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**VIRTUAL/TELECONFERENCE  
REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL  
4822 Madison Yards Way, Madison  
Contact: Will Johnson (608) 266-2112  
May 30, 2024**

*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 May 2, 2024 (3)**
- C. Reminders – Scheduling Concerns
- D. Introductions, Announcements, and Recognition
- E. Administrative Matters**
  - 1. Department, Staff and Council Updates
  - 2. Real Estate Examining Board Update
- F. Review of Forms That Should Be Revised to Respond to the Settlement Agreement in the Sitzer-Burnett Class-Action Lawsuit – Discussion and Consideration**
  - 1. Settlement Materials from Wisconsin Realtors Association (WRA) (4-22)
  - 2. Suggested Edits from Council Members (23-24)
  - 3. WB Listing Contracts
  - 4. WB Buyer Agency/Tenant Representation Agreement
  - 5. WB Offers to Purchase
- G. Review of Real Estate Contractual Forms for Revision – Discussion and Consideration
- H. Next Steps**
- I. Public Comments**

**ADJOURNMENT**

**NEXT MEETING: JULY 25, 2024**

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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 virtually unless otherwise indicated. In-person meetings are typically conducted at 4822 Madison Yards Way.

Madison, Wisconsin, unless an alternative location is listed on the meeting notice. In order to confirm a meeting or to request a complete copy of the board's agenda, please visit the Department website at <https://dps.wi.gov>. 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. Requests for interpreters for the hard of hearing, or other accommodations, are considered upon request by contacting the Affirmative Action Officer, or reach the Meeting Staff by calling 608-267-7213.

**VIRTUAL/TELECONFERENCE  
REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL  
MEETING MINUTES  
MARCH 7, 2024**

**PRESENT:** Casey Clickner, Debra Conrad, Michael Gordon, Cori Lamont, Sonya Mays, Kim Moermond, Angela Rowland, Jonathan Sayas (*excused at 9:56 a.m.*) (*arrived at 10:12 a.m.*), Thomas Weber Jr., Pamela Widen

**EXCUSED:** Laura Peck

**STAFF:** Will Johnson, Executive Direction; Joseph Ricker, Acting Legal Counsel; Dialah Azam, Board Administration Specialist; and other Department Staff

**CALL TO ORDER**

Sonya Mays, Chairperson, called the meeting to order at 9:32 a.m. A quorum of ten (10) members was confirmed.

**ADOPTION OF AGENDA**

**MOTION:** Michael Gordon moved, seconded by Cori Lamont, to adopt the agenda as published. Motion carried unanimously.

**APPROVAL OF MINUTES FROM MARCH 7, 2024**

**MOTION:** Casey Clickner moved, seconded by Jonathan Sayas, to approve the minutes of March 7, 2024 as published. Motion carried unanimously.

*(Jonathan Sayas excused at 9:56 a.m.)*

*(Jonathan Sayas arrived at 10:12 a.m.)*

**ADJOURNMENT**

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

The meeting adjourned at 12:50 p.m.

**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

1) Name and Title of Person Submitting the Request:  <b>Debbi Conrad, WRA</b>		2) Date When Request Submitted: 5.20.24  Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> <li>▪ 10 work days before the meeting for Medical Board</li> <li>▪ 14 work days before the meeting for all others</li> </ul>	
3) Name of Board, Committee, Council, Sections:  Real Estate Contractual Forms Advisory Council			
4) Meeting Date:  <b>5.30.24</b>	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? <b>Review of Forms That Should Be Revised to Respond to the Settlement Agreement in the Sitzer-Burnett Class-Action Lawsuit – Discussion and Consideration</b> <ol style="list-style-type: none"> <li>1. Settlement Materials from WRA</li> <li>2. WB Listing Contracts</li> <li>3. WB Buyer Agency/Tenant Representation Agreement</li> <li>4. WB Offers to Purchase</li> </ol>	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled?  <input type="checkbox"/> Yes ( <a href="#">Fill out Board Appearance Request</a> ) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: <b>N/A</b>	
10) Describe the issue and action that should be addressed:			
11) <b>Authorization</b>			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	



**To:** DSPS Real Estate Contractual Forms Advisory Council  
**From:** WRA Forms Committee  
**Date:** May 16, 2024  
**Re:** NAR Settlement Agreement Language in WB forms

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On March 15, 2024, the National Association of REALTORS® (NAR) reached a proposed settlement agreement that would end litigation against some defendants relating to a federal antitrust class action lawsuit. The court granted preliminary approval of the settlement on April 23, 2024, and the practice changes in the settlement agreement.

