property sought by Buyer.

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

255 **ADDITIONAL PROVISIONS** _____
256 _____
257 _____
258 _____
259 _____
260 _____
261 _____
262 _____
263 _____

264 **ADDENDA** The attached _____
265 _____ is/are made a part of this Agreement.

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

269 **TERMINATION OF AGREEMENT** Neither Buyer nor the Firm has the legal right to unilaterally terminate this Agreement
270 absent a material breach of contract by the other party. Buyer understands that the parties to this Agreement are Buyer and the
271 Firm. Agents for the Firm do not have the authority to terminate this Agreement, amend the compensation terms or shorten the
272 term of this Agreement, without the written consent of the Agent(s)' supervising broker. Buyer and the Firm agree that any
273 termination of this Agreement by either party before the date stated on lines xxx-xxx shall be effective by Buyer only if
274 stated in writing and delivered to the Firm in accordance with lines xx-xx and effective by the Firm only if stated in writing
275 by the supervising broker and delivered to Buyer in accordance with lines xx-xx.

276 **CAUTION: Early termination of this Agreement may be a breach of contract, causing the terminating party to**
277 **potentially be liable for damages.**

278 **EXTENSION OF AGREEMENT TERM** The Agreement term is extended for a period of one year as to any property
279 which during the term of this Agreement was: 1) located or negotiated for by the Firm or its Agents, Buyer or any person
280 acting on behalf of Buyer, or 2) which was the subject of a written proposal submitted by Buyer or any Person Acting on
281 Behalf of Buyer. If this extension is based on the Firm's or the Firm's Agent(s)' Location of an Interest in Property or
282 Negotiation of the Acquisition of an Interest in Property, this extension shall only be effective if a written description of the
283 property is delivered to Buyer no later than three days after termination or expiration of this Agreement.

284 **TERM OF THE AGREEMENT** From the _____ day of _____, _____ up
285 to and including midnight of the _____ day of _____.
286 Notwithstanding lines xxx-xxx, the Firm and Buyer agree that this Agreement (shall)(shall not) **STRIKE ONE** end ("shall" if
287 neither is stricken) when Buyer acquires an Interest in Property.

288 ■ **BY SIGNING BELOW, BUYER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT AND THAT**
289 **HE/SHE HAS READ ALL _____ PAGES AS WELL AS ANY ADDENDA AND ANY OTHER DOCUMENTS**
290 **INCORPORATED INTO THIS AGREEMENT.**

291 (x) _____
292 Buyer's Signature ▲ Print Name Here: ► _____ Date ▲ _____

293 (x) _____

294 Buyer's Signature ▲ Print Name Here: ► _____ Date ▲

295 (x) _____

296 Buyer's Signature ▲ Print Name Here: ► _____ Date ▲

297 (x) _____

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

299 Buyer Entity Name (if any): _____

300 _____ Print Name Here: ▲

301 (x) _____

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

303 Firm Name: _____

304 _____ Print Name Here: ▲

305 (x) _____

306 Agent's Signature ▲ Print Name Here: ► _____ Date ▲

WB-36 REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee
From: WRA Forms Committee
Date: March 29, 2016
RE: **WB-36 Buyer Agency/Tenant Representation Agreement**

The following are possible revisions to the WB-36 Buyer Agency/Tenant Representation Agreement (mandatory use date 7-1-08). The line numbers in this memo refer to the line numbers in the accompanying draft of proposed WB-36 modifications, file wb-36 wraNov15draft, labeled DRAFT 1. Also see the second draft, file wb-36 wraMar16draft, labeled DRAFT 2, which was created to show some possible alternative language with ideas taken from other buyer agency forms and member suggestions. DRAFT 1 more closely resembles the current WB-36 and is in tracking while DRAFT 2 is more like the idea board offering alternate language and provisions for discussion.

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 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 lease rather than a sale.

Until the DSPS Real Estate Contractual Forms Advisory Committee looks at this issue we are reluctant to proceed with a draft of a tenant representation agreement. If anyone has any suggested provisions or tenant representation forms that have some good items in them, please feel free to forward them to dconrad@wra.org

⇒ **Is this Committee in agreement that there should be a separate Tenant Representation Agreement? If so, the WRA Forms Committee can begin to work on suggested provisions for that.**

As the WB-36 is worked on, please keep in mind that the form needs to comply with **Wis. Stat. § 240.10(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.”

