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**REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL**  
**Room N208, 4822 Madison Yards Way, 2<sup>nd</sup> Floor, Madison, WI 53705**  
**Contact: Christian Albouras (608) 266-2112**  
**June 26, 2019**

*The following agenda describes the issues that the Council 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 Council.*

**AGENDA**

**9:30 A.M.**

**OPEN SESSION – CALL TO ORDER – ROLL CALL**

**A. Adoption of Agenda (1-2)**

**B. Approval of Minutes of April 3, 2019 (3)**

**C. Administrative Matters**

1. Council, Department and Staff Updates
2. Real Estate Examining Board Update

**D. Recommendations to Update the Current Form Revision Process**

**E. Review of Real Estate Contractual Forms for Revision**

1. **WB-11– Residential Offer to Purchase (4-13)**
  - a. Review of Proposed Revisions and Memo **(14-47)**
  - b. Proposed Revisions to Offer to Purchase Forms – Balance of Purchase Price
  - c. Proposed Revisions to Foreign Investment in Real Property Tax Act (FIRPTA) Provision **(48-53)**
  - d. Proposed Revisions to the Current Title Evidence Provisions by the Wisconsin Land Title Association (WLTA) **(48-53)**

**F. Public Comments**

**ADJOURNMENT**

**NEXT SCHEDULED MEETING: SEPTEMBER 11, 2019**

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MEETINGS AND HEARINGS ARE OPEN TO THE PUBLIC, AND MAY BE CANCELLED WITHOUT NOTICE.

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held at 4822 Madison Yards Way, Madison, Wisconsin, unless otherwise noted. In order to confirm a meeting or to request a complete copy of the board's agenda, please call the listed contact person. The board may also consider materials or items filed after the transmission of this notice. Times listed for the commencement of

disciplinary hearings may be changed by the examiner for the convenience of the parties. Interpreters for the hearing impaired provided upon request by contacting the Affirmative Action Officer, 608-266-2112.

**REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL  
MEETING MINUTES  
APRIL 3, 2019**

**PRESENT:** Joseph Busch (*arrived at 9:53 a.m.*), Casey Clickner, Debra Conrad, John Drzewiecki, Michael Gordon, Laura Peck, Jonathan Sayas, Gary Tritz (*excused at 1:34 p.m.*), Thomas Weber, Jr., Pamela Widen

**EXCUSED:** Kim Moermond, Robert Webster, Cori Lamont

**STAFF:** Christian Albouras, Executive Director; Kate Stolarzyk, Bureau Assistant; and other DSPS Staff

**CALL TO ORDER**

Christian Albouras, Executive Director, called the meeting to order at 9:40 a.m. A quorum of nine (9) members was confirmed.

**ADOPTION OF AGENDA**

**MOTION:** Debra Conrad moved, seconded by John Drzewiecki, to adopt the agenda as published. Motion carried unanimously.

**APPROVAL OF MINUTES FROM FEBRUARY 13, 2019**

**MOTION:** Laura Peck moved, seconded by Pamela Widen, to approve the minutes of February 13, 2019 as published. Motion carried unanimously.

**RECOMMENDATIONS TO UPDATE THE CURRENT FORM REVISION PROCESS**

**MOTION:** Thomas Weber moved, seconded by Michael Gordon, to table the Recommendations to Update the Current Form Revision Process to the next meeting for further discussion. Motion carried unanimously.

*(Joseph Busch arrived at 9:53 a.m.)*

*(Gary Tritz was excused at 1:34 p.m.)*

**ADJOURNMENT**

**MOTION:** Thomas Weber moved, seconded by Michael Gordon, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 2:41 p.m.

**WB-11 RESIDENTIAL OFFER TO PURCHASE**

1 LICENSEE DRAFTING THIS OFFER ON \_\_\_\_\_ [DATE] IS (AGENT OF BUYER)  
2 (AGENT OF SELLER/LISTING FIRM) (AGENT OF BUYER AND SELLER) **STRIKE THOSE NOT APPLICABLE**

3 **GENERAL PROVISIONS** The Buyer, \_\_\_\_\_  
4 \_\_\_\_\_, offers to purchase the Property known as [Street Address] \_\_\_\_\_  
5 \_\_\_\_\_ [longer line requested for Tax Parcel Numbers, etc.] \_\_\_\_\_ in the \_\_\_\_\_  
6 of \_\_\_\_\_, County of \_\_\_\_\_ Wisconsin (insert additional  
7 description, if any, at lines xxx-xxx or xxx-xxx or attach as an addendum per line xxx), on the following terms:

8 ■ PURCHASE PRICE: \_\_\_\_\_  
9 \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

10 ■ EARNEST MONEY of \$ \_\_\_\_\_ accompanies this Offer and earnest money of \$ \_\_\_\_\_  
11 will be mailed, or commercially or personally delivered within \_\_\_\_\_ days ("five" if left blank) of acceptance to (listing Firm)  
12 (Buyer's agent's Firm) (third party identified as \_\_\_\_\_) **STRIKE THOSE NOT**  
13 **APPLICABLE** (listing Firm if none chosen; if no listing Firm, then Buyer's agent's Firm; if no Firm then Seller).

14 **CAUTION: Should persons other than a Firm hold earnest money, an escrow agreement should be drafted by the**  
15 **Parties or an attorney. See lines XXX to XXX for additional-earnest money disbursement provisions regarding**  
16 **disbursements unless a third-party escrow agreement supersedes such provisions.**

17 ■ THE BALANCE OF PURCHASE PRICE will be paid in cash or equivalent at closing unless otherwise provided below.  
18 **NOTE: Because of the extraordinary threat of wire and money transfer fraud, Buyers or Sellers anticipating using**  
19 **money transfers should personally contact the title company or other settlement service provider by phone or in**  
20 **person to confirm timing and other requirements for transfer of funds. These communications should be directly**  
21 **between Buyers and/or Sellers and the title company or settlement service provider, and do not involve the Firms or**  
22 **real estate agents.**

23 ■ INCLUDED IN PURCHASE PRICE is the Property, all Fixtures on the Property as of the date stated on line 1 (unless excluded  
24 at lines xx-xx), and the following additional items: \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_

29 **NOTE: The terms of this Offer, not the listing contract or marketing materials, determine what items are included or**  
30 **not included.**

31 ■ NOT INCLUDED IN PURCHASE PRICE: \_\_\_\_\_  
32 \_\_\_\_\_  
33 \_\_\_\_\_

34 **CAUTION: Identify Fixtures that are on the Property (see lines xxx-xxx) to be excluded by Seller or which are rented**  
35 **(e.g., water softeners or other water treatment systems, LP tanks, etc.) and will continue to be owned by the lessor.**

36 **ACCEPTANCE** Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical  
37 copies of the Offer.

38 **CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term deadlines**  
39 **running from acceptance provide adequate time for both binding acceptance and performance.**

40 **BINDING ACCEPTANCE** This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on  
41 or before \_\_\_\_\_. Seller may keep the Property on the  
42 market and accept secondary offers after binding acceptance of this Offer.

43 **CAUTION: This Offer may be withdrawn prior to delivery of the accepted Offer.**

44 **INCLUSION OF OPTIONAL PROVISIONS** Terms of this Offer that are preceded by an OPEN BOX (  ) are part of this  
45 offer ONLY if the box is marked such as with an "X". They are not part of this offer if marked "N/A" or are left blank.

46 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and  
47 written notices to a Party shall be effective only when accomplished by one of the authorized methods specified at lines xx-xx.  
48 (1) **Personal:** giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at line  
49 xx or xx.

50 Name of Seller's recipient for delivery, if any: \_\_\_\_\_  
51 Name of Buyer's recipient for delivery, if any: \_\_\_\_\_

52  (2) **Fax:** fax transmission of the document or written notice to the following number:  
53 Seller: ( \_\_\_\_\_ ) \_\_\_\_\_ Buyer: ( \_\_\_\_\_ ) \_\_\_\_\_

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

57  (4) U.S. Mail: depositing the document or written notice, postage prepaid, in the U.S. Mail, addressed either to the Party,  
58 or to the Party's recipient for delivery, for delivery to the Party's address.

59 Address for Seller: \_\_\_\_\_

60 Address for Buyer: \_\_\_\_\_

61  (5) E-Mail: electronically transmitting the document or written notice to the e-mail address.

62 E-Mail address for Seller: \_\_\_\_\_

63 E-Mail address for Buyer: \_\_\_\_\_

64 **PERSONAL DELIVERY/ACTUAL RECEIPT** Personal delivery to, or Actual Receipt by, any named Buyer or Seller constitutes  
65 personal delivery to, or Actual Receipt by, all Buyers or Sellers.

66 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this  
67 Offer at lines xxx-xxx or xxx-xxx or in an addendum attached per line xxx, or lines xxx-xxx if the Property is leased. At time of  
68 Buyer's occupancy, Property shall be in broom swept condition and free of all debris, refuse, and personal property except for  
69 personal property belonging to current tenants, or that sold to Buyer or left with Buyer's consent. Occupancy shall be given  
70 subject to tenant's rights, if any.

71 **DEFINITIONS**

72 ■ **ACTUAL RECEIPT**: "Actual Receipt" means that a Party, not the Party's recipient for delivery, if any, has the document or  
73 written notice physically in the Party's possession, regardless of the method of delivery. If the document or written notice is  
74 electronically delivered, Actual Receipt shall occur when the Party opens the electronic transmission.

75 ■ **CONDITIONS AFFECTING THE PROPERTY OR TRANSACTION**: "Conditions Affecting the Property or Transaction" are  
76 defined to include:

77 a. Defects in the roof, basement or foundation (including cracks, seepage and bulges), electrical system, or part of the  
78 plumbing system (including the water heater, water softener and swimming pool); or basement, window, or plumbing leaks;  
79 overflow from sinks, bathtubs, or sewers; or other water or moisture intrusions or conditions.

80 b. Defects in heating and air conditioning system (including the air filters and humidifiers); in a wood burning stove or fireplace;  
81 or caused by a fire in a stove or fireplace or elsewhere on the Property.

82 c. Defects related to smoke detectors or carbon monoxide detectors, or a violation of applicable state or local smoke detector  
83 or carbon monoxide detector laws.

84 d. Defects in any structure, or mechanical equipment included as Fixtures or personal property.

85 e. Rented items located on the Property such as a water softener or other water conditioner system.

86 f. Defects caused by unsafe concentrations of, or unsafe conditions on the Property relating to, radon, radium in water  
87 supplies, lead in paint, soil or water supplies, unsafe levels of mold, asbestos or asbestos-containing materials or other  
88 potentially hazardous or toxic substances on the Property; manufacture of methamphetamine or other hazardous or toxic  
89 substances on the Property; or high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but  
90 not directly serving the Property.

91 **NOTE: Specific federal lead paint disclosure requirements must be complied with in the sale of most residential**  
92 **properties built before 1978.**

93 g. Defects caused by unsafe concentrations of, unsafe conditions relating to, or the storage of, hazardous or toxic substances  
94 on neighboring properties.

95 f. Property is served by a joint well; Defects related to a joint well serving the Property; or Defects in a well on the Property or  
96 in a well that serves the Property, including unsafe well water.

97 g. A septic system or other private sanitary disposal system serves the Property; Defects in the septic system or other sanitary  
98 disposal system on the Property; or any out-of-service septic system serving the Property not closed or abandoned according  
99 to applicable regulations.

100 h. Underground or aboveground fuel storage tanks on or previously located on the Property; or Defects in the underground or  
101 aboveground fuel storage tanks on or previously located on the Property. (The owner, by law, may have to register the tanks  
102 with the Department of Agriculture, Trade and Consumer Protection at P.O. Box 8911, Madison, Wisconsin, 53708, whether the  
103 tanks are in use or not. Department regulations may require closure or removal of unused tanks.)

104 i. "LP" tank on the Property (specify in the additional information whether the tank is owned or leased); or Defects in an "LP"  
105 tank on the Property.

106 j. Notice of property tax increases, other than normal annual increases, or pending Property reassessment; remodeling that  
107 may increase the Property's assessed value; pending special assessments; or Property is within a special purpose district, such  
108 as a drainage district, that has authority to impose assessments.

109 k. Proposed construction of a public project that may affect use of the Property; Property additions or remodeling affecting  
110 Property structure or mechanical systems during Seller's ownership without required permits; or any land division involving the  
111 Property without required state or local permits.

112 l. The Property is part of or subject to a subdivision homeowners' association; or the Property is not a condominium unit and  
113 there are common areas associated with the Property that are co-owned with others.

114 m. Any zoning code violations with respect to the Property; the Property or any portion thereof is located in a floodplain, wetland  
115 or shoreland zoning area; or the Property is subject to a shoreland mitigation plan required by Wisconsin Department of Natural

116 Resources (DNR) rules that obligates the Property owner to establish or maintain certain measures related to shoreland  
117 conditions, enforceable by the county.

118 n. Nonconforming uses of the Property; conservation easements, restrictive covenants or deed restrictions on the Property;  
119 or nonowners having rights to use part of the Property, including, but not limited to, rights-of-way and easements other than  
120 recorded utility easements.

121 o. All or part of the Property has been assessed as agricultural land; has been assessed a use-value assessment conversion  
122 charge; or payment of a use-value assessment conversion charge has been deferred.

123 p. All or part of the Property is subject, enrolled in, or in violation of a farmland preservation agreement, Forest Crop Law,  
124 Managed Forest Law, the Conservation Reserve Program, or a comparable program.

125 q. A dam is totally or partially located on the Property; or an ownership interest in a dam not located on the Property will be  
126 transferred with the Property because the dam is owned by a homeowners' association, lake district, or similar group of which  
127 the Property owner is a member.

128 r. No legal access to the Property; or boundary or lot line disputes, encroachments or encumbrances (including a joint  
129 driveway) affecting the Property.

130 s. Federal, state, or local regulations requiring repairs, alterations or corrections of an existing condition; or any insurance  
131 claims relating to damage to the Property within the last five years.

132 t. A pier attached to the Property not in compliance with state or local pier regulations.

133 u. Current or previous termite, powder-post beetle or carpenter ant infestations or Defects caused by animal, reptile, or other  
134 insect infestations.

135 v. Structure on the Property designated as an historic building; all or any part of the Property in an historic district; or one or  
136 more burial sites on the Property.

137 w. Other Defects affecting the Property.

138 **(Definitions Continued on page 4)**

139 **CLOSING** This transaction is to be closed on \_\_\_\_\_  
140 at the place selected by Seller, unless otherwise agreed by the Parties in writing. If the date for closing falls on a weekend, or  
141 federal or state holiday, the closing date shall be the next Business Day.

142 **CAUTION: To reduce the risk of wire transfer fraud, any wiring instructions received should be independently verified**  
143 **by phone or in person with the title company, financial institution, or entity directing the transfer. The real estate**  
144 **licensees in this transaction are not responsible for the transmission or forwarding of any wiring or money transfer**  
145 **instructions.**

146 **CLOSING PRORATIONS** The following items, if applicable, shall be prorated at closing, based upon date of closing values:  
147 real estate taxes, rents, prepaid insurance (if assumed), private and municipal charges, property owners association  
148 assessments, fuel and \_\_\_\_\_.

149 **CAUTION: Provide basis for utility charges, fuel or other prorations if date of closing value will not be used.**

150 Any income, taxes or expenses shall accrue to Seller, and be prorated at closing, through the day prior to closing.

151 Real estate taxes shall be prorated at closing based on **CHECK BOX FOR APPLICABLE PRORATION FORMULA** :

152  The net general real estate taxes for the preceding year, or the current year if available (Net general real estate taxes  
153 are defined as general property taxes after state tax credits and lottery credits are deducted) (NOTE: THIS CHOICE  
154 APPLIES IF NO BOX IS CHECKED)

155  Current assessment times current mill rate (current means as of the date of closing)

156  Sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior year,  
157 or current year if known, multiplied by current mill rate (current means as of the date of closing)

158  \_\_\_\_\_.

159 **CAUTION: Buyer is informed that the actual real estate taxes for the year of closing and subsequent years may be**  
160 **substantially different than the amount used for proration especially in transactions involving new construction,**  
161 **extensive rehabilitation, remodeling or area-wide re-assessment. Buyer is encouraged to contact the local assessor**  
162 **regarding possible tax changes.**

163  Buyer and Seller agree to re-prorate the real estate taxes, through the day prior to closing based upon the taxes on  
164 the actual tax bill for the year of closing, with Buyer and Seller each owing his or her pro-rata share. Buyer shall, within 5  
165 days of receipt, forward a copy of the bill to the forwarding address Seller agrees to provide at closing. The Parties shall re-  
166 prorated within 30 days of Buyer's receipt of the actual tax bill. Buyer and Seller agree this is a post-closing obligation and is  
167 the responsibility of the Parties to complete, not the responsibility of the real estate Firms in this transaction.

168 **LEASED PROPERTY** If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights  
169 under said lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the (written)  
170 (oral) **STRIKE ONE** lease(s), if any, are \_\_\_\_\_

171 \_\_\_\_\_

172 \_\_\_\_\_ . Insert additional terms, if any, at lines xxx-xxx or xxx-xxx or attach as an addendum per line 434.

173 **REAL ESTATE CONDITION REPORT** Wisconsin law requires owners of property which includes one-to-four dwelling units to  
174 provide Buyers with a Real Estate Condition Report. Excluded from this requirement are sales of property that has never been  
175 inhabited, sales exempt from the real estate transfer fee, and sales by certain court-appointed fiduciaries, (for example, personal

176 representatives who have never occupied the Property). The form of the Report is found in Wis. Stat. § 709.03. The law provides:  
177 "§ 709.02 Disclosure . . . the owner of the property shall furnish, not later than 10 days after acceptance of the contract of sale  
178 . . . , to the prospective Buyer of the property a completed copy of the report . . . A prospective Buyer who does not receive a  
179 report within the 10 days may, within two business days after the end of that 10-day period, rescind the contract of sale . . . by  
180 delivering a written notice of rescission to the owner or the owner's agent." Buyer may also have certain rescission rights if a  
181 Real Estate Condition Report disclosing defects is furnished before expiration of the 10 days, but after the Offer is submitted to  
182 Seller. Buyer should review the report form or consult with an attorney for additional information regarding rescission rights.