Some of the terms of the settlement impact language in the WB agency agreements and the WB offers as it may relate to offers of compensation. Practice changes required by the Settlement Agreement must be implemented by August 17, 2024.

Notations in **green** in the following refer to page and section number in the NAR Settlement Agreement. We are forwarding the relevant pages of the Settlement Agreement for your reference. We are also forwarding screen shots of slides from the NAR Mid-Year Meeting, and a short memo regarding third-party beneficiary claims to contracts.

## **WB Listing Contracts**

WB-1, lines 17 – 57

**MARKETING** Seller authorizes and the Firm and its agents agree to use reasonable efforts to market the Property. Seller agrees that the Firm and its agents may market Seller’s personal property identified on lines 7-10 during the term of this Listing. The marketing may include: \_\_\_\_\_

\_\_\_\_\_  
 The Firm and its agents may advertise the following special financing and incentives offered by Seller: \_\_\_\_\_

\_\_\_\_\_  
 Seller has a duty to cooperate with the marketing efforts of the Firm and its agents. See lines 251-257 regarding the Firm’s role as marketing agent and Seller’s duty to notify the Firm of any potential buyer known to Seller. Seller agrees that the Firm and its agents may market other properties during the term of this Listing.

**CONCESSIONS TO BUYERS** The Firm and its agents may advertise the following concessions (closing costs, etc.) to buyers: \_\_\_\_\_

**NOTE: Concessions offered in the MLS cannot be limited to or conditioned on the retention of or payment to a cooperating firm, buyer’s firm or other buyer’s representative.**

**COMMISSION** Seller and the Firm agree the Listing Firm’s commission shall be \_\_\_\_\_

\_\_\_\_\_  
 ■ **EARNED:** Seller shall pay the Firm’s commission, which shall be earned, if, during the term of this Listing:  
 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the

.....  
 ■ **DUE AND PAYABLE:** Once earned, the Firm’s commission is due and payable in full at the earlier of closing

or the date set for closing, even if the transaction does not close, unless otherwise agreed in writing.

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

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

**COMPENSATION TO OTHERS** Seller approves and authorizes the Firm to offer compensation to cooperating firms working with buyers such as subagents and buyer's firms. (The Firm) (Seller) **STRIKE ONE** ("The Firm" if neither is stricken) will offer the following compensation to cooperating firms: \_\_\_\_\_

**There is no standard market commission rate. Commissions and types of service may vary by firm. Commissions are not set by law and are fully negotiable. Compensation to others may be offered to firms acting as subagents and firms representing buyers as incentive to participate in the sale of firms' listings through compensation agreements.**

Page 29, 58.viii, ix, & vii; page 30, 58.xiii.

The WRA Forms Committee decided to create a short section where the firm is authorized to advertise concessions for buyers, and to include a NOTE using the Settlement Agreement language since it is an important restriction, even though there are ways to state this more simply and indicate that concessions offered in the MLS cannot have any included or associated buyer firm compensation. This time strict compliance with the Settlement Agreement won out over stating the prohibition in simple, more direct language. Agents would have to learn how to explain this to sellers, that concessions offered in the MLS cannot be an end-around to offer commission to buyers' firms in the MLS after August 17.

The Compensation to Others section is intended to comply with the Settlement Agreement in 58.viii., which provides that REALTORS® and REALTOR® MLS Participants acting for sellers are required to conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that the listing firm or seller will make to another firm, agent, or other representative (e.g., a real estate attorney) acting for buyers; and such disclosure must be in writing, provided in advance of any payment or agreement to pay to another firm acting for buyers, and specify the amount or rate of any such payment. The WRA Forms Committee thought the seller did not need to explicitly approve any compensation that the seller itself offers to cooperating firms as that is self-fulfilling.