Wis. Admin. Code § REEB 24.02 definitions:

- (2) “Agency agreement” means a written agreement between a broker and a client in which the client authorizes the broker to provide brokerage services to the client.
- (3) “Brokerage service” means any service described under s. 452.01 (2), Stats., provided by a broker to another person.
- (5) **“Buyer’s broker” means a licensee who has an agency agreement with a buyer.**
- (6) “Client” means a party to a transaction who has an agency agreement with a broker for brokerage services.

WB-36 Buyer Agency Agreement

- ◆ Update the top of the form to say Approved by the Wisconsin Real Estate Examining Board.
- ◆ **Chapter 452 Terminology. The terminology throughout this form is modified in anticipation of the Wis. Stat. chapter 452 revisions wherein the proposed terminology would refer to a Firm to mean either a broker entity or a sole proprietor broker. Those revisions additionally refer to salespersons, licensed individual brokers, and licensed broker entities, but here the choice was to refer to the Firm and the agents of the Firm. A definition of “Firm” was added to the draft.**
- ◆ **First caption (line 1) and Agency Authorization on lines 1-5:** The paragraph heading was simplified: ~~**BROKER THE SOLE EXCLUSIVE AUTHORITY TO ACT FOR BUYER AS A BUYER’S AGENT.**~~ There also is some new terminology in the section at lines 1-5.
WRA Forms Committee seemed to be satisfied with these modifications.

Should this refer to “buyer’s broker” because that is a defined term (see above) or are we accustomed to saying “buyer’s agent?” **WRA Forms Committee said no, leave it as buyer’s agent**

AUTHORIZATION

In the broadest sense, what is needed is an authorization from Buyer to the Firm to provide brokerage services. Additional considerations are whether this is exclusive –and what properties are being looked for – what is fair game?

★MAJOR FUNDAMENTAL ISSUE: Should the WB-36 Continue with the Firm Serving as the Exclusive Buyer’s Agent and the Buyer Being Able to Work with Owners or Other Firms?

The WRA Forms Committee was in favor of continuing with the exclusive buyer’s agent model, rather than changing to an exclusive agent to locate and negotiate the acquisition of an interest in property. This would be the 24/7 model where the buyer client would need to always work with the buyer’s agent and not with any owners, other agents or attorneys. The existing model is not an exclusive right to locate and negotiate arrangement – the buyer is not prohibited from personally contacting sellers or seller's agents regarding properties he or she may be interested in. The buyer is not prohibited from working with his or her attorney to assist with negotiations and is not prohibited from getting business strategies and acquisition advice from his or her cousin Henry, the real estate tycoon. The only prohibition regarding the people the buyer may work with is that the buyer cannot hire another buyer’s agent with respect to the properties subject to the WB-36.

In the current WB-36 the Firm’s tasks are broken down into locating properties and negotiating for properties. The drafters can modify this by lining out language within lines 1-5. Should this be made more apparent, for example, separate lines or check boxes for location and for negotiation?

- ★ If the buyer client is not selecting/waiving negotiation, then the documentation of a waiver of duties would be needed per Wis. Stat. § 452.133(6): "... a waiver under this subsection is not effective unless the Firm or licensees associated with the Firm provide to the client a written disclosure containing all of the following: (a) A copy of the text of sub. (2)(d) and § 452.01(5m), and, and a statement that, as a consequence of the client's waiver, the Firm or licensees associated with the Firm will have no legal duty to perform the duty imposed by sub.(2)(d). (b) A statement that as a consequence of the client's waiver, the client may require the assistance of an attorney or another service provider to fulfill the client's goals and contractual duties in the transaction."
- ★ If the buyer client is not seeking services to locate a property and the Firm will negotiate to acquire an interest in property, there is also a concern that simply writing the offer without providing any other brokerage services would violate license law and leave the broker in the position of engaging in the unauthorized practice of law per Wis. Admin. Code § REEB 16.05(3), § REEB 16.04(1) and § REEB 16.05(3). Taken all together a licensee may not enter into an agency agreement like a WB-36 just to draft the agreement between the parties because it would be considered the unlicensed practice of law. The drafting must be incidental to the practice of real estate. If the parties to the transaction have come to an agreement about the terms of the purchase of real property, perhaps it would be better if they were referred to legal counsel to draft their contract. The broker must provide brokerage services other just drafting the offer, such as licensee inspection of the property, disclosure of material adverse facts and negotiation of the contract terms.