183 **PROPERTY CONDITION REPRESENTATIONS** Seller represents to Buyer that as of the date of acceptance Seller has no  
184 notice or knowledge of Conditions Affecting the Property or Transaction (lines xx-xxx) other than those identified in Seller's Real  
185 Estate Condition Report dated \_\_\_\_\_, which was received by Buyer prior to Buyer  
186 signing this Offer and which is made a part of this Offer by reference **COMPLETE DATE OR STRIKE AS APPLICABLE** and

187 \_\_\_\_\_  
188 **INSERT CONDITIONS NOT ALREADY INCLUDED IN THE CONDITION REPORT**

189 **ADDITIONAL PROVISIONS/CONTINGENCIES**  
190 \_\_\_\_\_  
191 \_\_\_\_\_  
192 \_\_\_\_\_  
193 \_\_\_\_\_  
194 \_\_\_\_\_  
195 \_\_\_\_\_  
196 \_\_\_\_\_

197 **DEFINITIONS CONTINUED FROM PAGE 2**

198 ■ **BUSINESS DAY:** "Business Day" means a calendar day other than Saturday, Sunday, any legal public holiday under  
199 Wisconsin or Federal law, and any other day designated by the President such that the postal service does not receive registered  
200 mail or make regular deliveries on that day.

201 ■ **DEADLINES:** "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by excluding  
202 the day the event occurred and by counting subsequent calendar days. The deadline expires at Midnight on the last day.  
203 Additionally, deadlines expressed as a specific number of Business Days are calculated in the same manner except that only  
204 Business Days are counted while other days are excluded. Deadlines expressed as a specific number of "hours" from the  
205 occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24 hours  
206 per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as closing,  
207 expire at Midnight of that day. "Midnight" is defined as 11:59 p.m. Central Time.

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

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

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

223 **CAUTION: Exclude any Fixtures to be retained by Seller or which are rented (e.g., water softener or other water**  
224 **treatment systems, L.P. tanks, etc.) on lines xx-xx.**

225 ■ **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines x-x.

226 **PROPERTY DIMENSIONS AND SURVEYS** Buyer acknowledges that any land, building or room dimensions, or total acreage  
227 or building square footage figures, provided to Buyer by Seller or by a Firm or its agents, may be approximate because of  
228 rounding, formulas used or other reasons, unless verified by survey or other means.

229 **CAUTION: Buyer should verify total square footage formula, total square footage/acreage figures, and land, building**  
230 **or room dimensions, if material.**

231 **MAINTENANCE** Seller shall maintain the Property and all personal property included in the purchase price until the earlier of  
232 closing or Buyer's occupancy, in materially the same condition as of the date of acceptance of this Offer, except for ordinary  
233 wear and tear.

234 **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING** If, prior to closing, the Property is damaged in an amount  
235 not more than five percent of the purchase price, other than normal wear and tear, Seller shall promptly notify Buyer in writing,

236 and will be obligated to restore the Property to materially the same condition it was in at the date on Line 1 of this Offer. Seller  
237 shall provide Buyer with copies of all required permits and lien waivers for the lienable repairs no later than closing. If the amount  
238 of damage exceeds five percent of the purchase price, Seller shall promptly notify Buyer in writing of the damage and this Offer  
239 may be canceled at option of Buyer. Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to  
240 the insurance proceeds, if any, relating to the damage to the Property, plus a credit towards the purchase price equal to the  
241 amount of Seller's deductible on such policy, if any. However, if this sale is financed by a land contract or a mortgage to Seller,  
242 any insurance proceeds shall be held in trust for the sole purpose of restoring the Property.

243 **BUYER'S PRE-CLOSING WALK-THROUGH** Within three days prior to closing, at a reasonable time pre-approved by Seller  
244 or Seller's agent, Buyer shall have the right to walk through the Property to determine that there has been no significant change  
245 in the condition of the Property, except for ordinary wear and tear and changes approved by Buyer, and that any defects Seller  
246 has agreed to cure have been repaired in the manner agreed to by the Parties.

247 **IF LINE xxx IS NOT MARKED OR IS MARKED N/A LINES xxx-xxx APPLY.**

248  **FINANCING COMMITMENT CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain a written  
249 \_\_\_\_\_ [loan type or specific lender, if any] first mortgage loan commitment as described below, within  
250 \_\_\_\_\_ days of acceptance of this Offer. The financing selected shall be in an amount of not less than \$ \_\_\_\_\_  
251 for a term of not less than \_\_\_\_\_ years, amortized over not less than \_\_\_\_\_ years. Initial monthly payments of principal and  
252 interest shall not exceed \$ \_\_\_\_\_. Buyer acknowledges that lender's required monthly payments may also include  
253 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance premiums.  
254 The mortgage shall not include a prepayment premium. Buyer agrees to pay discount points in an amount not to exceed  
255 \_\_\_\_\_% ("0" if no entry) of the loan. If Buyer is using multiple loan sources or obtaining a construction loan or land contract  
256 financing, describe at lines xxx-xxx or xxx-xxx or in an addendum attached per line xxx. Buyer agrees to pay all customary loan  
257 and closing costs, wire fees, and loan origination fees, to promptly apply for a mortgage loan, and to provide evidence of  
258 application promptly upon request of Seller. Seller agrees to allow lender's appraiser access to the Property.

259 ■ **LOAN AMOUNT ADJUSTMENT:** If the purchase price under this Offer is modified, any financed amount, unless otherwise  
260 provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly payments shall  
261 be adjusted as necessary to maintain the term and amortization stated above.

262 **CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE xxx or xxx.**

263  **FIXED RATE FINANCING:** The annual rate of interest shall not exceed \_\_\_\_\_%.

264  **ADJUSTABLE RATE FINANCING:** The initial interest rate shall not exceed \_\_\_\_\_%. The initial interest rate shall be  
265 fixed for \_\_\_\_\_ months, at which time the interest rate may be increased not more than \_\_\_\_\_% ("2" if no entry) at  
266 the first adjustment and by not more than \_\_\_\_\_% ("1" if no entry) at each subsequent adjustment. The maximum  
267 interest rate during the mortgage term shall not exceed the initial interest rate plus \_\_\_\_\_% ("6" if no entry). Monthly  
268 payments of principal and interest may be adjusted to reflect interest changes.

269 ■ **SATISFACTION OF FINANCING COMMITMENT CONTINGENCY:** If Buyer qualifies for the loan described in this Offer or  
270 another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of a written loan commitment. This contingency shall  
271 be satisfied if, after Buyer's review, Buyer delivers to Seller a copy of a written loan commitment (even if subject to conditions)  
272 that is: (1) signed by Buyer; or, (2) accompanied by Buyer's written direction for delivery. Delivery of a loan commitment by  
273 Buyer's lender or delivery accompanied by a notice of unacceptability shall not satisfy this contingency.

274 **CAUTION: The delivered loan commitment may contain conditions Buyer must yet satisfy to obligate the lender to**  
275 **provide the loan. Buyer understands delivery of a loan commitment removes the Financing Commitment Contingency**  
276 **from the Offer and shifts the risk to Buyer if the loan is not funded.**

277 ■ **SELLER TERMINATION RIGHTS:** If Buyer does not deliver a loan commitment on or before the Deadline on line xxx, Seller  
278 may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to Seller's Actual Receipt of written loan  
279 commitment from Buyer.

280 ■ **FINANCING UNAVAILABILITY:** If financing is not available on the terms stated in this Offer (and Buyer has not already  
281 delivered an acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of  
282 same including copies of lender(s)' rejection letter(s) or other evidence of unavailability.

283  **SELLER FINANCING:** Seller shall have 10 days from the earlier of (i) Buyer delivery of written notice of evidence of  
284 unavailability as noted in lines xxx to xxx or (ii) the deadline for delivery of the loan commitment set on lines xxx to xxx, to deliver  
285 to Buyer written notice of Seller's decision to finance this transaction with a note and mortgage under the same terms set forth  
286 in this Offer, and this Offer shall remain in full force and effect, with the time for closing extended accordingly. If Seller's notice  
287 is not timely given, the option for Seller to provide financing shall be considered waived. Buyer agrees to cooperate with and  
288 authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller  
289 financing.

290  **APPRAISAL CONTINGENCY:** This Offer is contingent upon Buyer or Buyer's lender having the Property appraised at  
291 Buyer's expense by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated subsequent  
292 to the date stated on line 1, indicating an appraised value for the Property equal to or greater than the agreed upon purchase  
293 price.

294 This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of acceptance, delivers to Seller a copy of the  
295 appraisal report indicating an appraised value not equal to or greater than the agreed upon purchase price, and a written notice  
296 objecting to the appraised value.

297 ■ **RIGHT TO CURE:** Seller (shall) (shall not) ~~STRIKE ONE~~ ("shall" if neither is stricken) have a right to cure. If Seller has the  
298 right to cure, Seller may satisfy this contingency by delivering written notice to Buyer adjusting the purchase price to the value  
299 shown on the appraisal report within \_\_\_\_\_ days ("five" if left blank) of Buyer's delivery of the appraisal report and the notice  
300 objecting to the appraised value. Seller and Buyer agree to promptly execute an amendment initiated by either party after  
301 delivery of Seller's notice, solely to reflect the adjusted purchase price. This Offer shall be null and void with any earnest money  
302 returned to Buyer if Buyer makes timely delivery of the notice objecting to appraised value and the written appraisal report and:  
303 (1) Seller does not have a right to cure or (2) Seller has a right to cure but: (a) Seller delivers written notice that Seller will not  
304 adjust the purchase price or (b) Seller does not timely deliver the written notice adjusting the purchase price to the value shown  
305 on the appraisal report.

306 **IF THIS OFFER IS NOT CONTINGENT ON FINANCING** Within ~~seven~~ \_\_\_\_\_ days ("~~seven~~" if left blank) of acceptance, a  
307 financial institution or third party in control of Buyer's funds shall provide Seller with reasonable written verification that Buyer  
308 has, at the time of verification, sufficient funds to close. If such written verification is not provided, Seller has the right to terminate  
309 this Offer by delivering written notice to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written verification. Buyer  
310 may or may not obtain mortgage financing but does not need the protection of a financing contingency. Seller agrees to allow  
311 Buyer's appraiser access to the Property for purposes of an appraisal. Buyer understands and agrees that this Offer is not  
312 subject to the appraisal meeting any particular value, unless this Offer is subject to an appraisal contingency, nor does the right  
313 of access for an appraisal constitute a financing contingency.

314 **DISTRIBUTION OF INFORMATION** Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of the  
315 Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as  
316 defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple listing  
317 service sold databases; and (iii) provide active listing, pending sale, closed sale and financing concession information and data,  
318 and related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers researching  
319 comparable sales, market conditions and listings, upon inquiry.

320 **DEFAULT** Seller and Buyer each have the legal duty to use good faith and due diligence in completing the terms and conditions  
321 of this Offer. A material failure to perform any obligation under this Offer is a default which may subject the defaulting party to  
322 liability for damages or other legal remedies.

323 If Buyer defaults, Seller may:

324 (1) sue for specific performance and request the earnest money as partial payment of the purchase price; or

325 (2) terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) sue for actual  
326 damages.

327 If Seller defaults, Buyer may:

328 (1) sue for specific performance; or

329 (2) terminate the Offer and request the return of the earnest money, sue for actual damages, or both.

330 In addition, the Parties may seek any other remedies available in law or equity.

331 The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the  
332 discretion of the courts. If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution  
333 instead of the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of  
334 law those disputes covered by the arbitration agreement.

335 **NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD**  
336 **READ THIS DOCUMENT CAREFULLY. THE FIRM AND ITS AGENTS MAY PROVIDE A GENERAL EXPLANATION OF THE**  
337 **PROVISIONS OF THE OFFER BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS CONCERNING**  
338 **YOUR LEGAL RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT CLOSING. AN ATTORNEY SHOULD**  
339 **BE CONSULTED IF LEGAL ADVICE IS NEEDED.**

340 **ENTIRE CONTRACT** This Offer, including any amendments to it, contains the entire agreement of the Buyer and Seller  
341 regarding the transaction. All prior negotiations and discussions have been merged into this Offer. This agreement binds and  
342 inures to the benefit of the Parties to this Offer and their successors in interest.

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

346 **RADON TESTING CONTINGENCY:** This Offer is contingent upon Buyer obtaining a current written report of the results  
347 of a radon test at the Property performed by a qualified third party in a manner consistent with applicable EPA and Wisconsin  
348 Department of Health Services (DHS) protocols and standards indicating the radon level is less than 4.0 picoCuries per liter  
349 (pCi/L), at (Buyer's) (Seller's) ~~STRIKE ONE~~ ("Buyer's" if neither is stricken) expense. This contingency shall be deemed satisfied  
350 unless Buyer, within \_\_\_\_\_ days ("20" if left blank) of acceptance delivers to Seller a written copy of the radon test results  
351 report indicating a radon level of 4.0 pCi/L or higher and written notice objecting to the radon level in the report.

352 ■ **RIGHT TO CURE:** Seller (shall)(shall not) ~~STRIKE ONE~~ ("shall" if neither is stricken) have the right to cure. If Seller has the  
353 right to cure, Seller may satisfy this contingency by (1) delivering a written notice of Seller's election to cure within 10 days of  
354 delivery of Buyer's notice; and, (2) installing a radon mitigation system in conformance with EPA standards in a good and  
355 workmanlike manner and by giving Buyer a report of the work done and a post remediation test report indicating a radon level  
356 of less than 4.0 pCi/L no later than three days prior to closing. This Offer shall be null and void if Buyer timely delivers the above  
357 written notice and report to Seller and (1) Seller does not have the right to cure; or (2) Seller has a right to cure but: a) Seller

358 delivers written notice that Seller will not cure or b) Seller does not timely deliver the notice of election to cure. If Seller was  
359 responsible to provide the report, this Offer shall be null and void if Buyer delivers notice to Seller within three days of the  
360 delivery deadline stating Seller failed to deliver the report.

361  **CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's  
362 property located at \_\_\_\_\_, no later than \_\_\_\_\_ (the deadline).

363 This contingency shall be deemed satisfied unless Buyer or Seller delivers to the other Party notice that the closing of the sale  
364 of Buyer's property has not occurred by the deadline and this Offer shall be null and void. If Seller delivers the notice the Offer  
365 will not be null and void if ~~unless~~ Buyer delivers to Seller, within \_\_\_\_\_ days of Seller's delivery of notice, reasonable written  
366 verification from a financial institution or third party in control of Buyer's funds that Buyer has, at the time of verification, sufficient  
367 funds to close or has a bridge loan.

368  **BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer that another offer  
369 has been accepted. If Buyer does not deliver to Seller the documentation listed below within \_\_\_\_\_ hours ("72" if left blank) of  
370 Buyer's Actual Receipt of said notice, this Offer shall be null and void. Buyer must deliver the following:

371 (1) ~~Written~~ waiver of the Closing of Buyer's Property Contingency and \_\_\_\_\_  
372 \_\_\_\_\_ (name other contingencies subject to the Bump Clause, if any); and

373 (2) Any documentation checked below:

374  Proof of bridge loan financing

375  Proof of ability to close from a financial institution or third party in control of Buyer's funds which shall provide Seller  
376 with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close.

377  Other: \_\_\_\_\_ [insert other  
378 requirements, if any (e.g., payment of additional earnest money, waiver of all contingencies, ~~providing evidence of sale,~~  
379 etc.)]

380  **SECONDARY OFFER:** This Offer is secondary to a prior accepted offer. This Offer shall become primary upon delivery  
381 of written notice to Buyer that this Offer is primary. Unless otherwise provided, Seller is not obligated to give Buyer notice prior  
382 to any deadline, nor is any particular secondary buyer given the right to be made primary ahead of other secondary buyers.  
383 Buyer may declare this Offer null and void by delivering written notice of withdrawal to Seller prior to delivery of Seller's notice  
384 that this Offer is primary. Buyer may not deliver notice of withdrawal earlier than \_\_\_\_\_ days ("five/seven" if left blank) after  
385 acceptance of this Offer. All other Offer deadlines which are run from acceptance shall run from the time this Offer becomes  
386 primary.

387 **TIME IS OF THE ESSENCE** "Time is of the Essence" as to: (1) earnest money payment(s); (2) binding acceptance; (3)  
388 occupancy; (4) date of closing; (5) contingency Deadlines **STRIKE AS APPLICABLE** and all other dates and Deadlines in this  
389 Offer except: \_\_\_\_\_

390 \_\_\_\_\_  
391 \_\_\_\_\_ . If "Time is of the Essence" applies to a date or  
392 Deadline, failure to perform by the exact date or Deadline is a breach of contract. If "Time is of the Essence" does not apply to  
393 a date or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

#### 394 **TITLE EVIDENCE**

395 ■ **CONVEYANCE OF TITLE:** **Upon payment of the purchase price, Seller shall convey the Property by warranty deed**  
396 **(trustee's deed if Seller is a trust, personal representative's deed if Seller is an estate or other conveyance as provided**  
397 **herein), free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under**  
398 **them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and**  
399 **covenants, present uses of the Property in violation of the foregoing disclosed in Seller's Real Estate Condition Report and in**  
400 **this Offer, general taxes levied in the year of closing and \_\_\_\_\_**

401 \_\_\_\_\_  
402 (insert other allowable exceptions from title, if any ) **which constitutes merchantable title for purposes of this transaction.** Seller  
403 shall complete and execute the documents necessary to record the conveyance at Seller's cost and pay the Wisconsin Real  
404 Estate Transfer Fee.

405 **WARNING: Municipal and zoning ordinances, recorded building and use restrictions, covenants and easements may**  
406 **prohibit certain improvements or uses and therefore should be reviewed, particularly if Buyer contemplates making**  
407 **improvements to Property or a use other than the current use.**

408 ■ **TITLE EVIDENCE:** Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of the  
409 purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. Seller shall pay all  
410 costs of providing title evidence to Buyer. Buyer shall pay the costs of providing the title evidence required by Buyer's lender  
411 and recording the deed or other conveyance.

412 ■ **GAP ENDORSEMENT:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's)(Buyer's) **STRIKE**  
413 **ONE** ("Seller's" if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after the effective  
414 commitment date of the title insurance commitment and before the deed is recorded, subject to the title insurance policy  
415 conditions, exclusions and exceptions, provided the title company will issue the endorsement coverage. If a gap endorsement  
416 or equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 353-  
417 359xxx-xxx).

418 ■ DELIVERY PROVISION OF MERCHANTABLE TITLE: For purposes of closing, title evidence shall be acceptable if the  
419 required title insurance commitment shall be delivered to Buyer's attorney or Buyer no later than \_\_\_\_\_ days ("15" if left blank)  
420 (after acceptance)(prior to closing) ~~[STRIKE ONE]~~ ("after acceptance" if neither is stricken), not less than 5 business days before  
421 closing, not less than 5 business days before closing, showing title to the Property as of a date no more than 15 days before  
422 delivery of such title evidence to be merchantable per lines ~~326-335xxx-xxx~~, subject only to liens which will be paid out of the  
423 proceeds of closing and standard title insurance requirements and exceptions, as appropriate.