In this instance the WRA Forms Committee thought that the NOTE in the prior draft regarding not representing services are free was not needed and could be trained to the limited extent this would present a concern – agents typically do not represent the services of listing firms are free.

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## Written buyer agreements

NAR Settlement FAQs – May 9, 2024 – see <https://cdn.nar.realtor/sites/default/files/documents/nar-settlement-faq-2024-05-09.pdf>

### WRITTEN AGREEMENTS

#### 50. What provisions must be included in written buyer agreements?

- The written agreement must include:

1. A specific and conspicuous disclosure of the amount or rate of compensation the Participant will receive or how this amount will be determined, to the extent that the Participant will receive compensation from any source.
2. The amount of compensation in a manner that is objectively ascertainable and not open-ended.
3. A term that prohibits the Participant from receiving compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer; and
4. A conspicuous statement that broker fees and commissions are not set by law and are fully negotiable.

### What does conspicuous mean?

See the slides from a presentation at the recent NAR Mid-Year meetings in D.C. that recap much of what is in the [WRITTEN AGREEMENTS](#) section of the NAR Settlement FAQs – May 9, 2024, except they include the following additional information with regard to the written agreement required when working with a buyer and before touring a home:

#### Conspicuously?

Presented in a way that is noticeable to a reasonable person.

- Larger type than surrounding text
- Contrasting type like **bold** or ALL CAPS or **ALL CAPS BOLD**
- Different color than surrounding text
- “Set off” from surrounding text

#### WHAT ARE THE REQUIRED TERMS?

Three terms are required:

1. State conspicuously specific amount or rate of compensation the buyer broker will receive or how this amount will be determined
  - Must be objectively ascertained and not open-ended.
2. State conspicuously that commissions are fully negotiable and not fixed by state law.
3. State conspicuously that the buyer firm may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.

## WB Buyer Agency Agreements

WB-36, lines 30-52

**COMPENSATION** The Firm’s compensation for purchase, option, exchange or an effective change in ownership or control shall be: COMPLETE AS APPLICABLE

**COMMISSION:** Buyer and the Firm agree the **Buyer’s** Firm’s commission shall be \_\_\_\_\_.

**NOTE: A Firm may not represent that the firm’s services are free or available at no cost to their clients, unless they will receive no financial compensation from any source for those services.**

■ **COMMISSION EARNED:** The Firm has earned the Firm’s commission if during the term of this Agreement (or any extension of it), Buyer or any Person Acting on Behalf of Buyer acquires an Interest in Property or enters into an enforceable written contract to acquire an Interest in Property, at any terms and price acceptable to owner and Buyer, regardless of the purchase price range.

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

■ **COMMISSION CALCULATION:** A percentage commission shall be calculated based on the following if earned above: (i) for a purchase or option, the total consideration in the transaction, or (ii) for an exchange or an effective change in ownership or control, the fair market value of the Property in the transaction.

**■ OTHER COMPENSATION:**

[INSERT AMOUNTS AND TYPES OF **OTHER COMPENSATION AND FEES** (E.G., RETAINER, ADVANCE, HOURLY, ETC.) AND INDICATE WHEN DUE AND PAYABLE.]

**NOTE: The specific amount or rate of compensation must be objectively ascertainable (e.g., specific percentage of purchase price, flat dollar amount, hourly rate, etc.) Compensation may not be open-ended (e.g., buyer’s firm compensation shall be whatever the seller is offering to the buyer).**

■ **PAYMENT BY OWNER OR OWNER’S AGENT:** The Firm is hereby authorized to seek payment of commission from the owner (e.g., seller) or the owner’s agent (e.g., listing firm such as through compensation agreements) provided that all parties to the transaction give prior written consent. Buyer shall pay the Firm’s compensation, reduced by any amounts the Firm receives from the owner or the owner’s agent.