Is it safer to leave the language as it is now given these concerns that are seemingly highlighted when broken out? **WRA Forms Committee found it was better to retain the style of the existing section – no check boxes.**

Are there better ways to express the authorization that are clearer for the buyer client and all involved?

Looking at some other buyer agency forms, other ways to say this: "Buyer grants the Firm the exclusive right to act as [buyer's] agent for Buyer for the purpose of acquiring property in the market area." This type of language would tend to disallow the others from acting as agent for the buyer unless modified to say "buyer's agent", but the key would be for the buyer to understand that. The agreement goes on to define the market area by describing the perimeters of the area and defines property as any interest in real estate.

-OR-

"The Firm is hereby granted the right to represent Buyer in the purchase of property" and the agreement later broadly defines this as residential or commercial property within broad areas – a state or metropolitan area -- for the WB-36, it would be within Wisconsin, etc. using check boxes.

WRA Forms Committee found it was better to retain the language and style of the existing sections – no check boxes. The language (with some terminology changes) is in tracking in DRAFT 1 and regular text in DRAFT 2

◆ **Note (Lines 6-9):** The format was modified but the language is that from the present WB-36 (except for terminology) in DRAFT 1. 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.** See the variation in language in DRAFT 2. Is all bold and all caps effective? **WRA Forms Committee preferred the formatting in DRAFT 2.**

Other alternate language has been proposed for the Note on lines 6-9 (after the meeting):

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 Firm's full compensation, and shall pay the Firm directly or outside any acquisition or transaction, if Buyer's contacts with owner or owner's agent result in no compensation being received by the Firm from owner or owner's agent.

NOTE: If Buyer works directly with a property owner or a firm or agents representing a property owner in Locating and/or Negotiating the Acquisition of an Interest in Property, and if Buyer's contacts with property owners or other agents cause the Firm to not collect full compensation, Buyer shall be responsible to pay any uncollected amount. See Compensation at lines xxx-xxx.

⇒ **What NOTE language is preferred – or some combination [DRAFT 1, DRAFT 2, or the two above]?**

PRICE

◆ **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 the way it is.

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

TYPE OF PROPERTIES/SEARCH PARAMETERS

◆ **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. In other cases the WB-36 is not executed until the offer is written. In previous years there was a concern that agents would enter into a WB-36 and draft the offer without providing other brokerage services: would this practice raise these issues?

In the November 2007 *Legal Update*, “WB-36 Buyer Agency Agreement – 2008 Revisions,” at www.wra.org/LU0711 it is reported that:

“The 2008 WB-36, however, does not contain a general description of properties other than the purchase price range, and the broker's success fee is due (per the Compensation section of the 2008

WB-36) if the buyer acquires an interest in any property or enters into an enforceable contract to acquire such an interest – in any property. The only limitations on the property acquired come from the Purchase Price Range and the Excluded Properties sections of the 2008 WB-36. The Excluded Properties section provides:

EXCLUDED PROPERTIES: The following properties are excluded from this Agreement until _____ [INSERT DATE] Note: Identify any specific excluded properties or limitations on the scope of this Agreement including geographic limitations, or limitations on property type included under this Agreement. _____

In terms of defining which properties are subject to the broker’s authorization to act and which properties are outside of the agreement, this section seemingly combines two completely separate functions: (1) listing specific properties excluded for a specific time period, and (2) creating a general description of the kinds of property interests subject to the buyer agency agreement by indicating the types and categories of properties that are altogether excluded from the scope of the agreement. Although both the WRA and Advisory Committees suggested modifications to separate these two functions and at least create two different sets of blank lines to work with, the DRL declined to adopt any such reorganization or reformatting change. Thus, this provision may present challenges for REALTORS® when they explain this section to prospective clients and endeavor to fill in the blank lines.”