424 ■ TITLE NOT ACCEPTABLE FOR CLOSING: If title is not acceptable for closing, Buyer shall notify Seller in writing of objections  
425 to title within five days of delivery of the title commitment to Buyer or Buyer's attorney by the time set for closing. In such event,  
426 Seller shall have a reasonable time, but not exceeding 45-\_\_\_\_ days ("five" if left blank) from Buyer's delivery of the notice stating  
427 title objections, to remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event  
428 that Seller is unable to remove said objections, Buyer shall have five days from receipt of notice thereof, to deliver written notice  
429 waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer  
430 shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give  
431 merchantable title to Buyer.

432 ■ SPECIAL ASSESSMENTS/OTHER EXPENSES: Special assessments, if any, levied or for work actually commenced prior  
433 to the date stated on line 1 shall be paid by Seller no later than closing. All other special assessments shall be paid by Buyer.

434 "Levied" means the local municipal governing body has passed-adopted and published a final resolution describing the  
435 planned improvements and the assessment of benefits.

436 **CAUTION: Consider a special agreement if area assessments, property owners association assessments, special**  
437 **charges for current services under Wis. Stat. § 66.0627 or other expenses are contemplated. "Other expenses" are**  
438 **one-time charges or ongoing use fees for public improvements (other than those resulting in special assessments)**  
439 **relating to curb, gutter, street, sidewalk, municipal water, sanitary and storm water and storm sewer (including all**  
440 **sewer mains and hook-up/connection and interceptor charges), parks, street lighting and street trees, and impact fees**  
441 **for other public facilities, as defined in Wis. Stat. § 66.0617(1)(f).**

#### 442 **EARNEST MONEY**

443 ■ HELD BY: Unless otherwise agreed, earnest MONEY shall be mailed or delivered in accordance with lines 10-132 and held in  
444 the trust account of the designated party identified on lines 12-13, listing Ffirm (Buyer's agent if Property is not listed, Seller's  
445 account if no Ffirm is involved or a third party as designated on line 12), until applied to the purchase price or otherwise disbursed  
446 as provided in the Offer.

447 **CAUTION: Should persons other than a firm hold earnest money, lines xxx-xxx below do not apply. An escrow**  
448 **agreement should be drafted by the Parties or an attorney. If someone other than Buyer makes payment of pays earnest**  
449 **money, consider a special disbursement agreement.**

450 ■ DISBURSEMENT IF EARNEST MONEY HELD BY A FIRM: If negotiations do not result in an accepted offer and the earnest  
451 money is held by a firm, the earnest money shall be promptly disbursed (after clearance from payer's depository institution if  
452 earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed  
453 according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written  
454 disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been delivered to the Ffirm  
455 holding the earnest money within 60-30 days after the date set for closing, that Ffirm may disburse the earnest money: (1) as  
456 directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into a court hearing a  
457 lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; ~~or~~ (4) upon authorization granted  
458 within this Offer; or (5) any other disbursement as otherwise required or allowed provided any other disbursement required or  
459 allowed by law. The Ffirm may retain legal services to direct disbursement per (1) or to file an interpleader action per (2) and  
460 the Ffirm may deduct from the earnest money any costs and reasonable attorneys' fees, not to exceed \$ \_\_\_\_\_ ("500" if no entry),  
461 \$750, prior to disbursement.

462 ■ LEGAL RIGHTS/ACTION: The Ffirm's disbursement of earnest money does not determine the legal rights of the Parties in  
463 relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by the Ffirm holding the earnest  
464 money. At least 30 days prior to disbursement per (1), ~~or~~ (4) or (5) above, where the Firm has knowledge that either Party  
465 disagrees with the disbursement, the Ffirm shall send Buyer and Seller written notice of the intent to disbursement by certified  
466 mail. If Buyer or Seller disagree with the Ffirm's proposed disbursement, a lawsuit may be filed to obtain a court order regarding  
467 disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property  
468 with one-to-four dwelling units and certain other earnest money disputes. Buyer and Seller should consider consulting attorneys  
469 regarding their legal rights under this Offer in case of a dispute. Both Parties agree to hold the Ffirm harmless from any liability  
470 for good faith disbursement of earnest money in accordance with this Offer or applicable Department of Safety and Professional  
471 Services regulations concerning earnest money. See Wis. Admin. Code Ch. REEB 18.

472 **INSPECTIONS AND TESTING** Buyer may only conduct inspections or tests if specific contingencies are included as a part of  
473 this Offer. An "inspection" is defined as an observation of the Property, which does not include an appraisal or testing of the  
474 Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source,  
475 which are hereby authorized. A "test" is defined as the taking of samples of materials such as soils, water, air or building materials  
476 from the Property and the laboratory or other analysis of these materials. Seller agrees to allow Buyer's inspectors, testers and  
477 appraisers reasonable access to the Property upon advance notice, if necessary to satisfy the contingencies in this Offer. **Buyer**

478 and licensees may be present at all inspections and testing. Except as otherwise provided, Seller's  
479 authorization for inspections does not authorize Buyer to conduct testing of the Property.

480 **NOTE: Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose of the**  
481 **test, (e.g., to determine if environmental contamination is present), any limitations on Buyer's testing and any other**  
482 **material terms of the contingency.**

483 Buyer agrees to promptly restore the Property to its original condition after Buyer's inspections and testing are completed unless  
484 otherwise agreed to with Seller. Buyer agrees to promptly provide copies of all inspection and testing reports to Seller within  
485 \_\_\_\_\_ days ("four" if left blank) of receipt of each report. Seller acknowledges that certain inspections or tests may detect  
486 environmental pollution which may be required to be reported to the Wisconsin Department of Natural Resources.

487  **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 395-409xxx-xxx).  
488 This Offer is contingent upon an independent Wisconsin registered home inspector performing a home inspection of the Property  
489 after the date on line 1 of this Offer which discloses no Defects. This Offer is further contingent upon a qualified independent  
490 inspector or independent qualified third party performing an inspection of \_\_\_\_\_

491 \_\_\_\_\_ (list any Property component(s)  
492 to be separately inspected, e.g., swimming pool, roof, foundation, chimney, etc.) which discloses no Defects. Buyer shall order  
493 the inspection(s) and be responsible for all costs of inspection(s). Buyer may have follow-up inspections recommended in a  
494 written report resulting from an authorized inspection, provided they occur prior to the deadline specified at line xxx. Inspection(s)  
495 shall be performed by a qualified independent inspector or independent qualified third party.

496 **CAUTION: Buyer should provide sufficient time for the home inspection and/or any specialized inspection(s), as well**  
497 **as any follow-up inspection(s).**

498 This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days ("20" "15?" if left blank) of acceptance, delivers  
499 to Seller a copy of the written inspection report(s) dated after the date on line 1 of this Offer and a written notice listing the  
500 Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

501 **CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.**  
502 For the purposes of this contingency, Defects (see lines xxx-xxx) do not include structural, mechanical or other conditions the  
503 nature and extent of which Buyer had actual knowledge or written notice before signing this Offer (lines xxx-xxx).

504 **■ RIGHT TO CURE:** Seller (shall)(shall not) STRIKE ONE ("shall" if neither is stricken) have a right to cure the Defects. If Seller  
505 has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within seven (five??) ("10"  
506 if left blank) days of Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects; (2) curing the Defects in a  
507 good and workmanlike manner; and (3) delivering to Buyer a written report detailing the work done at least no later than three  
508 days prior to closing. "Good and Workmanlike Manner" means work performed by independent, properly licensed or credentialed  
509 contractors in accordance with any applicable permit requirements. This Offer shall be null and void if Buyer makes timely  
510 delivery of the Notice of Defects and written inspection report(s) and: (1) Seller does not have a right to cure or (2) Seller has a  
511 right to cure but: (a) Seller delivers written notice that Seller will not cure or (b) Seller does not timely deliver the written notice  
512 of election to cure.

513  **ADDENDA:** The attached \_\_\_\_\_ is/are made part of this Offer.

514 **ADDITIONAL PROVISIONS/CONTINGENCIES** \_\_\_\_\_  
515 \_\_\_\_\_  
516 \_\_\_\_\_  
517 \_\_\_\_\_  
518 \_\_\_\_\_  
519 \_\_\_\_\_  
520 \_\_\_\_\_  
521 \_\_\_\_\_

522 This Offer was drafted by [Licensee and Firm] \_\_\_\_\_  
523 \_\_\_\_\_

524 (x) \_\_\_\_\_  
525 Buyer's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

526 (x) \_\_\_\_\_  
527 Buyer's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

528 EARNEST MONEY RECEIPT Firm acknowledges receipt of earnest money as per line xx of the above Offer.

529 Firm: \_\_\_\_\_ Signature of Agent for the Firm: \_\_\_\_\_

530 **SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OFFER**  
531 **SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE PROPERTY ON**  
532 **THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS OFFER.**

533 **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)** Section 1445 of the Internal Revenue Code (IRC)  
534 provides that a transferee (Buyer) of a United States real property interest must pay or withhold as a tax up to 15% of the  
535 total "Amount Realized" in the sale if the transferor (Seller) is a "Foreign Person" and no exception from FIRPTA  
536 withholding applies. A "Foreign Person" is a nonresident alien individual, foreign corporation, foreign partnership, foreign  
537 trust, or foreign estate. The "Amount Realized" is the sum of the cash paid, the fair market value of other property  
538 transferred, and the amount of any liability assumed by Buyer.  
539 **CAUTION: Under this law if Seller is a Foreign Person, and Buyer does not pay or withhold the tax amount, Buyer**  
540 **may be held directly liable by the U.S. Internal Revenue Service for the unpaid tax and a tax lien may be placed**  
541 **upon the Property.**  
542 Seller hereby represents that Seller is not a Foreign Person. Buyer and Seller agree to comply with FIRPTA requirements  
543 under IRC § 1445. No later than 15 days prior to the closing, Seller shall execute and deliver to Buyer, or a qualified  
544 substitute (attorney or title company as stated in IRC § 1445), a sworn certification under penalties of perjury of Seller's  
545 non-foreign status in accordance with IRC § 1445 including Seller's Social Security number or taxpayer identification  
546 number. Any representations made by Seller with respect to this issue shall survive the closing and delivery of the deed.  
547 If Seller fails to deliver certification of Seller's non-foreign status, Buyer shall be entitled to either: (1) withhold the amount  
548 required to be withheld pursuant to IRC § 1445 from amounts otherwise payable to Seller under this Offer; or, (2) terminate  
549 this Offer by written notice to Seller prior to closing. Buyer and Seller shall complete, execute, and deliver, on or before  
550 closing, any other instrument, affidavit, or statement needed to comply with FIRPTA, including withholding forms.  
551 Firms, Agents, and Title Companies are not responsible for determining FIRPTA status or whether any FIRPTA exemption  
552 applies. The Parties are advised to consult with their respective independent legal counsel and tax advisors.

553 (x) \_\_\_\_\_  
554 Seller's Signature ▲ Print Name Here ► Date ▲

555 (x) \_\_\_\_\_  
556 Seller's Signature ▲ Print Name Here ► Date ▲

557 This Offer was presented to Seller by [Licensee and Firm] \_\_\_\_\_

558 \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

559 This Offer is rejected \_\_\_\_\_ This Offer is countered [See attached counter] \_\_\_\_\_  
560 Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲

**OFFER TO PURCHASE REVISIONS**

To: DSPS Real Estate Contractual Forms Advisory Committee

From: WRA Forms Committee

Date: June 12, 2019

RE: **WB-11 Residential Offer to Purchase**

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The 20190403WB-11-DSPS\_0626DSPSMtg draft that accompanies this memo shows the result of the discussion of the discussion of the DSPS Real Estate Contractual Forms Advisory Committee at its meeting on April 3, 2019 and WRA Forms Committee on April 11, 2019, May 9, 2019, and June 6, 2019 meetings as well as proposed provisions that are there for discussion purposes. This draft has accepted many of the changes made a few meetings ago and thus has a bit less tracking.

**WB-11 Residential Offer to Purchase**

**Formatting Suggestions**

We have received feedback and suggestions from various WRA members. One comment is for there to be a longer line in the form. For instance, some want a longer line for the property description to include tax parcel numbers; some want longer lines for deadlines like in the Financing Commitment Contingency and the Appraisal Contingency so that they can write in a specific date, "by 12/31/19." Another one is at the end of the offer where there are blank lines for the sellers to initial and date if they are rejecting or countering – not enough room if using electronic platforms if there are multiple sellers. These areas of the form have been highlighted in green on the form with the thought that they are primarily formatting issues for a possible discussion later on.

**Earnest Money Proposed Change, Lines 10-16:**

The WRA Forms Committee received a comment that earnest money is frequently, at least in some areas, not held by listing firms. The Committee discussed that there is a long blank line at line 12 where it can be written in if somebody other than the listing firm will hold the earnest money but it was felt that agents are not very vigilant about completing that line and that requires that the buyer’s agent have been notified in advance that the listing firm was not holding the money. There was a suggestion for check boxes, but the Committee instead proposed to move the Caution from the Earnest Money section to the front page:

**CAUTION: Should persons other than a Firm hold earnest money, an escrow agreement should be drafted by the Parties or an attorney.**

The idea is that this will be a better reminder, with the placement near the beginning of the offer rather than near the end, to write in if the title company or some other party is holding the earnest money and that an escrow agreement will be needed.

➤ **The DSPS went farther with this suggestion and proposed as follows:**

EARNEST MONEY of \$ \_\_\_\_\_ accompanies this Offer and earnest money of \$ \_\_\_\_\_ will be mailed, or commercially or personally delivered within \_\_\_\_\_ days ("five" if left blank) of acceptance to (listing Firm) (Buyer agent's Firm) (third party identified as \_\_\_\_\_) **STRIKE** **THOSE NOT APPLICABLE** (listing Firm if none chosen; if no listing Firm, then Buyer agent's Firm; then Seller's account).

**CAUTION:** Should persons other than a **Firm** hold earnest money, an escrow agreement should be drafted by the Parties or an attorney. See lines XXX to XXX for additional provisions regarding disbursements unless a third-party escrow agreement supersedes such provisions.

- **The WRA Forms Committee agreed with this concept and proposes the following additional modifications:**

EARNEST MONEY of \$ \_\_\_\_\_ accompanies this Offer and earnest money of \$ \_\_\_\_\_ will be mailed, or commercially or personally delivered within \_\_\_\_\_ days (“five” if left blank) of acceptance to (listing Firm) (Buyer’s agent’s Firm) (third party: \_\_\_\_\_) **STRIKE AND COMPLETE AS APPLICABLE** (listing Firm if none chosen; if no listing Firm, then Buyer’s agent’s Firm; if no Firm, then Seller).

**CAUTION:** Should persons other than a Firm hold earnest money, an escrow agreement should be drafted by the Parties or an attorney. See lines XXX to XXX for earnest money disbursement provisions unless a third-party escrow agreement supersedes such provisions.

- **The DSPS Committee made a tweak saying money delivered to Seller rather than Seller’s account within the default and the WRA Forms Committee agreed. The above language is now in the draft.**

### **Financing Commitment Contingency overall – Lines 247-282:**

**BE AWARE THAT PARTICULARLY COMMERCIAL LENDERS ARE NO LONGER PROVIDING LOAN COMMITMENTS AND THAT A CHANGE MAY BE COMING TO RESIDENTIAL AS WELL!**

### **If This Offer Is Not Contingent On Financing – Lines 306-313:**

- **IF THIS OFFER IS NOT CONTINGENT ON FINANCING:** Within 7 days of acceptance: (a) a financial institution or third party in control of Buyer’s funds shall provide Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close; or (b) Buyer shall provide Seller with: [Specify documentation intended (required?) to verify availability of funds]. ...

The reason for the proposal is that existing language might embody an “ideal” proof of funds scenario, but parties and agents should not be limited to that, particularly if it is so easily subject to potential dispute. They should have a ready-available option to avoid that complexity, be simpler, and get a clear, negotiated result. In most cases the buyers will likely have in mind what they’d intend to send when they confront that provision when writing the offer. If that’s so, they should have the easy option of specifying up front exactly what they intend to send. If the seller doesn’t like it, the seller counters. If the parties agree, who are we to say what they agreed to is somehow “wrong”? If they agree to something, regardless what it is, both parties (and agents) will then know exactly what to expect and won’t have to interpret or argue about anything.

**The WRA Forms Committee** indicated that some buyers do cross this out and some write in that funds will come from the sale of buyer’s property or say a loan commitment will be the proof. That option remains. The WRA Forms Committee believed the provision should remain as it is to require proof of funds within 7 days of acceptance, which timeframe would not likely be met for a sale of buyer’s property or a loan commitment. The Committee wishes to preserve the purpose of the provision to give the seller some assurance there will be money for a closing without having to wait until the end of the transaction.

**The DSPS Committee** discussed the proposal and some were in favor of the proposed change. They discussed a reasonable alternative may be to instead make the timeframe shorter and 2 days and 3 days were mentioned. Apparently, some lenders are telling broker to write cash offers and to use the loan approval as proof of funds, or a pre-approval subject to only appraisal and title. It is best if brokers don't say there is a cash offer unless there really is. It was noted that everyone needs to be careful with such timelines when they run from acceptance and not binding acceptance. The Committee decided it would live with placing a blank for the timeline so shorter times could be inserted but the default was left at 7 days so as to not confuse those who were used to that time frame and overlook the blank line.

**IF THIS OFFER IS NOT CONTINGENT ON FINANCING** Within ~~seven~~ \_\_\_\_\_ days ("seven" if left blank) of acceptance, a financial institution or third party in control of Buyer's funds shall provide Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close. If such written verification is not provided, Seller has the right to terminate this Offer by delivering written notice to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written verification. Buyer may or may not obtain mortgage financing but does not need the protection of a financing contingency. Seller agrees to allow Buyer's appraiser access to the Property for purposes of an appraisal. Buyer understands and agrees that this Offer is not subject to the appraisal meeting any particular value, unless this Offer is subject to an appraisal contingency, nor does the right of access for an appraisal constitute a financing contingency.

**Both Forms Committees were satisfied with this and this language is now in the draft.**

### **FIRPTA Provision – Lines 524-543:**

The disposition of a U.S. real property interest by a foreign person (the transferor) (for example, a non-resident alien) is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. Persons purchasing U.S. real property interests (transferees) from foreign persons, certain purchasers' agents, and settlement officers are required to withhold 15% of the amount realized on the disposition (special rules for foreign corporations). <https://www.irs.gov/individuals/international-taxpayers/firpta-withholding>

Exceptions to FIRPTA withholding: <https://www.irs.gov/individuals/international-taxpayers/exceptions-from-firpta-withholding> includes residential property purchased for less than \$300,000 and used as a home.