**There is no standard market commission rate. Commissions are not set by law and are fully negotiable. Commissions and types of service may vary based on the firm you hire.**

**NOTE: The Firm cannot receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in this Agreement.**

Page 29, 58.vi.a, vi.b, vi.c, vii & ix.

WRA Forms Committee Modifications

The WRA Forms Committee made a few formatting changes highlighted in yellow above to make sure the amount or rate of compensation was conspicuous.

Although the Settlement Agreement does not mandate the inclusion of the information in the first two NOTES, the WRA Forms Committee thought it was important to include this information as reminders to agents to not engage in the past practice where some agents represented buyer agency services were free, and to not say the compensation will be whatever is being offered by the listing firm and/or seller as several licensees have done in the past. These are reminders to not engage in bad past habits, and they also contribute to the overall transparency for the benefit of the buyer. In other situations, these might be seen as practice pointers to be trained but not at this juncture as it will be enough to teach the WB language changes on a fairly short timetable.

The third NOTE is required information.

**WB Offers to Purchase**

Optional contingency

**SELLER PAYMENT OF COMPENSATION TO BUYER’S FIRM:** Seller agrees to pay to Buyer’s Firm the amount of \$\_\_\_\_\_, or \_\_\_\_% of the purchase price, toward Buyer’s brokerage fees at closing. Payment made under this provision represents an economic adjustment only and does not create any agency relationship between Buyer’s Firm and Seller, and the Parties agree Buyer’s Firm is a direct and intended third party beneficiary of this contract.

**NOTE: The amount or rate of real estate commissions or compensation is not fixed by law. There is no standard market rate commission. Commissions are set by each Firm individually and are negotiable between Seller and the Listing Firm, and between Buyer and the Buyer’s Firm.**



## WHAT DOES THAT MEAN?

### Working with a buyer:

MLS Participants who **provide brokerage services** to a buyer

- Identifying potential properties
- Arranging for the buyer to tour a property
- Negotiating on behalf of the buyer
- Writing and presenting offers

*As opposed to MLS Participants who simply market their services or just talk to a buyer—like at an open house or providing an unrepresented buyer access to one of their listed homes*



## WHEN DOES IT NEED TO BE SIGNED

“Before touring a home”

UNLESS

State law dictates an earlier time



## CONSPICUOUSLY?

Presented in a way that is noticeable  
to a reasonable person.



## WHAT DOES THAT MEAN?

### Touring a home:

- When the buyer and/or the MLS Participant (or other agent, at the direction of the MLS Participant working with the buyer) **physically enter the home**
- Includes when the MLS Participant or other agent, at the direction of the MLS Participant, working with the buyer enters the home to provide a **live, virtual tour** to a buyer not physically present



## WHAT TYPES OF AGREEMENTS?

Any type of written agreement can be used\*

- Exclusive buyer representation agreement
- Non-exclusive buyer rep agreement
- Non-agency
- Transactional
- Limited service
- Designated agency
- Dual agency
- One property, one weekend ...

\* Anything that complies with state law



## CONSPICUOUSLY?

Presented in a way that is noticeable  
to a reasonable person.

- Larger type than surrounding text
- Contrasting type **like bold** or ALL CAPS or **ALL CAPS BOLD**
- Different color than surrounding text
- **\*\*Set off\*\*** from surrounding text



# WHAT ARE THE REQUIRED TERMS?

## Three terms are required:

- 1 State conspicuously specific amount or rate of compensation the buyer broker will receive or how this amount will be determined
  - o Must be objectively ascertained and not open-ended.
- 2 State conspicuously that commissions are fully negotiable and not fixed by state law.
- 3 State conspicuously that the buyer broker may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.

## CONSPICUOUSLY?



Presented in a way that is noticeable  
to a reasonable person.

- Larger type than surrounding text
- Contrasting type **like bold** or ALL CAPS or **ALL CAPS BOLD**
- Different color than surrounding text
- **\*\*Set off\*\*** from surrounding text

## WHAT TYPES OF AGREEMENTS?



### NAR policy does not dictate:

- What type of relationship the professional has with the potential buyer (e.g., agency, non-agency, subagency, transactional, customer).
- The term of the agreement (e.g., one day, one month, one house, one zip code).
- The services to be provided (e.g., ministerial acts, a certain number of showings, negotiations, presenting offers).
- The compensation charged (e.g., \$0, X flat fee, X percent, X hourly rate).