Because of this concern it was thought that alternatives to the current Excluded Properties should at least be discussed.

◆ DRAFT 1 and DRAFT 2 attempt to separate out the different components and provide more detail to see if it seems clearer and more easy to understand (or not) – starting place for discussion. **WRA Forms Committee found DRAFT 1 to be acceptable the first time they looked at it, but now there is a divergence of opinion. DRAFT 2 with three subsections of exclusions was not favored.**

Is there a better way to indicate the type of property (general) and the search parameters (more specific)? Presumably there is reluctance to place more specific property information or search parameters in the WB-36 for fear the buyer will change his or her mind and then the WB-36 needs to be amended.

Other alternate language has been proposed for Excluded Properties on lines 11-27 of DRAFT 1 (after the meeting):

The paragraph hopes to address two different situations, properties that the buyer chooses to exclude and those they must exclude because commission is due to another. Each should have its own sentence. Whether there is one or two sets of blank lines seems to be part of the indecision.

EXCLUDED PROPERTY: The following specific properties are excluded from this Agreement until _____ (insert date of any property protected to another Broker): _____
_____. The Buyer further excludes the following types of property (add property description(s), if any) from this contract: _____

Perhaps some of the concerns would lessen if any properties protected under other buyer agency agreements were automatically excluded from the WB-36, something like (this is shown in DRAFT 2):

EXCLUDED PROPTIES All properties in which Buyer may acquire an interest that are Protected Properties under a prior buyer agency agreement are excluded from this Agreement to the extent of the prior firm's legal rights, unless otherwise agreed to in writing. Within seven days of the date of this Agreement, Buyer agrees to deliver to the Firm a written list of all such Protected Properties. NOTE: If Buyer fails to timely deliver this list to the Firm, Buyer may be liable to the Firm for damages and costs. The following other properties _____

_____ are excluded from this Agreement until _____ [INSERT DATE]. The Buyer further excludes the following types of property (add geographic or other limitations, if any) from this Agreement: _____

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

Are either of these options or the DRAFT 1 language – or some combination -- preferred to the existing language (see above)?

There also was language submitted for Search Parameters (after the meeting):

Search Parameters: Purchase Price Range provides the initial Search Parameters. Buyer agrees to inform Broker of the property type, property characteristics, and any other material features or terms sought by Buyer, to allow Broker to search more efficiently. Buyer agrees to inform Broker in writing of all properties of interest to Buyer which may be outside the original Search Parameters, and Buyer agrees that the Purchase Price Range of this Agreement is amended upon such notification to include those properties.

This language seems to suggest a separate document used as a supplement to the Buyer Agency Agreement but not as an incorporated addendum, yet the written notice of properties of interest apparently outside of the price range is said to amend the price range. In other words it suggests a separate procedure for search parameter feedback and modifications outside of the WB-36 that need not be in writing unless there are properties outside of the price range. Would this mean that a buyer could forward property listings from the MLS or Zillow that they might be interested in and that this would be considered an amendment to the price range should the listed property's price fall outside the range?

Care must be taken to make sure enough is in the Excluded Properties section to establish a property type as required for an enforceable contract and payment of commission under Wis. Stat. § 240.10 and to withstand any challenge by a buyer hoping to not pay the buyer's broker's fee. Whether this would be defensible may be dependent upon what is written in as excluded and if it says "none" would a judge be likely to agree that a property type has been established?

⇒ **Should this language or something like it be added?**

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

COMMISSION

◆ **Compensation (Lines 26-45):** In DRAFT 1 the formatting and terminology is modified slightly. Line 39 was added to make it clear that the buyer owes the compensation unless paid by the owner or another broker. A note was added at lines 43-44 regarding the need to have prior written consent from all parties to the transaction in the offer or other contract, as required under Wis. Admin. Code § REEB 24.05(1),

before the Firm may receive compensation from the owner/seller or listing broker. A friendly reminder that you may or may not like – just an idea.