➤ **Both Committees have agreed they will work from Option #5 below.**

### **Option #1:**

**FEDERAL TAX REQUIREMENT:** If Seller is a "foreign person", as defined by applicable law, or if Seller fails to deliver an affidavit that Seller is not a "foreign person", then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax form.

The Wisconsin Land Title Association has also requested that a FIRPTA provision be included. This is based on the Minnesota provision and perhaps too detailed, but it does make the point that the parties will need to complete an affidavit and provide their Social Security numbers on or before closing: **Option #2:**

**FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** Section 1445 of the Internal Revenue Code (IRC) provides that a transferee (Buyer) of a United States real property interest must be notified in writing and must withhold tax if the transferor (Seller) is a foreign person and no

exceptions from FIRPTA withholding apply. Buyer and Seller agree to comply with FIRPTA requirements under IRC § 1445. Seller shall represent and warrant, under penalties of perjury, whether Seller is a “foreign person,” as defined in FIRPTA, prior to closing. Any representations made by Seller with respect to this issue shall survive the closing and delivery of the deed. Buyer and Seller shall complete, execute, and deliver, on or before closing, any instrument, affidavit, or statement reasonably necessary to comply with the FIRPTA requirements, including delivery of their respective federal taxpayer identification numbers or Social Security numbers. Due to the complexity and potential risks of failing to comply with FIRPTA, including Buyer’s responsibility for withholding the applicable tax, Buyer and Seller should seek appropriate legal and tax advice regarding FIRPTA compliance, as the respective licensees representing or assisting either party will be unable to assure either party whether the transaction is exempt from FIRPTA withholding requirements.

Another version: **Option #3:**

**Compliance with Foreign Investment in Real Property Tax Act of 1980 (FIRPTA):** The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) requires persons purchasing U.S. real property interests (transferees) from foreign persons, certain purchasers’ agents, and settlement officers to withhold 15% of the amount realized on the disposition (special rules for foreign corporations). <https://www.irs.gov/individuals/international-taxpayers/firpta-withholding>. Exceptions to this withholding include residential property used as a home that sells for less than \$300,000. <https://www.irs.gov/individuals/international-taxpayers/exceptions-from-firpta-withholding>.

Section 1445 of the Internal Revenue Code (IRC) provides a transferee (Buyer) of a United States real property interest must be notified in writing and must withhold tax if the transferor (Seller) is a foreign person and no exceptions from FIRPTA withholding apply.

The Parties agree to comply with FIRPTA requirements under IRC § 1445. Seller shall represent and warrant, under penalties of perjury, whether Seller is a “foreign person,” as defined in FIRPTA, prior to closing. Any representations made by Seller with respect to this issue shall survive the closing and delivery of the deed. The Parties shall complete, execute, and deliver, on or before closing, any instrument, affidavit, or statement reasonably necessary to comply with the FIRPTA requirements, including delivery of their respective federal taxpayer identification numbers or Social Security numbers.

Due to the complexity and potential risks of failing to comply with FIRPTA, including Buyer’s responsibility for withholding the applicable tax, the Parties should seek appropriate legal and tax advice regarding FIRPTA compliance, as the respective firm and its agent are unable to assure either Party whether the transaction is exempt from FIRPTA withholding requirements.

Another version: **Option #4:**

**FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** Section 1445 of the Internal Revenue Code (IRC) provides that a transferee (Buyer) of a United States real property interest must deduct and withhold a 15% tax on the total Amount Realized in the transaction if the transferor (Seller) is a Foreign Person and no exception from FIRPTA withholding applies. A Foreign Person is a nonresident alien individual, foreign corporation that has not made an election under section 897(i) of the IRC to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. The Amount Realized is the sum of the cash paid, the fair market value of other property transferred, and the amount of any liability assumed by Buyer.

If Seller (is)(is not) ~~STRIKE ONE~~ a foreign person, and Seller shall provide a sworn affidavit under penalties of perjury prior to closing confirming this status and furnishing Seller's Social Security number or taxpayer identification number. If Seller is a Foreign Person and Buyer fails to withhold, Buyer may be held liable for the tax.

- The DSPTS made the modifications shown above in tracking.

### **Option #5.**

**The WRA Forms Committee suggested the following to provide more protection for the buyer and the DSPTS Committee also favored this version – they made additional modifications to the language:**

- The WRA wants there to be no choices to be made in the provision so this was further modified and now appears in the draft at lines 315-325:

**FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** Section 1445 of the Internal Revenue Code (IRC) provides that a transferee (Buyer) of a United States real property interest must deduct and withhold a 15% tax on the total Amount Realized in the transaction if the transferor (Seller) is a Foreign Person and no exception from FIRPTA withholding applies. A Foreign Person is a nonresident alien individual, foreign corporation that has not made an election under section 897(i) of the IRC to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. The Amount Realized is the sum of the cash paid, the fair market value of other property transferred, and the amount of any liability assumed by Buyer.

~~Seller warrants and represents Seller (is)(is not) ~~STRIKE ONE~~ (“is not” if neither is stricken) a foreign person. If Seller (is)(is not) ~~STRIKE ONE~~ a foreign person, and Seller shall provide a sworn affidavit under penalties of perjury prior to closing confirming this Seller's status in conformance with IRC § 1445(b)(2) and furnishing Seller's Social Security number or taxpayer identification number.~~ If Seller is a Foreign Person and Buyer fails to withhold, Buyer may be held liable for the tax. **Firms or real estate agents are not responsible for determining whether FIRPTA applies. The Parties may wish to consult independent legal counsel or tax advisors.**

- The DSPTS Committee discussed who would provide the affidavit and who is responsible to see that it is done. Many title companies will not and certainly it should not be the licensees – buyer's attorney perhaps? There was also discussion of whether the WRA should offer a form for this purpose. Would we want this done? There are forms available online from title companies and other sources that are essentially the same. The DSPTS Committee intends to discuss this more at their next meeting on January 23. They were interested in knowing what was done in other states. See, for instance, Knight Barry's Minnesota forms at <https://www.knightbarry.com/Forms/MN-Forms.aspx>
- The WRA Forms Committee also discussed whether the WRA should have a form for the Certificate of Non-Foreign Status. Many are uneasy with the form, in part because it includes a TIN/Social Security number, but if the language above is adopted there may be no other reliable way for the Sellers to complete and submit the form before closing because not all title companies are on board to work with this.
- **On January 23 the DSPTS Committee elected to pass this until next time based on the conversation from that committee that they thought there were other ways to handle this in other states, etc. Those DSPTS Committee members will be responsible to bring forward their other proposals and the WRA Forms Committee is not expected to do anything further. However, please note the significant comments that were made:**

1. The suggestion was made to move this provision above the signature lines so it would not be missed by the parties.
2. The affidavit of the seller needs to be submitted to the closing agent/title company BEFORE closing so there are no last-minute surprises. If the seller is a foreign person additional paperwork needs to be done.
3. The latest word from the WLTA attorneys is they would prefer an affirmative statement in the offer as to whether the seller is or is not a foreign person. This would provide a heads-up as to what was coming and what would be required for closing.

Another suggestion for review from Arizona: **Option #6:**

**FOREIGN SELLERS:** The Foreign Investment in Real Property Tax Act (“FIRPTA”) is applicable if Seller is a non-resident alien individual, foreign corporation, foreign partnership, foreign trust or foreign estate (“Foreign Person”). Seller agrees to complete, sign, and deliver to Escrow Company a certificate indicating whether Seller is a Foreign Person. FIRPTA requires that a foreign seller may have federal income taxes up to 15% of the purchase price withheld, unless an exception applies. Seller is responsible for obtaining independent legal and tax advice.

**Another suggestion: Option #7:**

**FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** Section 1445 of the Internal Revenue Code (IRC) applies to certain transactions where the Seller is a “Foreign Person,” who under that law is a nonresident alien individual, foreign corporation that has not made an election under section 897(i) of the IRC to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate, and requires the transferee (Buyer) to pay or withhold a 15% tax on the total Amount Realized in the transaction if the transferor (Seller) is a Foreign Person and no exception from FIRPTA withholding applies. The Amount Realized is the sum of the cash paid, the fair market value of other property transferred, and the amount of any liability assumed by Buyer.

**CAUTION: Under this law if Seller is a Foreign Person, and Buyer does not pay or withhold the tax amount, Buyer may be held directly liable by the United States Internal Revenue Service for the unpaid tax and a tax lien may be placed upon the Property.** Seller agrees to provide a sworn affidavit, or equivalent document, under penalty of perjury, prior to closing confirming whether or not Seller is a Foreign Person and furnish identification as necessary to any closing entity to confirm same, and Buyer agrees to pay or cause to be withheld at closing the amount, if any, as may be required under FIRPTA. Firms or real estate agents are not responsible for determining whether FIRPTA applies. The parties may wish to consult independent legal counsel or tax advisors.

**FIRPTA Proposed by Jonathan Sayas (different from the WLTA proposals following below!)**

**FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** Section 1445 of the Internal Revenue Code (IRC) provides that a transferee (Buyer) of a United States real property interest must deduct and withhold a tax on the total Amount Realized in the transaction if the transferor (Seller) is a Foreign Person and no exception from FIRPTA withholding applies. The Amount Realized is the sum of the cash paid, the fair market value of other property transferred, and the amount of any liability assumed by Buyer. A Foreign Person is a nonresident alien individual, foreign corporation that has not made an election under section 897(i) of the IRC to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate.

Seller agrees to provide Buyer ~~at~~ before closing, a qualifying Certification of Non-Foreign Status or other evidence that this transaction is exempt from FIRPTA withholding. In the event this transaction is not exempt, the parties agree to execute the necessary documentation and IRS tax forms to comply with FIRPTA and agrees the required withholding funds shall be paid to the IRS at closing. Firms or real estate agents are not responsible for determining whether FIRPTA applies. The Parties may wish to consult independent legal counsel or tax advisors.

**CAUTION: Under this law if Seller is a Foreign Person and transaction is not exempt from withholding, and Buyer does not pay or withhold the tax amount, Buyer may be held directly liable by the United States Internal Revenue Service for the unpaid tax and a tax lien may be placed upon the Property.**

**3 drafts of FIRPTA REVISIONS: to be placed at end of offer above signature lines**

**1<sup>st</sup> Draft:**

This Offer is made by Buyer with the express understanding and condition that Seller is not a Foreign person, is not a nonresident alien individual and is not a foreign corporation that has made an election under section 897(i) of the IRC to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. If any of the above representations are not true, seller MUST counter this offer and agrees that proceeds of this transaction may be subject to FIRPTA withholding.

The above statement is true. \_\_\_\_\_

The above statement is not true, this Offer is countered. \_\_\_\_\_

582 (x) \_\_\_\_\_

583 Seller's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲

584 (x) \_\_\_\_\_

585 Seller's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲

586 This Offer was presented to Seller by [Licensee and Firm] \_\_\_\_\_

**2<sup>nd</sup> Draft:**

This Offer is made by Buyer with the express understanding and condition that Seller is not a Foreign person, is not a nonresident alien individual and is not a foreign corporation that has made an election under section 897(i) of the IRC to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. If any of the above representations are not true, seller MUST counter this offer **affirmatively verifying Seller's status with respect to FIRPTA laws** and agrees that proceeds of this transaction may be subject to FIRPTA withholding.

The above statement is true. \_\_\_\_\_

The above statement is not true, this Offer is countered **to include Seller's FIRPTA status with respect to Section 1445 of the Internal Revenue Code (IRC).** \_\_\_\_\_

582 (x) \_\_\_\_\_

583 Seller's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲

584 (x) \_\_\_\_\_

585 Seller's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_  
586 This Offer was presented to Seller by [Licensee and Firm] \_\_\_\_\_

**3<sup>rd</sup> Draft:**

This Offer is made by Buyer with the express understanding and condition that Seller is not a Foreign person, is not a nonresident alien individual and is not a foreign corporation that has made an election under section 897(i) of the IRC to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. If any of the above representations are not true, seller **MUST** counter this offer **affirmatively verifying Seller's status with respect to FIRPTA laws** and agrees that proceeds of this transaction may be subject to FIRPTA withholding.

The above statement is true. **Seller further agrees to provide certification no later than 3 days prior to closing.** \_\_\_\_\_

The above statement is not true, this Offer is countered **to include Seller's FIRPTA status with respect to Section 1445 of the Internal Revenue Code (IRC). Seller agrees to provide certification no later than 3 days prior to closing** \_\_\_\_\_

582 (x) \_\_\_\_\_  
583 Seller's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_  
584 (x) \_\_\_\_\_  
585 Seller's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_  
586 This Offer was presented to Seller by [Licensee and Firm] \_\_\_\_\_

**Wisconsin Land Title Most Recent Requests cover letter:**  
Attorney Conrad –

On behalf of the **WLTA** please see the attached memo regarding the title provisions of the offer to purchase. The WLTA would also request that should any FIRPTA provision be inserted into the offer to purchase:

1. That the provision contain a clear representation as to whether the Seller is a non-resident alien, foreign corporation, foreign trust, foreign estate or other foreign entity (as defined in the Internal Revenue Code and Income Tax Regulations).
2. That any Certification of Non-Foreign Status be provided in advance of the deadline for closing.
3. That the provision clarifies a title agent involved in the transaction, is not required to act as a withholding agent for the Buyer, nor is responsible for compliance with any FIRPTA provision.
4. That if the above provisions would **not** be included in the offer to purchase, the WLTA would be agreeable to having no FIRPTA provision in the offer to purchase (status quo), or in the alternative, a very generic warning that the parties may be subject to FIRPTA and are responsible for compliance with same.

Thank you for considering the feedback from the WLTA.

Jonathan M. Sayas  
Wisconsin Underwriting Counsel  
Stewart Title Guaranty Company  
**SEE ATTACHED MEMO REGARDING TITLE ISSUES**

So, there are lots of ideas and no clear solutions and not everyone will be happy with any choice that is made!

1. Do nothing
2. Use language proposed for the end of the offer (seller certifications in all transactions)
3. Use warning language only (would have to create because what we have all ends up with the seller agreeing to take action)
4. Use one of the options

Most provisions include language that the seller agrees to provide the certification so that means a step would be added to all transactions.

- ★ The following rough draft provision is based upon the discussion of the WRA Forms Committee on March 14 and assumes the WRA would create a form for sellers to use for the certification of foreign/non-foreign status. The provision would be placed near the end of the form.

**FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** Section 1445 of the Internal Revenue Code (IRC) provides that a transferee (Buyer) of a United States real property interest must deduct and withhold a 15% tax on the total amount realized in the transaction if the transferor (Seller) is a Foreign Person and no exception from FIRPTA withholding applies. A Foreign Person is a nonresident alien individual, foreign corporation that has not made an election under section 897(i) of the IRC to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. If Seller is a Foreign Person, and Buyer does not withhold the tax, Buyer may be held directly liable by the United States Internal Revenue Service for the unpaid tax and a tax lien may be placed upon the Property.

This Offer is made with the express understanding that Seller is not a Foreign Person. If Seller is a Foreign Person, Seller must counter this Offer and **affirmatively confirm Seller's status with respect to FIRPTA laws** and Seller acknowledges proceeds of this transaction may be subject to FIRPTA withholding. Firms or real estate agents are not responsible for determining whether FIRPTA applies. The parties may wish to consult independent legal counsel or tax advisors.

Seller is not a Foreign Person. **Seller shall provide a qualifying certification of non-foreign status to the closing agent no later than 3 days prior to closing.**

\_\_\_\_\_  
Seller's Initials ▲                      Date ▲                      Seller's Initials ▲                      Date ▲

Seller is a Foreign Person, and this Offer is countered. **Seller shall provide a qualifying certification of foreign status to the closing agent no later than 3 days prior to closing.**

\_\_\_\_\_  
Seller's Initials ▲                      Date ▲                      Seller's Initials ▲                      Date ▲

- ★ The following is an alternate draft with the notion that a counter-offer may not be necessary. It again assumes the WRA would create a form for sellers to use for the certification of foreign/non-foreign status. The provision is shown in the draft near the end of the form:

**FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** Section 1445 of the Internal Revenue Code (IRC) provides that a transferee (Buyer) of a United States real property interest must deduct and withhold a 15% tax on the total amount realized in the transaction if the transferor (Seller) is a Foreign Person and no exception from FIRPTA withholding applies. A Foreign Person is a nonresident alien individual, foreign corporation that has not made an election under section 897(i) of the IRC to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. If Seller is a Foreign Person, and Buyer does not withhold the tax, Buyer may be held directly liable by the United States Internal Revenue Service for the unpaid tax and a tax lien may be placed upon the Property.

This Offer is made with the express understanding that Seller is not a Foreign Person. If Seller is a Foreign Person or if Seller does not provide certification of Seller's status, Seller acknowledges proceeds of this transaction may be subject to FIRPTA withholding. Firms or real estate agents are not responsible for determining whether FIRPTA applies. The parties may wish to consult independent legal counsel or tax advisors.

**Seller is not a Foreign Person.** Seller shall provide a qualifying certification of non-foreign status to the closing agent no later than 3 days prior to closing.

\_\_\_\_\_  
 Seller's Initials ▲                      Date ▲                      Seller's Initials ▲                      Date ▲

**Seller is a Foreign Person.** Seller shall provide a qualifying certification of foreign status to the closing agent no later than 3 days prior to closing.

\_\_\_\_\_  
 Seller's Initials ▲                      Date ▲                      Seller's Initials ▲                      Date ▲

The WRA Forms Committee believes that the process should protect the parties first and the brokers second. It was suggested that the foreign/nonforeign status of sellers should be gathered in the listing contracts.

- ★ Note that the certification forms include the seller's TIN/Social Security number and the FIRPTA information seems to indicate the certification would go to the buyer to prove to the buyer they don't have to withhold – it is the buyer's insurance policy – and there is indication the buyer should hold the certification for 5 years.

**April 3, 2019: The DSPS Forms Committee** discussed this at some length and the following is what they agreed to (lines 524-543 of the draft). This version assumes the seller is not a foreign person and the seller will have to counter if they are. The seller nonetheless is required to provide a sworn certification of seller's non-foreign status because that is the only way under the tax code the buyer has "the insurance policy" protecting them from any liability to the IRS. It was discovered that this could be delivered to a "qualified substitute" who is responsible for the closing. This may include a title company or an attorney but does not include the either party's agent. It seems the seller appoints the qualified substitute (this may need further confirmation). That would mean the certificate with the Social Security number in it does not have to be delivered to the buyer necessarily, at least not at first. The qualified substitute gives the buyer a statement, under penalties of perjury, that the certificate is in the possession of the qualified substitute.