In DRAFT 1 the Buyer and the Firm must choose whether the Firm may be paid by the owner or owner's agent with a default that yes they can, whereas DRAFT 2 assumes that to be the case and provides that buyer would have to pay only if the amount received from the owner or owner's agent is not enough and buyer must pay the balance.

See alternate language suggestions in DRAFT 2 that simplifies and clarifies the payment of compensation, and that is structured along the lines of the WB-1 to facilitate understanding and transparency. This variation drops the use of the term "Success Fee" and instead refers to commission.

⇒ **What Compensation language is preferred?**

◆ **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 52-74):** 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 75-84):** Do we want or need the long description of what negotiate means? The language used is from the statutes, but the Disclosure to Clients section covers much of this and lists the Firm's duties. Also see the proposed definition of "Negotiate the Acquisition an Interest in Property" at lines 243-255 of DRAFT 2 which incorporates the statutory definition of negotiate. It is believed that this section is included to help establish what performance is required by the Firm in order to establish adequate performance justifying the fee. There is no similar section in the WB-1.

◆ Also see DRAFT 2 for alternate language/ideas.

⇒ **Should the Firm's duties section be retained?**

⇒ **Is the definition of "Negotiate the Acquisition an Interest in Property" a better place to enumerate what is involved in negotiation – or should that be included at all?**

⇒ **Is the language in the draft acceptable or are there additional changes?**

BUYER RESPONSIBILITIES

When looking at other buyer agency agreements, there is a basic short section for the broker's duties and a section of the buyer's duties which seemingly addresses some of the concerns expressed at times about the lack of understanding on the part of the buyer. A couple of examples:

BUYER'S RESPONSIBILITIES:

- A. **Exclusive Relationship with Firm:** Buyer will work exclusively with the Firm and its Agents during the term of this Agreement. (exclusive agent 24/7 – not what we currently have in the WB-36). Could be modified to say, "Buyer will work with the Firms and its agents as the buyer's exclusive buyer's agent and with no other Firm in the capacity of buyer's agent."
- B. **Financial Information:** Buyer will furnish the Firm with necessary financial and personal information to reasonably establish Buyer's ability to purchase property.
- C. **Signs or Advertisements for Property:** If Buyer sees any signs or advertisements for Property being offered for sale, Buyer will not contact the owner or the owner's agent but will first contact the Agent named herein who will provide information about the property and make arrangements to see them.

- D. Public Open Houses: In the event buyer elects to visit an open house without the Agent named herein, Buyer agrees to notify the party representing the owner of this signed buyer agency agreement.
- E. New Home Builders and Open Houses: In order to avoid the possibility of confusion over the agency relationship and misunderstandings about liability for compensation, Buyer agrees not to make a first visit to any new home builder's model nor contact any agents representing the owner or builder without being accompanied by the Agent.

Another option for

BUYER'S RESPONSIBILITIES. Buyer will:

- F. Work exclusively through the Firm when acquiring property in the market area and negotiate acquisition of the property in the market area only through the Firm (exclusive agent 24/7 – not what we currently have in the WB-36) – modify to say “will work with the Firm and no other buyer's broker and negotiate acquisition of property through no other buyer's broker”
- G. Inform other firms, agents, sellers, property owners, etc. that the Firm exclusively represents Buyer for the purpose of acquiring property in the market area and refer all such persons to the Firm and
- H. Comply with all provisions of this agreement

⇒ **See DRAFT 2 which uses some of these provisions**

Another suggestion which has similarities to DRAFT 2 (terminology needs modification if this is used):

Buyer will submit all showing requests and property inquiries through Buyer Agent. If Buyer contacts, or is contacted by, other real estate agents or private owners, or attends “Open Houses,” Buyer must explain that Buyer is under a Buyer Agency agreement with Broker, and that Buyer will be working with Broker in the purchase of any real estate (including scheduling showings, negotiations, and information requests). Buyer understands that to do otherwise, or to accept brokerage services from other agents, including showings, open houses, and information requests, or involving other real estate agents or brokers in the process, could create an obligation to another broker, or a “procuring cause” issue, such that Broker does not receive compensation from the owner or owner's agent, in which event, any commission not collected from owner or owner's agent will be paid by Buyer.