The qualified substitute is to hold the certificate for six years unless the IRS requires the buyer to produce it to prove the exemption from withholding. This provides some relief to those real estate licensees concerned about transmission and holding of documents with Social Security numbers in them. Again, to protect buyers in transaction that is the only way to eliminate liability assuming the buyer does not have knowledge that the certificate or the qualified substitute's statement is false. This also assumes the WRA will create a form for the certificate of non-foreign status.

If the seller does not deliver a certificate at least 15 days before closing the buyer can either withhold from the proceeds pursuant IRC procedures or give notice terminating the offer. If a seller does not provide a Social Security number or an ITIN, the seller is not in violation of the IRC and the buyer becomes obligated to withhold. There are other exemptions from withholding but it was thought best to leave that for the sellers and their attorneys to submit proper notice and proof and get the buyer to agree to such an alternate resolution, likely in a counter-offer or offer amendment.

**NEW!!! – DSPS Forms Council did not see this information before:**

**26 CFR § 1.1445-2 - Situations in which withholding is not required under section 1445(a).**

**(d)Exceptions to requirement of withholding -**

**(1)Purchase of residence for \$300,000 or less.** No **withholding** is required under section 1445(a) if one or more individual **transferees** acquire a U.S. **real property interest** for use as a residence and the **amount** realized on the transaction is \$300,000 or less. For **purposes** of this section, a U.S. **real property interest** is **acquired** for use as a residence if on the date of the **transfer** the **transferee** (or transferees) has definite **plans** to reside at the **property** for at least 50 percent of the number of days that the **property** is used by any **person** during each of the first two 12-month periods following the date of the **transfer**. The number of days that the **property** will be vacant is not taken into **account** in determining the number of days such **property** is used by any **person**. A **transferee** shall be considered to reside at a **property** on any day on which a **member** of the **transferee's** family, as **defined** in section 267(c)(4), resides at the **property**. No form or other document need be filed with the Internal Revenue Service to establish a **transferee's** entitlement to rely upon the **exception** provided by this paragraph (d)(1). A **transferee** who fails to withhold in reliance upon this **exception**, but who does not in fact reside at the **property** for the minimum number of days set forth above, shall be liable for the failure to withhold (if the transferor was a **foreign person** and did not pay the full U.S. tax due on any **gain** recognized upon the **transfer**). However, if the **transferee** establishes that the failure to reside the minimum number of days was caused by a **change in circumstances** that could not reasonably have been anticipated at the time of the **transfer**, then the **transferee** shall not be liable for the failure to withhold. The **exception** provided by paragraph (d)(1) does not apply in any case where the **transferee** is other than an individual even if the **property** is **acquired** for or on behalf of an individual who will use the **property** as a residence. However, this **exception** applies regardless of the organizational structure of the transferor (i.e., regardless of whether the transferor is an individual, **partnership**, **trust**, **corporation**, **etc.**).

➤ **Should something based on this information be worked into the provision?**

**On April 9, the WRA Committee said no, not at this time but maybe in the future.**

Other FIRPTA resources: <https://www.narfoc.us.com/billdatabase/clientfiles/172/24/2614.pdf> and <https://www.narfoc.us.com/billdatabase/clientfiles/172/9/2615.pdf>

**Both Forms Committees were satisfied with the following:**

**FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)** Section 1445 of the Internal Revenue Code (IRC) provides that a transferee (Buyer) of a United States real property interest must pay or withhold as a tax up to 15% of the total "Amount Realized" in the sale if the transferor (Seller) is a "Foreign Person" and no exception from FIRPTA withholding applies. A "Foreign Person" is a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate. The "Amount Realized" is the sum of the cash paid, the fair market value of other property transferred, and the amount of any liability assumed by Buyer.

**CAUTION: Under this law if Seller is a Foreign Person, and Buyer does not pay or withhold the tax amount, Buyer may be held directly liable by the U.S. Internal Revenue Service for the unpaid tax and a tax lien may be placed upon the Property.**

Seller hereby represents that Seller is not a Foreign Person. Buyer and Seller agree to comply with FIRPTA requirements under IRC § 1445. No later than 15 days prior to the closing, Seller shall execute and deliver to Buyer, or a qualified substitute (attorney or title company as stated in IRC § 1445), a sworn certification under penalties of perjury of Seller's non-foreign status in accordance with IRC § 1445 including Seller's Social Security number or taxpayer identification number. Any representations made by Seller with respect to this issue shall survive the closing and delivery of the deed. If Seller fails to deliver certification of Seller's non-foreign status, Buyer shall be entitled to either: (1) withhold the amount required to be withheld pursuant to IRC § 1445 from amounts otherwise payable to Seller under this Offer; or, (2) terminate this Offer by written notice to Seller prior to closing. Buyer and Seller shall complete, execute, and deliver, on or before closing, any other instrument, affidavit, or statement needed to comply with FIRPTA, including withholding forms.

Firms, Agents, and Title Companies are not responsible for determining FIRPTA status or whether any FIRPTA exemption applies. The Parties are advised to consult with their respective independent legal counsel and tax advisors.

- **On June 6 the WRA Forms Committee raised the following questions: Should there be a time frame/deadline for**

If Seller fails to deliver certification of Seller's non-foreign status, Buyer shall be entitled to either: (1) withhold the amount required to be withheld pursuant to IRC § 1445 from amounts otherwise payable to Seller under this Offer; or, (2) terminate this Offer by written notice to Seller at least \_\_\_\_\_ days ("5" if no entry) prior to closing.

- **Should there be an additional reference/emphasis to the parties conferring with legal or tax advisors about possible exemptions from the withholding requirement?**

Firms, Agents, and Title Companies are not responsible for determining FIRPTA status or whether any FIRPTA exemption applies. The Parties are advised to consult with their respective independent legal counsel and tax advisors regarding the application of FIRPTA and exemptions from the withholding requirement.

### **Closing of Buyer's Property Contingency – Lines 361-367:**

In the current offer this provision is as follows:

**CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's property located at \_\_\_\_\_, no later than \_\_\_\_\_. If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer of acceptance. If Buyer does not deliver to Seller a written waiver of the Closing of Buyer's Property Contingency and \_\_\_\_\_

**[INSERT OTHER REQUIREMENTS, IF ANY (e.g., PAYMENT OF ADDITIONAL EARNEST MONEY, WAIVER OF ALL CONTINGENCIES, OR PROVIDING EVIDENCE OF**

**SALE OR BRIDGE LOAN, etc.)] within \_\_\_\_ hours of Buyer's Actual Receipt of said notice, this Offer shall be null and void.**

In the offer draft and in this memo, this provision was split to make the bump clause a separate provision. The draft of the Closing of Buyer's Property Contingency also looks to set a consequence if there is no closing by the deadline. The provision suggests an implementation process.

What is the consequence if the sale of the buyer's property does not close by the deadline, assuming the deadline is not the same as the closing date? Does it mean the seller can terminate the offer? Does it simply mean the seller cannot enforce the offer against the buyer because the contingency was not fulfilled but the buyer may still choose to go forward (the result of the current language)? There also is a statement the buyer may unilaterally waive the contingency as this has been a point of discussion for some.

The DSPS Committee proposed the following:

**CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's property located at \_\_\_\_\_, no later than \_\_\_\_\_ (the deadline). Buyer may proceed to closing without satisfaction of this contingency, and may waive this contingency unilaterally, in writing, at any time upon written notice delivered to Seller. If Buyer sells Buyer's property Buyer shall deliver written notice to Seller indicating the contingency is satisfied. But if this contingency is not otherwise timely satisfied or waived by the deadline, Seller may deliver a notice of termination to Buyer, rendering this Offer null and void, except that Buyer may elect to proceed with this Offer if Buyer delivers to Seller a written notice waiving this contingency within \_\_\_\_ hours after delivery of Seller's notice.

The WRA Forms Committee reviewed the above rough draft of the Closing of Buyer's Property Contingency and proposed the following modification to add a requirement for proof of funds if a buyer is going to be allowed to unilaterally waive. Otherwise the contingency has little meaning in the opinion of the WRA Forms Committee.

**CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's property located at \_\_\_\_\_, no later than \_\_\_\_\_ (the deadline). Buyer may proceed to closing without satisfaction of this contingency, and may waive this contingency unilaterally, in writing, at any time upon written notice delivered to Seller accompanied by reasonable written verification from a financial institution or third party in control of Buyer's funds that Buyer has, at the time of verification, sufficient funds to close. If Buyer sells Buyer's property Buyer shall deliver written notice to Seller indicating the contingency is satisfied. But if this contingency is not otherwise timely satisfied or waived by the deadline, Seller may deliver a notice of termination to Buyer, rendering this Offer null and void, except that Buyer may elect to proceed with this Offer if Buyer delivers to Seller a written notice waiving this contingency within \_\_\_\_ hours after delivery of Seller's notice. If Buyer does not close on the sale of buyer's property on or before the deadline on line xxx, Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to Seller's Actual Receipt of written notice?/proof? from Buyer that the sale of buyer's property has closed.

- The DSPS Committee objected to this proposal because it imposes a condition on the buyer's waiver that likely is not there if they waive in response to a bump notice. Not right to make it harder to waive than it is to respond to a bump notice.
- The WRA Forms Committee believes the Seller has no protection and the contingency is meaningless if the buyer can just waive it away and accordingly wants the language to

remain. The Seller is relying upon the sale of the Buyer's property in order for the offer to come together. The WRA Forms Committee believes the blank does get filled in and if it does not it is an issue for training emphasis.

- The DSPS committee is adamant the language in yellow above is not acceptable and must be deleted (lined out above). They also do not believe the buyer should have to provide notice if the buyer closes on the sale of the buyer's property – that is lined out above. They are not finished with their analysis. They also indicated the last sentence should be more like the seller termination provision, so a rough suggestion of such language was added above in tracking.

Another suggestion to structure the contingency like the appraisal or inspection contingencies. It may be largely ignored in many situations, and the Buyer will effectively waive it if the parties just go to closing. If one party or the other wants to end the offer, the party can give notice to make it null and void, and the Buyer, in effect, has the "right to cure" if the seller is giving notice by submitting evidence of the financial means to purchase if the buyer wants to still go forward.

- The WRA Forms Committee found this acceptable where the provision self-satisfies, Buyer can get out and if the Seller wished to end the deal the Buyer can keep it afloat with proof of funds to close. This version is now in the draft. Is this acceptable or are there other suggestions and ideas?

**CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's property located at \_\_\_\_\_, no later than \_\_\_\_\_ (the deadline). This contingency shall be deemed satisfied unless Buyer or Seller delivers to the other Party notice that the closing of the sale of Buyer's property has not occurred by the deadline and this Offer shall be null and void. If Seller delivers the notice the Offer will not be null and void if ~~unless~~ Buyer delivers to Seller, within \_\_\_\_ days of Seller's delivery of notice, reasonable written verification from a financial institution or third party in control of Buyer's funds that Buyer has, at the time of verification, sufficient funds to close; or has a bridge loan; ~~or~~ \_\_\_\_\_ (something else?).

The DSPS Committee, per the request of one of their Committee members, is also going to look at the **RANW Addendum A provision** for discussion purposes:

**CLOSING OF THE SALE OF BUYER'S PROPERTY CONTINGENCY**  
This Offer is contingent upon the closing of the sale of Buyer's property located at \_\_\_\_\_ no later than \_\_\_\_\_.  
Buyer's property is, or shall be, within seven (7) days of acceptance of this Offer, listed for sale with \_\_\_\_\_ at a list price no greater than \_\_\_\_\_.  
If the closing of the sale of Buyer's property does not occur on or before the closing date for this Offer or if an offer for Buyer's property becomes null and void or terminated for any reason, Buyer shall promptly notify seller in writing, and either Party shall have the right to declare this Offer null and void by written notice thereof delivered to the other Party.

(NOTE: Choose box at line 15 or 28 if box at line 6 is marked).

**ACCEPTED OFFER TO PURCHASE ON BUYER'S PROPERTY AND NO BUMP**

(NOTE: Choose box at line 17 or 18 if box at line 15 is marked)

Seller acknowledges that Buyer has provided Seller a copy of the accepted offer to purchase on Buyer's property.

Buyer shall deliver to Seller, within three (3) days of acceptance of this Offer a copy of the accepted offer to purchase on Buyer's property

(NOTE: Choose one of the two options on line 21 or 23 if box at line 18 is marked)

with written proof that all contingencies are satisfied or removed, and which has a closing date prior to the closing \_\_\_\_\_ in this Offer.

which is subject to financing and \_\_\_\_\_, and which has a closing \_\_\_\_\_ date prior to the closing in this Offer.

If Buyer does not make timely delivery of the accepted offer on Buyer's property that is consistent with the representation(s) above, Seller may terminate this Offer by delivering a written notice of termination to Buyer prior to **(Buyer's delivery) (Seller's Actual Receipt) ~~STRIKE ONE~~** ("Buyer's delivery" if neither is stricken) of a copy of the accepted offer on Buyer's property.

**CONTINUED MARKETING – WITH BUMP CLAUSE**

If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer of such acceptance. This Offer shall be null and void and Buyer shall be deemed conclusively to have forfeited and released any interest in the Property unless Buyer, prior to such notice or within \_\_\_\_\_ hours of Buyer's Actual Receipt of such notice, delivers to Seller one of the following:

(1) written notice from Buyer that Buyer is waiving the Closing of the Sale of Buyer's Property Contingency and all financing contingencies in this Offer, making this a cash offer AND written verification from a financial institution or a third party in control of Buyer's funds that Buyer has sufficient funds necessary to close this transaction which are not contingent on the sale of Buyer's property; or

(2) a copy of the offer to purchase on Buyer's property which has all contingencies, other than any financing contingencies, properly removed or satisfied AND written verification from a financial institution that buyer under said offer to purchase has been pre-approved for financing, which then will modify this Closing of the Sale of Buyer's Property contingency making this Offer subject to the successful closing of the sale of Buyer's property described on lines 7-8 above, on or before the closing date in the Offer.

**NOTE: A financing pre-approval is NOT considered a loan commitment.**

If Buyer accepts a bona fide offer for the purchase of Buyer's property prior to receiving written notice from Seller that Seller has accepted a bona fide secondary offer, Buyer shall promptly notify Seller of such acceptance. Such notification does NOT modify **lines 6-53 of this Addendum** (the Closing of the Sale of Buyer's Property Contingency).

Unless Seller has given Buyer notice of a bona fide secondary offer, once Buyer has an accepted offer on Buyer's property that complies with requirement (2) above, the Buyer shall promptly deliver to Seller a copy of such offer and this Closing of the Sale of Buyer's Property Contingency shall be deemed modified and subject to the closing of the sale of Buyer's property. Other than the deadlines for Buyer Financing Pre-approval letter, if applicable, payment of Earnest Money and \_\_\_\_\_,

all deadlines in this Offer which run from acceptance shall run from the time Buyer has complied with requirement (1) above or from the time Buyer has an accepted offer for the purchase of Buyer's property that complies with requirement (2) above.

**NOTE: Buyer may not unilaterally waive this contingency without compliance with (1) or (2) above.**

- ★ **Looking at this provision caused the DSPS Committee launch into a discussion of when and if the buyer could provide a copy of the offer on the buyer's house to the buyer's seller. What does that mean with regard to the confidentiality protections in license law?**

Does it mean any provisions where you talk about delivering a copy of an offer to some else, even if not a buyer in competition for the buyer's property, would need to include language similar to the following?

Buyer and Seller are aware that Wis. Admin. Code § REEB 24.12 prohibits a licensed real estate agent from disclosing any of the terms of one prospective buyer's offer to purchase, exchange agreement or option contract proposal to any other prospective buyer or to any person with the intent that this information be disclosed to any other prospective buyer. Buyer and Seller understand that delivery of other bona fide offers must be conducted solely between Buyer and Seller or via their attorneys and cannot involve their respective agents.

A proposal was made by the DSPS Forms Council to include standard language in the Distribution of Information provision to have parties automatically authorize agents to provide copies of offers in situations like a Closing of Sale of Buyer's Property Contingency:

DISTRIBUTION OF INFORMATION. Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple listing service sold databases; (iii) provide active listing, pending sale, closed sale and financing concession information and data, and related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers researching comparable sales, market conditions and listings, upon inquiry; and (iv) [distribute copies of this Offer for Seller to obtain an accepted offer on any property Seller intends to purchase, or for either party to meet or satisfy obligations as required under the terms of another offer to purchase.](#)

This causes concerns under the license law provisions concerning confidentiality.

**Wis. Stat. § 452.133 Duties of licensees; prohibitions.**

(1) Duties to all parties to a transaction. A firm providing brokerage services to a party to a transaction owes all of the following duties to the party:

...

(d) The duty to keep confidential any information given to the firm in confidence, or any information obtained by the firm that the firm knows a reasonable person would want to be kept confidential, unless the information must be disclosed by law or [the person whose interests may be adversely affected by the disclosure specifically authorizes the disclosure of particular information.](#) The firm shall continue to keep the information confidential after the transaction is complete and after the firm is no longer providing brokerage services to the party.

(6) Waiver of duties. The [duties imposed by subs. \(1\), \(2\) \(a\), \(am\), \(b\), and \(c\), \(4\), and \(5\)](#) may not be waived.

**Wis. Admin. Code § REEB 24.12 Confidentiality of offers.**

(1) Except as provided in sub. (2), a licensee acting as a principal or an agent in a real estate or business opportunity transaction [shall not disclose any of the terms of one prospective buyer's offer to purchase, exchange agreement or option contract proposal to any other prospective buyer or to any person with the intent that this information be disclosed to any other prospective buyer.](#) Licensees shall encourage all prospective buyers to submit their best offers. A licensee may, but is not required to, disclose information known by the licensee regarding the existence of other offers on the property, the fact that a seller has accepted an offer, that the offer is subject to contingencies and that the offer is subject to a clause requiring removal of certain contingencies upon the occurrence of an event such as receipt, acceptance or conditional acceptance of another offer.

Some [comments by various attorneys](#), who are not all in agreement on all of the following:

The REEB 24.12 rule, in my opinion, is to stop competitive advantage between buyers on the same property. It would prohibit the broker delivery in escalation clause situations because two buyers are attempting to purchase same property. REEB 24 however would have no bearing in the context of a seller asking for the buyer's offer. The seller is seeking information about the strength of their buyer's offer which is subject to sale.

The 452 rule is the one that could be applicable to the buyer's buyer's expectations of confidentiality. As a buyer would I think my offer is going to be shared with my seller's seller? My first thought is no, at least not without my express permission.

Looking at the § 452.133(6) issue, which explicitly states the section on confidentiality can't be waived. Admittedly (6) is expressly contrary to the potential for a person, whose interest may be adversely affected, to authorize disclosure. My read, when there is an offer, if either party expects confidentiality, unless they are both persons whose interest is adversely affected, you can't get a waiver.

I believe the average buyer is under the impression their offer terms are not going to be shared with anyone that may be competing with them. To highlight this fact, I have even been pressed by agents and buyers about having to put information in the financing contingency – they feel that is too personal. Therefore, I'm pretty sure they would argue a reasonable person believes the offer terms are confidential at least when it involves a competitor. This alone – this general impression in Wisconsin that offers are private and confidential -- speaks to a reason why the proposed language may not fly.

Part of the chatter at Forms Council was assuming the terms and conditions of the offer were confidential, that then the buyer's buyer could not give specific authorization because it is not adverse to them to disclose a copy of their offer. That begs the question: if it is not adverse to anyone then is the offer confidential to begin with?

Do we assume that the terms and conditions of an offer always are confidential? Or is there just certain information that is confidential? Or does that depend upon context?

In the listing contract the focus is particular information -- it provides:

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

The following information is required to be disclosed by law:

- 1) Material Adverse Facts, as defined in section 452.01 (5g) of the Wisconsin statutes (see lines 195-198).
- 2) Any facts known by the Firm and its agents that contradict any information included in a written inspection report on the property or real estate that is the subject of the transaction.

To ensure that the Firm and its agents are aware of what specific information you consider confidential, you may list that information below (see lines 147-148). At a later time, you may also provide the Firm with other information you consider to be confidential.

**CONFIDENTIAL INFORMATION:** \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

Assume the whole of the offer is confidential to the buyer's buyer even though the provision in § 452.133 was intended to apply to specific facts or information. Is the buyer's buyer a "person whose interests may be adversely affected by the disclosure" so they can give authorization? We don't really know who a "person whose interests may be adversely affected by the disclosure" is. Would it be anyone with regard to whom the information in the offer is private or confidential? If we assume that all offers are automatically confidential, do we assume that all parties are automatically a "person whose interests may be adversely affected by the disclosure"?

It would seem there has been no definitive interpretation of what the language” **the person whose interests may be adversely affected by the disclosure specifically authorizes the disclosure of particular information**” in § 452.133(1)(d) means and there is a general impression that the public will generally believe the terms of their offers are confidential in Wisconsin, at least to the extent that no one seems secure in relying upon that language as a green light to adopt the proposed additional language for the Distribution of Information provision.

➤ **DSPS Committee: What do you think of all of this?**

\*\*\*\*\*

➤ **Do you want the bump clause to remain part of the Closing of Buyer’s Property Contingency or separate? WRA Forms Committee says separate.**

**Bump Clause – Lines 368-378:**

This shows what this would look like as a separate provision. It allows for a bump that requires removal of various provisions or the meeting of other conditions. It has a default for the timeframe, involves the debate over whether or not actual receipt is a good thing and adds a statement that the seller may unilaterally waive the bump clause provision – for better or for worse – the group may look at this and decide. Also, is it good or bad to have a list of check box items for the buyer to comply with to satisfy the bump? Are the prompts better within the text as in the current version? Which prompts should be included?

**BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer of acceptance that another offer has been accepted. If Buyer does not deliver to Seller written waiver of the Closing of Buyer’s Property Contingency and: **CHECK AND COMPLETE AS APPLICABLE**

Written waiver of Financing Commitment Contingency

Proof of bridge loan financing

Proof of ability to close

\_\_\_\_\_ (other – specify)

**[INSERT OTHER REQUIREMENTS, IF ANY (e.g., PAYMENT OF ADDITIONAL EARNEST MONEY, WAIVER OF ALL CONTINGENCIES, PROVIDING EVIDENCE OF SALE, etc.)]** within \_\_\_\_ hours (“72” if left blank) of Buyer’s Actual Receipt/delivery of said notice, this Offer shall be null and void. Seller may unilaterally waive this Bump clause provision.

The DSPS Forms Committee looked at this and worked on the following rough draft of what they preferred.

➤ **The WRA Forms Committee reviewed the drafts of the Bump Clause, indicated they prefer the check boxes to the blank line with prompts and the following was their proposal:**

**BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer that another offer has been accepted. If Buyer does not deliver to Seller written waiver of the Closing of Buyer’s Property Contingency and **CHECK AND COMPLETE AS APPLICABLE** :

~~Financing Commitment Contingency~~

Proof of bridge loan financing

Proof of ability to close from a financial institution or third party in control of Buyer’s funds which shall provide Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close.

Other: \_\_\_\_\_ [insert other requirements, if any (e.g., payment of additional earnest money, waiver of all contingencies, providing evidence of sale, etc.)]  
within \_\_\_\_\_ hours ("72" if left blank) of Buyer's Actual Receipt of said notice, this Offer shall be null and void.

- **Should this provision be made so that it can be used with other contingencies in addition to the Closing of Buyer's Property Contingency? The WRA Forms Committee says yes. They also suggested moving the time element to the top of the provision so it will not be lost:**

**BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer that another offer has been accepted. If Buyer does not deliver to Seller the documentation listed below within \_\_\_\_\_ hours ("72" if left blank) of Buyer's Actual Receipt of said notice, this Offer shall be null and void. Buyer must deliver the following:

(1) ~~W~~ritten waiver of the Closing of Buyer's Property Contingency and \_\_\_\_\_  
\_\_\_\_\_ (name other contingencies subject to the Bump Clause, if any); and

(2) Any documentation checked below:

Proof of bridge loan financing

Proof of ability to close from a financial institution or third party in control of Buyer's funds which shall provide Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close.

Other: \_\_\_\_\_ [insert other requirements, if any (e.g., payment of additional earnest money, waiver of all contingencies, etc.)]

~~within \_\_\_\_\_ hours ("72" if left blank) of Buyer's Actual Receipt of said notice, this Offer shall be null and void.~~

- **The above language is in the draft. Is this acceptable or are there other suggestions and ideas?**

### **Secondary Offer – Lines 380-386:**

A default time frame was added.

**SECONDARY OFFER:** This Offer is secondary to a prior accepted offer. This Offer shall become primary upon delivery of written notice to Buyer that this Offer is primary. Unless otherwise provided, Seller is not obligated to give Buyer notice prior to any deadline, nor is any particular secondary buyer given the right to be made primary ahead of other secondary buyers. Buyer may declare this Offer null and void by delivering written notice of withdrawal to Seller prior to delivery of Seller's notice that this Offer is primary. Buyer may not deliver notice of withdrawal earlier than \_\_\_\_\_ **days ("five seven" if left blank)** after acceptance of this Offer. All other Offer deadlines which are run from acceptance shall run from the time this Offer becomes primary.

### **Priority Over All Other Secondary Offers**

Buyer is aware this is a secondary offer. In the event the primary buyer cannot meet the offer terms, and upon written notice from Seller to Buyer hereunder, this Offer shall become the primary offer. Seller agrees not to grant any extensions or modifications to primary buyer after acceptance of this Offer. Seller shall not have the right to consider this secondary offer subordinate to any other secondary offer. Buyer may declare this Offer null and void by delivering written notice of withdrawal to Seller at any time prior to delivery of Seller's notice this Offer is primary. Buyer may not deliver notice of withdrawal earlier than \_\_\_\_\_ days ("10" if left blank) after acceptance of this Offer. Offer deadlines, other than deadlines in this secondary offer provision and for payment of earnest money, measured from acceptance shall be measured from the time this Offer becomes primary.

- **The DSPS Forms Committee was fine with the existing language shown first above with the five-day default added. The WRA Forms Committee prefers a seven-day default. Is this acceptable? 5 days versus 7 days for the default is the remaining issue.**

**Title Evidence section – Lines 394-431:**

First of all, the language highlighted in yellow was been referred to the smart title attorneys with the Wisconsin Land Title Association.

**TITLE EVIDENCE**

Lines 395-407:

■ **CONVEYANCE OF TITLE: Upon payment of the purchase price, Seller shall convey the Property by warranty deed (trustee’s deed if Seller is a trust, personal representative’s deed if Seller is an estate or other conveyance as provided herein), free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, present uses of the Property in violation of the foregoing disclosed in Seller’s Real Estate Condition Report and in this Offer [this issue has been referred to the Wisconsin Land title Association and all of their smart attorneys and they will get back to us with a recommendation], general taxes levied in the year of closing and \_\_\_\_\_**

\_\_\_\_\_ (insert other allowable exceptions from title, if any) which constitutes merchantable title for purposes of this transaction. Seller shall complete and execute the documents necessary to record the conveyance at Seller’s cost and pay the Wisconsin Real Estate Transfer Fee.

A representative of Chicago Title mentioned a potential problem she has run across when a certain attorney in town drafts a deed and includes a “reference” to the Condition Report, with it never to be fully explained going forward, but will be there recorded on record forever. The language is the last part “...present uses of the Property in violation of the foregoing disclosed in the Seller’s Real Estate Condition Report and in this Offer...”

**The Wisconsin Land Title Association has looked at this issue and does not recommend any modifications to the current language or would be amenable to returning to the 1999 version of this section. The 1999 language is shown in tracking here in tracking:**

Upon payment of the purchase price, Seller shall convey the Property by warranty deed (trustee’s deed if Seller is a trust, personal representative’s deed if Seller is an estate or other conveyance as provided herein), free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, ~~present uses of the Property in violation of the foregoing disclosed in Seller’s Real Estate Condition Report and in this Offer~~, general taxes levied in the year of closing and \_\_\_\_\_

~~(insert other allowable exceptions from title, if any provided none of the foregoing prohibit present use of the Property)~~, which constitutes merchantable title for purposes of this transaction.

- ★ This takes out the reference to the RECR and by doing so opens the door to possible lawsuits based upon the seller’s warranty of title, which might rarely occur when other theories of redress are not available or less profitable.

In the older (1999) listing contract, the offer to purchase and the deed, the seller guarantees (warrants) that the title will be transferred free and clear of liens and encumbrances except for (paraphrasing) local ordinances, building codes and subdivision restrictions, which do not prohibit the current use of the property. If the use of the property, like an illegal bedroom, violates one of these then it would violate the Conveyance of Title section: "Upon payment of the purchase price, Seller shall convey the Property by warranty deed(...) free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, general taxes levied in the year of closing and \_\_\_\_\_ (provided none of the foregoing prohibit present use of the Property), which constitutes merchantable title ...."

If a seller added an illegal bedroom in the attic, the seller's warranty will arguably be violated because the current use of the property (a bedroom in the attic) is prohibited under the local building code. The present use of the bedroom is illegal, so it is not an exception to the warranty of title because the building code does prohibit the present use of the property. Because of that the addition was made to the list of exceptions for "present uses of the Property in violation of the foregoing disclosed in Seller's Real Estate Condition Report and in this Offer." The problem is that neither the RECR nor the Offer are part of the chain of title, so this becomes meaningless once you get past the first transaction.

- **The WRA Forms Committee said to leave this Conveyance of Title provision as it is now. Are there other suggestions and ideas?**

The WLTA suggests the following modifications for lines 410-414:

- **GAP ENDORSEMENT:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's)(Buyer's) ~~STRIKE ONE~~ ("Seller's" if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after the ~~effective-commitment~~ date of the title insurance commitment and before the deed is recorded, subject to the title insurance policy conditions, exclusions and exceptions, provided the title company will issue the endorsement coverage. If a gap endorsement or equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines xxx-xxx).

- **The WRA Forms Committee agrees to these changes. Are there other suggestions and ideas?**

The WB-11 and the WB-14 Residential Condominium offers have the title commitment delivery time frame at the end of the process immediately before closing which may not allow any time to point out and address title concerns and may delay closing or force decisions the buyer and/or title company would not otherwise make. The following looks to provide a choice of timing for delivery of the title commitment. It also looks to place a deadline on the buyer's objections to title.

Lines 418-431: Timing for delivery of title commitment and objections

- ~~PROVISION-DELIVERY OF MERCHANTABLE TITLE:~~ For purposes of closing, title evidence shall be acceptable if the required title insurance commitment is delivered to Buyer's attorney or Buyer no later than \_\_\_\_\_ days ("15" if left blank) (after acceptance)(prior to closing) [STRIKE ONE] ("after acceptance" if neither is stricken), ~~losing~~, showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines ~~326-335xxx-xxx~~, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.

- **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title by the time set for closing within five days of delivery of the title commitment to Buyer or Buyer's attorney. In such event, Seller shall have a reasonable time, but not exceeding 15-\_\_\_\_ days

("five" if left blank) from Buyer's delivery of the notice stating title objections, to remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event that Seller is unable to remove said objections, Buyer shall have five days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give merchantable title to Buyer.

The DSPS Forms Committee reviewed and discussed these provisions and made the following changes making it so the title is provided a short time before closing and any objections to title may bleed over the closing date and likely require extension of closing:

■ ~~DELIVERY PROVISION OF MERCHANTABLE TITLE: For purposes of closing, title evidence shall be acceptable if~~ the required title insurance commitment shall be delivered to Buyer's attorney or Buyer ~~no later than \_\_\_\_\_ days ("15" if left blank) (after acceptance)(prior to closing) [STRIKE ONE] ("after acceptance" if neither is stricken), not less than 5 business days before closing, not less than 5 business days before closing,~~ showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines ~~326-335xxx-xxx~~, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.

■ ~~TITLE NOT ACCEPTABLE FOR CLOSING: If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title within five days of delivery of the title commitment to Buyer or Buyer's attorney by the time set for closing.~~ In such event, Seller shall have a reasonable time, but not exceeding ~~15~~ days ("five" if left blank) from Buyer's delivery of the notice stating title objections, to remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event that Seller is unable to remove said objections, Buyer shall have five days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give merchantable title to Buyer.

➤ **Does this work or are there other suggestions and ideas? The WRA Forms Committee agrees with the DELIVERY OF MERCHANTABLE TITLE section changes.**

➤ **The WRA Forms Committee believes the TITLE NOT ACCEPTABLE FOR CLOSING should be left as it is in the existing WB-11 because the time frames are too short for resolving title objections. That language is as follows:**

■ ~~TITLE NOT ACCEPTABLE FOR CLOSING: If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title by the time set for closing. In such event, Seller shall have a reasonable time, but not exceeding 15 days, to remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event that Seller is unable to remove said objections, Buyer shall have 5 days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give merchantable title to Buyer.~~

➤ **Does this work or are there other suggestions and ideas?**

### **Special Assessments/Other Expenses: Lines 432-441:**

The idea here is to define what "levied" means. Here is the general statute on the subject. Note there are other statutes for specific circumstances that may give a slightly different result but this covers the majority:

**Wis. Stat. § 66.0703 Special assessments, generally.**

(8)(a) After the hearing upon any proposed work or improvement, the governing body may approve, disapprove or modify, or it may rerefer the report prepared under subs. (4) and (5) to the designated officer or employee with directions to change the plans and specifications and to accomplish a fair and equitable assessment.

(b) If an assessment of benefits is made against any property and an award of compensation or damages is made in favor of the same property, the governing body shall assess against or award in favor of the property only the difference between the assessment of benefits and the award of damages or compensation.

(c) When the governing body finally determines to proceed with the work or improvement, it shall approve the plans and specifications and adopt a resolution directing that the work or improvement be carried out and paid for in accordance with the report as finally approved.

(d) The city, town or village clerk shall publish the final resolution as a class 1 notice, under ch. 985, in the assessment district and a copy of the resolution shall be mailed to every interested person whose post-office address is known, or can be ascertained with reasonable diligence.

(e) When the final resolution is published, all work or improvements described in the resolution and all awards, compensations and assessments arising from the resolution are then authorized and made, subject to the right of appeal under sub. (12).

■ **SPECIAL ASSESSMENTS/OTHER EXPENSES:** Special assessments, if any, levied or for work actually commenced prior to the date [stated on line 1](#) shall be paid by Seller no later than closing. All other special assessments shall be paid by Buyer. [“Levied” means the local municipal governing body has passed-adopted and published a final resolution describing the planned improvements and the assessment of benefits.](#)

➤ **Does this work or are there other suggestions and ideas? The WRA Forms Committee is agreeable to this language.**

An alternative provision:

■ **SPECIAL ASSESSMENTS/OTHER EXPENSES:** Seller has disclosed the following special assessment(s) that has been published by the local municipal governing body and sent to all interested persons: \_\_\_\_\_

Buyer has contacted city, county, and other local municipal governing bodies with the power to levy special assessments on the property and is aware of the following current or pending special assessments: \_\_\_\_\_

(Buyer)(Seller) [STRIKE ONE] (“Seller” if neither is stricken) shall pay for current or pending special assessments. If Seller is to pay for current or pending special assessments, Seller shall pay prior to closing. If Buyer is to pay for current or pending special assessments, Buyer may elect to pay in a lump sum when final bills are distributed or on an installment bases if permitted by the local municipal governing body responsible for the special assessment.

➤ **Does this work or are there other suggestions and ideas? The WRA Forms Committee prefers the language above and shown in the draft.**

## **Earnest Money Disbursement – Lines 442-467:**

### **EARNEST MONEY**

■ **HELD BY:** Unless otherwise agreed, earnest money shall be [mailed or delivered in accordance with lines 10-132](#) and held in the trust account of the listing [Firm](#) ([trust account of Buyer's agent's Firm](#) if Property is not listed, Seller's account if no [Firm](#) is involved [or the account of thea third party as-designated on line 12](#)), until applied to the purchase price or otherwise disbursed as provided in the Offer.

--OR--

■ **HELD BY:** Unless otherwise agreed, earnest money shall be mailed or delivered in accordance with lines 10-13 and held in the trust account of the ~~listing Firm (trust account of Buyer's agent's Firm if Property is not listed, Seller's account if no Firm is involved or the account of the third party designated party identified~~ on lines 12-13, until applied to the purchase price or otherwise disbursed as provided in the Offer.

➤ **Which of the above is preferred for the HELD BY provision? The WRA Forms Committee prefers the second option above for the HELD BY subsection.**

Lines 10-13 state:

■ EARNEST MONEY of \$ \_\_\_\_\_ accompanies this Offer and earnest money of \$ \_\_\_\_\_ will be mailed, or commercially or personally delivered within \_\_\_\_\_ days ("five" if left blank) of acceptance to (listing Firm) (Buyer agent's Firm) (third party identified as \_\_\_\_\_) **STRIKE THOSE NOT APPLICABLE** (listing Firm if none chosen; if no listing Firm, then Buyer agent's Firm; if no firm then Seller).