◆ **Earnest Money (Lines 85-92)**: The terminology was changed and the provision was made to mirror part of the Earnest Money provision in the WB-1 residential listing contract so that disbursement may be authorized in accordance with the law, especially Wis. Admin. Code § REEB 18.09(1) and not limited to a disbursement agreement.

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

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

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

◆ **Disclosure to Clients (Lines 97-182)**:

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

- ◆ **Waiver of Confidentiality (Lines 183-190):** This information is nice but not sure whether it is helpful or essential.
 - ⇒ **Should this section be retained?**
 - ⇒ **Is this acceptable or are there additional changes?**

- ◆ **Non-Exclusive Relationship (Lines 191-195):**
This information is nice but not sure whether it is helpful or essential.
 - ⇒ **Should this section be retained?**
 - ⇒ **Is this acceptable or are there additional changes?**

- ◆ **Cooperation (Lines 196-202):** This is somewhat of a parallel counterpart to the similar section in the WB-1. Should there be modifications to the last sentence which reads, “Buyer shall also notify the Firm of the identity of all persons making inquiries concerning Buyer's objectives stated in this Agreement.” Should the buyer be notifying the Firm or referring the persons to the Firm?
 - ⇒ **Is this acceptable or are there additional changes?**

- ◆ **Property Dimensions (Lines 203-208):**
 - ⇒ **Should this section be retained?**
 - ⇒ **Is this acceptable or are there additional changes?**

- ◆ **Definition of Adverse Fact (Lines 214-220):**
This is the same as before and the same as the definition in the WB-1.
 - ⇒ **Is this acceptable or are there additional changes?**

- ◆ **Definition of Buyer (Lines 221-222):** This is the same as before except that the word “lease” was removed if there is going to be a separate tenant representation agreement.
 - ⇒ **Is this acceptable or are there additional changes?**

- ◆ **Definition of Deadlines-Days (Lines 223-224):**
This is the same as before and the same as the definition in the WB-1.
 - ⇒ **Is this acceptable or are there additional changes?**

- ◆ **Definition of Firm (Line 231):** This was added and is the same as the definition in the WB-1.
 - ⇒ **Is this acceptable or are there additional changes?**

- ◆ **Definition of Interest in Property (Lines 232-234):**
This is the same as before except that the word “leasehold” was deleted and a sentence indicating this is not referring to rentals and leaseholds was added.
 - ⇒ **Is this acceptable or are there additional changes?**

- ◆ **Definition of Locate an Interest in Property (Lines 235-237):** This is mostly the same as before.
 - ⇒ **Is this acceptable or are there additional changes?**

- ◆ **Definition of Material Adverse Fact (Lines 238-241):** This is the same as before and the same as the definition in the WB-1.
 - ⇒ **Is this acceptable or are there additional changes?**

- ◆ **Definition of Negotiate the Acquisition of an Interest in Property (Lines 242-254):**

The term was changed to substitute the word acquisition because that is the term used in other buyer and tenant agency agreements. Also the definition was modified to add the details of the definition of “negotiation” from the statutes as opposed to having it in the Firm’s Duties section. The parenthetical within (a) from the definition might be eliminated or this could be rephrased a bit to make more user friendly.

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

◆ **Definition of Person acting on Behalf of Buyer (Lines 255-260)**: This is the same as before with additions made that come from the WB-6 and the WB-1. Is the last phrase on lines 250-251 needed in the WB-36?

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

◆ **Term of the Agreement (Lines 272-276)**: This is the same as before with some formatting changes.

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

◆ **Termination of Agreement (Lines 277-287)**: This has been modified to make it like the similar provision in the WB-1.

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

◆ **Extension of Agreement Term (Lines 288-294)**: This is the same as before with additions made that come from the WB-6 and the WB-1. Is the last phrase on lines 250-251 needed in the WB-36?

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

◆ **Notice about Sex Offender Registry (Lines 295-297)**: This is the same as before with additions made that come from the WB-6 and the WB-1. Is the last phrase on lines 250-251 needed in the WB-36?

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

◆ **Signature section and lines (Lines 298-325)**: This was modified similarly to the WB-1.

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

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?

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