**CAUTION: Should persons other than a Firm hold earnest money, lines xxx-xxx below do not apply. An escrow agreement should be drafted by the Parties or an attorney. If someone other than Buyer makes payment of pays earnest money, consider a special disbursement agreement.**

➤ **The WRA Forms Committee agree to the CAUTION language above, and the changes shown below in tracking clarifying the offer language for earnest money disbursement apply only if the money is held by a Firm.**

■ **DISBURSEMENT IF EARNEST MONEY HELD BY A FIRM:** If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after clearance from payer's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been delivered to the Firm holding the earnest money within 60 days after the date set for closing, that Firm may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; or (4) any other disbursement required or allowed by law. The Firm may retain legal services to direct disbursement per (1) or to file an interpleader action per (2) and the Firm may deduct from the earnest money any costs and reasonable attorneys' fees, not to exceed \$750, prior to disbursement.

■ **LEGAL RIGHTS/ACTION:** The Firm's disbursement of earnest money does not determine the legal rights of the Parties in relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by the Firm holding the earnest money. At least 30 days prior to disbursement per (1) or (4) above, the Firm shall send Buyer and Seller notice of the disbursement by certified mail. If Buyer or Seller disagree with the Firm's proposed disbursement, a lawsuit may be filed to obtain a court order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property with one-to-four dwelling units and certain other earnest money disputes. Buyer and Seller should consider consulting attorneys regarding their legal rights under this Offer in case of a dispute. Both Parties agree to hold the Firm harmless from any liability for good faith disbursement of earnest money in accordance with this Offer or applicable Department of Safety and Professional Services regulations concerning earnest money. See Wis. Admin. Code Ch. REEB 18.

➤ **The money that may be spent for an attorney is increased to \$750 – should it be more? The WRA Forms Committee said to use a blank line with a default of \$500.**

the Firm may deduct from the earnest money any costs and reasonable attorneys' fees, not to exceed \$750 ("500" if no entry), prior to disbursement.

- Also, can a firm that has not initiated a small claims interpleader action or has not retained an attorney for a legal opinion still use the \$500 for the legal services involved if named in a small claims action between the parties? The WRA Forms Committee said no.

The provisions for earnest money disbursement in the WB-11 do not match with the provisions of Wis. Admin. Code § REEB 18.09:

#### **Disbursement of trust funds.**

(1) Proper disbursement. A firm who disburses trust funds from the firm's real estate trust account under any of the following circumstances shall not be deemed to have violated s. 452.14 (3) (i), Stats.:

(a) To the payer upon the rejection, expiration or withdrawal prior to binding acceptance of an offer to purchase, lease, exchange agreement or option on real estate or a business opportunity.

(b) As directed in a written earnest money disbursement agreement signed by all parties having an interest in the trust funds. For the purposes of this subsection, a closing statement is a written earnest money disbursement agreement.

(c) To a court having jurisdiction over a civil action involving all parties having an interest in the trust funds.

(d) As directed by order of a court.

(e) Upon a good faith decision based upon advice of an attorney not representing any party to the contract.

(f) Upon authorization granted within the contract. **THIS IS NOT INCLUDED IN THE OFFER**

(g) As otherwise provided by law.

(2) Notification of disbursement. Prior to making a disbursement of trust funds under sub. (1) (a) where the firm has knowledge that not all parties agree that the rejection or withdrawal occurred prior to binding acceptance, and prior to making a disbursement under sub. (1) (e), (f), and (g) where the firm has knowledge that either party disagrees with the disbursement, the firm shall attempt to notify all parties in writing of the intent to disburse. The notice shall be delivered by certified mail to the parties' last known addresses and shall state to whom and when the disbursement will be made. The disbursement may not occur until 30 days after the date on which the notice is sent.

Should these be made to match better? Note that according to the rules there is no 60-day waiting period before a firm holding the money can pursue items (1) – (4) as now listed in the WB-11. Technically speaking, something written in a contract between the seller and the buyer does not control the behavior of a firm. The firm needs to comply with statutes and the rules. The 60-day waiting period is a fiction and not binding on the firms holding earnest money although we all behave like that controls.

Just because the parties have these provisions in the offer does not control the legal options the firms have in § REEB 18.09 or mean that the firms have to wait 60 days before pursuing the legal safe harbors in § REEB 18.09 – they don't need the parties' permission before pursuing those safe harbors.

The listing contract says the listing firm is to comply with applicable license law:

**EARNEST MONEY** If the Firm holds trust funds in connection with the transaction, they shall be retained by the Firm in the Firm's trust account. The Firm may refuse to hold earnest money or other trust funds. Should the Firm hold the earnest money, the Firm shall hold and disburse earnest money funds in accordance with Wis. Stat. Ch. 452 and Wis. Admin. Code Ch. REEB 18. If the transaction

fails to close and the Seller requests and receives the earnest money as the total liquidated damages, then upon disbursement to Seller, the earnest money shall be paid first to reimburse the Firm for cash advances made by the Firm on behalf of Seller and one half of the balance, but not in excess of the agreed commission, shall be paid to the Firm as full commission in connection with said purchase transaction and the balance shall belong to Seller. This payment to the Firm shall not terminate this Listing.

In other words, it directs the listing firm to disburse in accordance with license law – nowhere is the 60-day waiting period to be found.

The following draft removes the 60-day waiting period and incorporates in the safe harbor for a disbursement authorization within the Offer.

■ **DISBURSEMENT IF EARNEST MONEY HELD BY A FIRM**: If negotiations do not result in an accepted offer and the earnest money is held by a firm, the earnest money shall be promptly disbursed (after clearance from payer's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. ~~If said disbursement agreement has not been delivered to~~ Alternately the Firm holding the earnest money within 60 days after the date set for closing, that Firm may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; ~~or (4) upon authorization granted within this Offer, or (5) any other disbursement as otherwise required or allowed provided~~ by law. The Firm may retain legal services to direct disbursement per (1) or to file an interpleader action ~~per (2) and~~ the Firm may deduct from the earnest money any costs and reasonable attorneys' fees, not to exceed ~~\$750~~ ("500" if no entry), prior to disbursement.

■ **LEGAL RIGHTS/ACTION**: The Firm's disbursement of earnest money does not determine the legal rights of the Parties in relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by the Firm holding the earnest money. At least 30 days prior to disbursement per (1), ~~or (4) or (5)~~ above, where the Firm has knowledge that either Party disagrees with the disbursement, the Firm shall send Buyer and Seller written notice of the intent to disbursement by certified mail. If Buyer or Seller disagree with the Firm's proposed disbursement, a lawsuit may be filed to obtain a court order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property with one-to-four dwelling units ~~and certain other earnest money disputes~~. Buyer and Seller should consider consulting attorneys regarding their legal rights under this Offer in case of a dispute. Both Parties agree to hold the Firm harmless from any liability for good faith disbursement of earnest money in accordance with this Offer or applicable Department of Safety and Professional Services regulations concerning earnest money. See Wis. Admin. Code Ch. REEB 18.

- **Do we like the revision removing the 60-day delay or should we just leave it in although it is not legally binding? Other alternatives? Although some were in favor of removing the artificial time frame the WRA Forms Committee came to the conclusion they would prefer a 30-day fiction to encourage the parties to resolve their differences on their own, but 60 days is too long to wait.**
- **Do we like the addition of the safe harbor for written authorization within the Offer? Yes, it applies in instances like with an FHA or VA addendum.**
- **The following is the DISBURSEMENT IF EARNEST MONEY HELD BY A FIRM section approved by the WRA forms Committee on June 6:**

■ DISBURSEMENT IF EARNEST MONEY HELD BY A FIRM: If negotiations do not result in an accepted offer and the earnest money is held by a Firm, the earnest money shall be promptly disbursed (after clearance from payer's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been delivered to the Firm holding the earnest money within ~~60-30~~ days after the date set for closing, that Firm may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; ~~or (4) upon authorization granted within this Offer; or (5) any other disbursement as otherwise required or allowed provided~~ by law. The Firm may retain legal services to direct disbursement per (1) or to file an interpleader action per (2) and the Firm may deduct from the earnest money any costs and reasonable attorneys' fees, not to exceed \$        ("\$500" if no entry), prior to disbursement.

■ LEGAL RIGHTS/ACTION: The Firm's disbursement of earnest money does not determine the legal rights of the Parties in relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by the Firm holding the earnest money. At least 30 days prior to disbursement per (1), ~~or (4)~~, or (5) above, where the Firm has knowledge that either Party disagrees with the disbursement, the Firm shall send Buyer and Seller written notice of the intent to disbursement by certified mail. If Buyer or Seller disagree with the Firm's proposed disbursement, a lawsuit may be filed to obtain a court order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property with one-to-four dwelling units ~~and certain other earnest money disputes~~. Buyer and Seller should consider consulting attorneys regarding their legal rights under this Offer in case of a dispute. Both Parties agree to hold the Firm harmless from any liability for good faith disbursement of earnest money in accordance with this Offer or applicable Department of Safety and Professional Services regulations concerning earnest money. See Wis. Admin. Code Ch. REEB 18.

Another proposed suggestion submitted to the WRA:

If this Offer does not close due to a contingency that has not been satisfied, the earnest money shall be returned to the Party whose contingency has not been satisfied within 10 days of notice of termination if the other Party does not object. If for any other reason this offer does not close, the earnest money shall be returned according to the written disbursement agreement ....

- **How to tell who the contingency is for? What if no notice of termination? Inspection? The WRA Forms Committee decided to pass on this idea.**

Another similar proposal:

In the event this Offer is terminated by Buyer pursuant to a contingency in this Offer, the earnest money shall be returned to Buyer if Seller does not object within 10 days of delivery of the notice terminating the Offer.

- **Are these acceptable? Other ideas? The WRA Forms Committee decided to pass on this idea.**

### **Inspections and Testing – Lines 476-490:**

- **Please indicate what, if any, changes you believe should be made.**

**INSPECTIONS AND TESTING** Buyer may only conduct inspections or tests if specific contingencies are included as a part of this Offer. An "inspection" is defined as an observation of the Property, which does not include an appraisal or testing of the Property, other than testing for leaking carbon monoxide, or testing for

leaking LP gas or natural gas used as a fuel source, which are hereby authorized. A “test” is defined as the taking of samples of materials such as soils, water, air or building materials from the Property and the laboratory or other analysis of these materials. Seller agrees to allow Buyer’s inspectors, testers and appraisers reasonable access to the Property upon advance notice, if necessary to satisfy the contingencies in this Offer. Buyer and licensees may be present at all inspections and testing. Except as otherwise provided, Seller’s authorization for inspections does not authorize Buyer to conduct testing of the Property.

**NOTE: Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose of the test, (e.g., to determine if environmental contamination is present), any limitations on Buyer's testing and any other material terms of the contingency.**

Buyer agrees to promptly restore the Property to its original condition after Buyer’s inspections and testing are completed unless otherwise agreed to with Seller. Buyer agrees to promptly provide copies of all inspection and testing reports to Seller within \_\_\_ days (“four” if left blank) of receipt of each report. Seller acknowledges that certain inspections or tests may detect environmental pollution which may be required to be reported to the Wisconsin Department of Natural Resources.

The WRA Forms Committee discussed the definition of “test” included in the language above and in **yellow** highlights. The comment was to keep the definition and enforce it. If moisture meters are inspections and not tests, are they accurately reflected on inspection reports? That may be a concern to be addressed with the home inspectors.

From Hottips: The difficulty in certain transactions arises when a home inspector proposes to investigate issues such as lead-based paint (LBP) or moisture content. These investigations may be inspections or tests depending on the methodology used. An XRF machine will determine if there is LBP in a property but it is an inspection because there is no sample taken to arrive at the results. On the other hand, taking paint or dust samples and having them analyzed in a lab would be a test and would require testing authorization. Moisture level investigations will ordinarily be an inspection. Like an XRF machine, a moisture meter takes an electronic reading of the level of moisture that may be present. Generally, no sample is taken and therefore the use of the moisture meter would appear to be authorized under the WB-11’s inspection contingency.

- **Are these acceptable? Other ideas? The WRA Forms Committee likes the existing definition of test.**
- **Do we like the timeframe for the provision of inspection reports? No the WRA Forms Committee says to take the time frame out and leave it as -- promptly**

There has been a request from a member who believes there is a contradiction in language between the listing and the offer regarding a buyer’s agent’s responsibility to attend a home inspection.

Listing contract line: 260-261 “ ...and that buyers OR licensees may be present at all inspections and testing....

Offer to purchase -- see **yellow** highlights above: Buyer AND licensees may be present at all inspections and testing...”

He believes that the language of the listing implies that a buyer’s agent does NOT have to accompany buyer on home inspection, but language of offer implies that either both buyer AND licensee will attend or neither buyer nor licensee will attend – its either buyer and their agent + home inspector or home inspector solo. Sounds like we need our grammar experts!

- **Which is right? What language should be used? Other ideas? The WRA Forms Committee approves the existing language and did not feel any change was necessary.**

### **Inspection Contingency – Lines 487-510:**

Some proposed changes:

**INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines xxx-xxx). This Offer is contingent upon an independent Wisconsin registered home inspector performing a home inspection of the Property after the date on line 1 of this Offer which discloses no Defects. This Offer is further contingent upon a qualified independent inspector or independent qualified third party performing an inspection of \_\_\_\_\_

\_\_\_\_\_ (list any Property component(s) to be separately inspected, e.g., swimming pool, roof, foundation, chimney, etc.) which discloses no Defects. Buyer shall order the inspection(s) and be responsible for all costs of inspection(s). Buyer may have follow-up inspections recommended in a written report resulting from an authorized inspection, provided they occur prior to the deadline specified at line xxx. Inspection(s) shall be performed by a qualified independent inspector or independent qualified third party.

**CAUTION: Buyer should provide sufficient time for the home inspection and/or any specialized inspection(s), as well as any follow-up inspection(s).**

This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days (“20” “15?” if left blank) of acceptance, delivers to Seller a copy of the written inspection report(s) dated after the date on line 1 of this Offer and a written notice listing the Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

**CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.**

For the purposes of this contingency, Defects (see lines xxx-xxx) do not include structural, mechanical or other conditions the nature and extent of which Buyer had actual knowledge or written notice before signing this Offer (lines xxx-xxx).

■ **RIGHT TO CURE:** Seller (shall)(shall not) ~~STRIKE ONE~~ (“shall” if neither is stricken) have a right to cure the Defects. If Seller has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within seven (five??) days of Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects; (2) curing the Defects in a good and workmanlike manner; and (3) delivering to Buyer a written report detailing the work done at least three days prior to closing. This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and: (1) Seller does not have a right to cure or (2) Seller has a right to cure but: (a) Seller delivers written notice that Seller will not cure or (b) Seller does not timely deliver the written notice of election to cure.

Note the insertion of the word “independent” on line 481.

- **The WRA Forms Committee had some discussion about “independent.” They do not want it included with regard to the home inspectors.**

Note the default timeframe of 20/15 days on line 491.

- **The WRA Forms Committee believes there should be a default of 15 days.**

There also is a clarification to the time frame on line 500 – at least three days prior to closing.

- **Is that a good clarification? Other ideas? The WRA Forms Committee prefers “no later than three days prior to closing.”**

**Suggestion:** should the timeframe for the Seller's response to the notice of defects be less than 10 days? The draft at line 498 says seven days. Should it be shorter, for instance, five days? Or should there be a blank line for the number of days so the parties may decide for themselves?

- **What language should be used? Other ideas? The WRA Forms Committee prefers a blank with a ten-day default to maintain consistency with the current offer for those who overlook the blank.**

The draft also shows in tracking (yellow highlights above) a requirement that the inspection must be performed, and the inspection reports used to trigger the notice of defects must be new reports dated after the date the offer was accepted. This is intended to disallow the use of prior inspection reports for this purpose. There have been some buyers trying to do this.

- **Is this a good idea? Yes, per the WRA Forms Committee. Other ideas?**

### ***Interconnection between home inspection and testing- one possibility***

Some brokers have been using provisions providing that if the inspection report recommends tests – similar to the way that it sometimes recommends further inspections – and if there is a testing contingency in the offer that refers to the inspection report by saying that tests recommended by the home inspection report are included in the testing contingency. Would that be desirable? If there is a testing contingency in the offer the testing contingency could be completed, for example, as shown below.

**August 9: The WRA Forms Committee discussed this and felt that any such provisions should be countered out.** The seller should have the ability to consider and negotiate appropriate parameters for testing and restoration if they will allow testing – this should be done in an amendment if the testing was not agreed to in the original offer.

- **Does the DSPS Committee agree or are there other suggestions and ideas?**

**TESTING CONTINGENCY:** This Offer is contingent upon (Buyer obtaining)(Seller providing) [STRIKE ONE] (“Buyer obtaining” if neither is stricken) a current written report from a qualified independent expert(s) documenting the results of the following test(s) conducted pursuant to applicable government or industry protocols and standards [indicate substances or compounds to be tested, e.g., asbestos (see <http://www2.epa.gov/asbestos/protect-your-family>), etc.]: substance(s) recommended for testing in the inspection report provided per lines xxx-xxx of the Offer \_\_\_\_\_, no later than \_\_\_\_ days (after acceptance)(prior to closing) STRIKE ONE (“prior to closing” if neither is stricken), at (Buyer's) (Seller's) STRIKE ONE (“Buyer’s” if neither is stricken) expense. Specify any protocols, testing contractors, labs, standards/levels constituting a Defect, financial limits, acceptable repair methodology, etc.: \_\_\_\_\_. Seller (shall)(shall not) STRIKE ONE (“shall” if neither is stricken) have the right to cure. See lines 62-71 regarding the Right to Cure. With regard to testing recommended in the inspection report per lines xxx-xxx of this Offer, the deadline for performance of the testing shall be extended to the deadline per line xxx of that contingency (deadline for follow-up inspections).

- **The WRA Forms Committee says no to this.**

Then the Inspection Contingency could be modified by adding:

**INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 395-409). This Offer is contingent upon an independent Wisconsin registered home inspector performing a home inspection of the Property which discloses no Defects. This Offer is further contingent upon a qualified independent inspector or independent qualified third party performing an inspection of

\_\_\_\_\_ (list any Property

component(s) to be separately inspected, e.g., swimming pool, roof, foundation, chimney, etc.) which discloses no Defects. Buyer shall order the inspection(s) and be responsible for all costs of inspection(s). Buyer may have follow-up inspections recommended in a written report resulting from an authorized inspection, provided they occur prior to the deadline specified at line xxx. Inspection(s) shall be performed by a qualified independent inspector or independent qualified third party. Buyer may have follow-up testing recommended in a written report resulting from an authorized inspection, provided there is a testing contingency in this Offer, any testing is in accordance with the testing contingency and any testing occurs prior to the deadline specified at line xxx.

➤ **The WRA Forms Committee says no to this.**

***Another consideration for timeframes when there is testing recommended by the inspection report might be to add this:***

**INSPECTION AND TESTING DEADLINE EXTENSIONS:** The Parties agree to extend the deadlines for any Inspection Contingency and any Testing Contingency in this Offer for any follow-up inspections or testing recommended in a timely written inspection or testing report. The extension shall apply only to follow-up inspections or testing.

➤ **The WRA Forms Committee says no to this. This may go in an addendum if desired.**

***Inspection Contingency Right to Cure suggestion:***

■ **RIGHT TO CURE:** Seller (shall)(shall not) ~~STRIKE ONE~~ (“shall” if neither is stricken) have a right to cure the Defects. If Seller has the right to cure, Seller may satisfy this contingency by: ~~(4)~~ delivering written notice to Buyer within 7 days of Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects by either having the Defects cured in a good and workmanlike manner; at Seller's expense no later than 3 days prior to closing or and (32) delivering to Buyer a written report detailing the work done at least 3 days prior to closing giving Buyer a credit at closing so Buyer, or a contractor or vendor of Buyer's choice, can cure the Defects in a good and workmanlike manner. This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and: (1) Seller does not have a right to cure or (2) Seller has a right to cure but: (a) Seller delivers written notice that Seller will not cure or (b) Seller does not timely deliver the written notice of election to cure.

➤ **The WRA Forms Committee says no to this. Lenders dislike and may disallow loans.**

The “**good and workmanlike manner**” discussion has resurfaced! As you may recall we discussed this at the end of 2017/beginning of 2018 and the following are some of the notes:

One discussion thread was that good and workmanlike would entail: (1) permits must be pulled when required, (2) tradesmen must be properly licensed or credentialed, and (3) they must be independent.

Some discussion of sellers who do some of their own work – buyers think that the sellers will cut corners. But what if the seller is a credentialed contractor? Many believe that nonetheless that the seller must hire qualified contractors.

“**Good and Workmanlike Manner**” means work performed by independent, properly licensed or credentialed contractors in accordance with any applicable permit requirements.

➤ **Do we wish to add this? The WRA Forms Committee says yes, insert in the Inspection Contingency.**

There have been a few suggestions to try to help clarify the Inspection Contingency with clearer formatting – here is one attempt:

**INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines xxx-xxx).

1) This Offer is contingent upon an ~~independent~~ Wisconsin registered home inspector performing a home inspection of the Property after the date on line 1 of this Offer which discloses no Defects.

2) This Offer is further contingent upon a qualified independent inspector or independent qualified third party performing an inspection of \_\_\_\_\_

\_\_\_\_\_ (list any Property component(s) to be separately inspected by a specialist, e.g., swimming pool, roof, foundation, chimney, etc.) which discloses no Defects.

Buyer shall order the inspection(s) and be responsible for all costs of inspection(s).

3) Buyer may have follow-up inspections recommended in a written report resulting from an authorized inspection under 1) or 2) above, provided they occur prior to the deadline specified at line xxx. Follow-up inspection(s) shall be performed by a qualified independent inspector or independent qualified third party.

**CAUTION: Buyer should provide sufficient time for the home inspection and/or any specialized inspection(s), as well as any follow-up inspection(s).**

This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days (“15” if left blank) of acceptance, delivers to Seller a copy of the written inspection report(s) dated after the date on line 1 of this Offer and a written notice listing the Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

For the purposes of this contingency, Defects (~~see lines xxx-xxx~~) do not include structural, mechanical or other conditions the nature and extent of which Buyer had actual knowledge or written notice before signing this Offer. “Defect” means a condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

If Buyer makes timely delivery of the Notice of Defects and written inspection report(s), lines xxx-xxx control.

**CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.**

■ **RIGHT TO CURE:** Seller (shall)(shall not) ~~STRIKE ONE~~ (“shall” if neither is stricken) have a right to cure the Defects.

(a) If Seller has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within ~~seven (five??)~~ (“10” if left blank) days of Buyer’s delivery of the Notice of Defects stating Seller’s election to cure Defects; (2) curing the Defects in a good and workmanlike manner; and (3) delivering to Buyer a written report detailing the work done no later than three days prior to closing. **“Good and Workmanlike Manner” means work performed by independent, properly licensed or credentialed contractors in accordance with any applicable permit requirements.**

This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and: (1) Seller does not have a right to cure or (2) Seller has a right to cure but: (a) Seller delivers written notice that Seller will not cure or (b) Seller does not timely deliver the written notice of election to cure.

(b) If Seller does not have the right to cure, this Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s).

- **What parts are good and what is bad? Will reformatting make this easy for parties to understand? Other ideas? The WRA is satisfied with the above. Some of the language changes are in the draft but not the formatting. Below is what the changes and reformatting would be like without tracking:**

**INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines xxx-xxx).

1) This Offer is contingent upon a Wisconsin registered home inspector performing a home inspection of the Property after the date on line 1 of this Offer which discloses no Defects.

2) This Offer is further contingent upon a qualified independent inspector or independent qualified third party performing an inspection of \_\_\_\_\_

\_\_\_\_\_ (list any Property component(s) to be separately inspected by a specialist, e.g., swimming pool, roof, foundation, chimney, etc.) which discloses no Defects.

Buyer shall order the inspection(s) and be responsible for all costs of inspection(s).

3) Buyer may have follow-up inspections recommended in a written report resulting from an authorized inspection under 1) or 2) above, provided they occur prior to the deadline specified at line xxx. Follow-up inspection(s) shall be performed by a qualified independent inspector or independent qualified third party.

**CAUTION: Buyer should provide sufficient time for the home inspection and/or any specialized inspection(s), as well as any follow-up inspection(s).**

This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days ("15" if left blank) of acceptance, delivers to Seller a copy of the written inspection report(s) dated after the date on line 1 of this Offer and a written notice listing the Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

For the purposes of this contingency, Defects do not include structural, mechanical or other conditions the nature and extent of which Buyer had actual knowledge or written notice before signing this Offer. "Defect" means a condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

If Buyer makes timely delivery of the Notice of Defects and written inspection report(s), lines xxx-xxx control.

**CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.**

■ **RIGHT TO CURE:** Seller (shall)(shall not) ~~STRIKE ONE~~ ("shall" if neither is stricken) have a right to cure the Defects.

(a) If Seller has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within \_\_\_\_\_ ("10" if left blank) days of Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects; (2) curing the Defects in a good and workmanlike manner; and (3) delivering to Buyer a written report detailing the work done no later than three days prior to closing. "Good and Workmanlike Manner" means work performed by independent, properly licensed or credentialed contractors in accordance with any applicable permit requirements.

This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and: (1) Seller does not have a right to cure or

(2) Seller has a right to cure but: (a) Seller delivers written notice that Seller will not cure or (b) Seller does not timely deliver the written notice of election to cure.

(b) If Seller does not have the right to cure, this Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s).

### **General discussion regarding Inspection Contingency:**

Some WRA Forms Committee members talked about a system where there is a notice of defects and then a curative amendment that specifies the details of the cure. If the seller doesn't agree then it is up to the buyer to decide whether the offer ends. This flips or reverses the decision-making power and puts the buyer in power while the seller has more power under the existing offer. The current inspection contingency is a deterrent to buyers to give a notice of defects in the minds of some WRA Forms Committee members.

### **Earnest Money Receipt – Lines 530-531:**

Does this configuration make more sense? Other modifications?

### **License Numbers for RESPA**

Should there be an area where the licensees in the transaction provide their license numbers needed for the RESPA Closing Disclosure? **The WRA Forms Committee says no.**

### **Wisconsin Marital Property Law Disclosure**

Persons in the process of divorce, who are buying a personal residence for themselves without their partner's participation, may not be able to honor their commitment in the end. The Seller has no way of knowing what the buyer is legally able to do. A statement of representation or a statement to provide sufficient proof a legally binding agreement to permit the person to buy without interference from the soon to be ex-spouse would be helpful. Thus, a request has been made of the parties to complete a disclosure just above the signature lines at the end of the offer:

**Wisconsin Marital Property Law Disclosure: I am the Buyer/Seller [STRIKE ONE]. By signing below, I represent that I, along with any other person named as a Buyer/Seller [STRIKE ONE] on this Offer, have the sole authority to commit to this transaction without the approval of any other person or entity. CAUTION: In the event there is more than one Owner of this property, or the property is or will be marital property, the transaction may not be binding without all signatures. Persons who are in the process of divorce should provide evidence of their ability to complete this sale without approval, cooperation, or any other agreement with any other person's.**

**Observation:** Buyers do not need to have both spouses sign an offer as buyers and sellers may not either depending upon management and control powers. Marital property law kicks in with the sellers. The problem may be that a buyer who is getting divorced may have issues purchasing before the divorce is final because the property purchased might become categorized as marital instead of that buyer's individual property. The thought behind the last sentence is appropriate for that circumstance.

OfferWB-11RevisionDPS6-26-19

## Wood, Kimberly - DSPS

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**From:** Jonathan Sayas <Jonathan.Sayas@stewart.com>  
**Sent:** Tuesday, February 12, 2019 5:13 PM  
**To:** Debbi Conrad  
**Cc:** Kate O'Keefe  
**Subject:** WLTA Memo  
**Attachments:** WLTA memo.pdf; ATT00001.txt

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Attorney Conrad –

On behalf of the WLTA please see the attached memo regarding the title provisions of the offer to purchase.

The WLTA would also request that should any FIRPTA provision be inserted into the offer to purchase:

1. That the provision contain a clear representation as to whether the Seller is a non-resident alien, foreign corporation, foreign trust, foreign estate or other foreign entity (as defined in the Internal Revenue Code and Income Tax Regulations).
2. That any Certification of Non-Foreign Status be provided in advance of the deadline for closing.
3. That the provision clarifies a title agent involved in the transaction, is not required to act as a withholding agent for the Buyer, nor is responsible for compliance with any FIRPTA provision.
4. That if the above provisions would **not** be included in the offer to purchase, the WLTA would be agreeable to having no FIRPTA provision in the offer to purchase (status quo), or in the alternative, a very generic warning that the parties may be subject to FIRPTA, and are responsible for compliance with same.

Thank you for considering the feedback from the WLTA.

Jon

**Jonathan M. Sayas**  
Wisconsin Underwriting Counsel

**Stewart Title Guaranty Company**  
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NYSE: STC

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To: Wisconsin Real Estate Contractual Forms Advisory Council

From: WLTA

Date: February 12, 2019

Re: Proposed Revisions to the WB-11 Residential Offer to Purchase form – Title Evidence and other provisions.

The Wisconsin Realtors® Association, in conjunction of the Wisconsin Real Estate Contractual Forms Advisory Council, requested the WLTA to review and give feedback regarding the current Title Evidence provisions contained in the WB-11 Residential Offer to Purchase. Specifically, regarding the following provisions:

325 **TITLE EVIDENCE**

326 ■ **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed  
327 (trustee's deed if Seller is a trust, personal representative's deed if Seller is an estate or other conveyance as  
328 provided herein), free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements  
329 entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use  
330 restrictions and covenants, present uses of the Property in violation of the foregoing disclosed in Seller's Real Estate  
331 Condition Report and in this Offer, general taxes levied in the year of closing and \_\_\_\_\_

332 \_\_\_\_\_  
333 \_\_\_\_\_  
334 \_\_\_\_\_

335 which constitutes merchantable title for purposes of this transaction. Seller shall complete and execute the documents  
336 necessary to record the conveyance at Seller's cost and pay the Wisconsin Real Estate Transfer Fee.

337 **WARNING: Municipal and zoning ordinances, recorded building and use restrictions, covenants and easements may**  
338 **prohibit certain improvements or uses and therefore should be reviewed, particularly if Buyer contemplates making**  
339 **improvements to Property or a use other than the current use.**

340 ■ **TITLE EVIDENCE:** Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of the  
341 purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. Seller shall pay all  
342 costs of providing title evidence to Buyer. Buyer shall pay all costs of providing title evidence required by Buyer's lender.

343 ■ **GAP ENDORSEMENT:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's)(Buyer's)  
344 **STRIKE ONE** ("Seller's" if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after  
345 the effective date of the title insurance commitment and before the deed is recorded, subject to the title insurance policy  
346 exclusions and exceptions, provided the title company will issue the endorsement. If a gap endorsement or equivalent gap  
347 coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 353-359).

348 ■ **PROVISION OF MERCHANTABLE TITLE:** For purposes of closing, title evidence shall be acceptable if the required title  
349 insurance commitment is delivered to Buyer's attorney or Buyer not less than 5 business days before closing, showing title to  
350 the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines 326-335,  
351 subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and  
352 exceptions, as appropriate.

353 ■ **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of  
354 objections to title by the time set for closing. In such event, Seller shall have a reasonable time, but not exceeding 15 days, to  
355 remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event that Seller is  
356 unable to remove said objections, Buyer shall have 5 days from receipt of notice thereof, to deliver written notice waiving the  
357 objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer shall be  
358 null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give  
359 merchantable title to Buyer.

As for the *Conveyance of Title* section (lines 326-339), the WLTA does not make any recommend changes at this time, but would also note, that if the Council would like to return to the title conveyance provisions used in the 1999 version of the offer to purchase, they would be agreeable to same:

*(1999 version of the WB-11 Residential Offer to Purchase)*

187 **TITLE EVIDENCE**

188 ■ **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed (or  
189 other conveyance as provided herein) free and clear of all liens and encumbrances, except: municipal and zoning ordinances  
190 and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building  
191 and use restrictions and covenants, general taxes levied in the year of closing and \_\_\_\_\_ (provided none  
192 \_\_\_\_\_ of the foregoing prohibit present use of the Property), which constitutes merchantable title for purposes of this transaction. Seller  
193 further agrees to complete and execute the documents necessary to record the conveyance. **WARNING: Municipal and zoning**  
194 **ordinances, recorded building and use restrictions, covenants and easements may prohibit certain improvements or uses and therefore**  
195 **should be reviewed, particularly if Buyer contemplates making improvements to Property or a use other than the current use.**  
196

As for the *Title Evidence* section (lines 340-342), the WLTA does not make any recommend changes at this time.

As for the *GAP Endorsement* section (lines 343-347), the WLTA recommends the section be revised to update the vernacular to better reflect current industry terms as follows:

*(Current version)*

343 ■ **GAP ENDORSEMENT:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's)(Buyer's)  
344 ~~STRIKE ONE~~ ("Seller's" if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after  
345 the effective date of the title insurance commitment and before the deed is recorded, subject to the title insurance policy  
346 exclusions and exceptions, provided the title company will issue the endorsement. If a gap endorsement or equivalent gap  
347 coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 353-359).

*(Proposed revision)*

**GAP COVERAGE:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's)(Buyer's) ~~STRIKE ONE~~ ("Seller's" if neither is stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after the commitment date of the title insurance commitment and before the deed is recorded, subject to the title insurance policy conditions, exclusions and exceptions, provided the title company will issue the coverage. If a gap endorsement or equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for closing (See lines XXX-XXX).

As for the *Provision of Merchantable Title* section (lines 348-352) the WLTA does not make any recommend changes at this time.

As for the *Title Not Acceptable for Closing* section (lines 353-359), the WLTA does not make any recommend changes at this time.

Finally, WLTA has previously submitted to the Forms Advisory Council, a memo on June 1, 2018 addressing proposed revisions better defining specifics of how the funds will be transmitted by the Buyer to pay the balance of funds due at closing. A copy of referenced June 1, 2018 memo is attached as Exhibit A. WLTA again requests the Council consider the requests therein.

Respectfully submitted on behalf of the Wisconsin Land Title Association

EXHIBIT A



To: Wisconsin Real Estate Forms Advisory Committee
From: WLTA Members: Cheri Hipenbecker (cah@knightbarry.com), Brad Hoeschen (bhoeschen@oldrepublictitle.com), Lisa Petersen (PetersenL@ctt.com) and Jon Sayas (Jonathan.Sayas@stewart.com)
Date: June 1, 2018
Re: Proposed Revisions to Offer to Purchase forms – Balance of Purchase Price

COMMITTEE MEMBERS: the proposal is to amend the clause "THE BALANCE OF PURCHASE PRICE" which currently appears in all of the various Offers to Purchase forms (residential, commercial, vacant etc...) as follows:

Proposed Change: Revise "THE BALANCE OF PURCHASE PRICE" to read:

- THE BALANCE OF PURCHASE PRICE shall be submitted by (wire transfer) (cashier's check). [STRIKE ONE] ("wire transfer" if neither is stricken). NOTICE: Funds submitted by wire transfer will be available for distribution, including for Seller proceeds, on the day received if all other closing requirements are met. Funds submitted by cashier's check may not be available for distribution, including for Seller proceeds, until up to 7 days after receipt.

Reason for Request: With the rise of wire fraud and with concerns about the cost of sending a wire, some Buyers, real estate agents and lenders are returning to the practice of providing cashier's checks for real estate closings. This places a difficult burden on the settlement companies (the majority of the time being title companies, but in some instances lenders) as most Sellers want all funds, including their proceeds, distributed at closing by wire.

However, the settlement companies should not be funding transactions until they have fully collected funds in their bank accounts, without risk of a fraudulent check. Increasingly the settlement industry is being pressured to wire funds out of a closing when some portion of those funds have been received in the form of a check received the day of closing. If a settlement company wires money out the same day the settlement company deposits the check, thus the check has not yet cleared and the funds are not fully collected, the settlement company is using the money of others held in their trust accounts. The title industry would like to stop this practice.

The best way to remedy this issue is to have the parties to the Offer to Purchase determine what works best for them. If the Seller can wait for proceeds to be delivered (or the real estate agents can wait for commission checks), then using a cashier's check may be acceptable. If wiring of funds from a closing is required because, for example, the Seller is buying their new house the same day or in a few days, then all funds should be wired in. The proposed change to Line 13 allows the parties to determine how the funds from the Buyer will be delivered and then explains the consequences of each decision.

*We are happy to discuss this matter with you further. For additional information, please contact:*

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Wisconsin Land Title Association Legislative Committee  
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414-847-4033

Brad L.F. Hoeschen, Co-Chair  
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414-316-5810