WHO IS ENFORCING ALL OF THIS?



**THE MLS**



### Third-party Beneficiary Claims to Contracts

The third-party beneficiary doctrine is a contract doctrine that is well established in Wisconsin case law. See *Severson v. Milwaukee Automobile Ins. Co.*, 265 Wis. 488, 61 N.W.2d 872 (1953). The doctrine provides an exception to the general rule of privity of contract that only individuals who are parties to a contract may enforce it. See *Badger State, Inc. v. Keller Constr. Co.*, 2012 WI App. 97, ¶ 8, 820 N.W.2d 155, 344 Wis. 2d 123. Under the doctrine, a third-party beneficiary has the right to sue on a contract, despite not having originally been a party to the contract.

There are two kinds of third-party beneficiaries: an “intended or intentional” beneficiary and an “incidental” beneficiary.

An intended or intentional beneficiary is a non-party to a contract who receives benefit from the agreement directly. *Keller* provides that “under third-party beneficiary doctrine, a person who is not a party to a contract ‘may enforce a contract as third-party beneficiary if the contract indicates that he or she was either specifically intended by the contracting parties to benefit from the contract or is a member of a class the parties intended to benefit.’” *Id.* (quoting *Milwaukee Area Technical College v. Frontier Adjusters of Milwaukee*, 2008 WI App 76, ¶ 20, 312 Wis. 2d 360, 752 N.W.2d 396).

An incidental beneficiary is a non-party to a contract who benefits from the contract, but it is not intended in the contract that the non-party benefit. As such, a non-party receiving an indirect benefit that is incidental to the contract between the parties will not rise to a third-party beneficiary claim. *Ampex Corp. v. Sound Inst.*, 44 Wis.2d 674, 683, 172 N.W.2d 170 (1969).

Amount, or any portion thereof, by or on behalf of the National Association of REALTORS® to be a preference, voidable transfer, fraudulent transfer or similar transaction under Title 11 of the United States Code (Bankruptcy) or applicable state law and any portion thereof is required to be refunded and such amount is not promptly deposited in the Escrow Account by or on behalf of the National Association of REALTORS®, then, at the election of Co-Lead Counsel, this Settlement Agreement may be terminated and the releases given and the judgment entered pursuant to the Settlement shall be null and void.

56. The Settling Parties' rights to terminate this Settlement Agreement and withdraw from this Settlement Agreement are a material term of this Settlement Agreement.

57. The National Association of REALTORS® reserves all of its legal rights and defenses with respect to any claims brought by potential Opt-Outs.

#### **H. Practice Changes**

58. As soon as practicable, and in no event later than the date of Class Notice (as provided in Paragraph 30 of this Settlement Agreement), the National Association of REALTORS® (defined for purposes of this paragraph to include present and future, direct and indirect subsidiaries, predecessors, and successors) will implement the following practice changes:

- i. eliminate and prohibit any requirement by the National Association of REALTORS®, REALTOR® MLSs, or Member Boards that listing brokers or sellers must make offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers), and eliminate and prohibit any requirement that such offers, if made, must be blanket, unconditional, or unilateral;
- ii. prohibit REALTOR® MLS Participants, subscribers, other real estate brokers, other real estate agents, and their sellers from (a) making offers of compensation on the MLS to buyer brokers or other buyer representatives (either directly or through buyers) or (b)

disclosing on the MLS listing broker compensation or total broker compensation (i.e., the combined compensation to both listing brokers and cooperating brokers);

iii. require REALTOR® MLSs to (a) eliminate all broker compensation fields on the MLS and (b) prohibit the sharing of the offers of compensation to buyer brokers or other buyer representatives described in Paragraphs 58(i) and (ii) of this Settlement Agreement via any other REALTOR® MLS field;

iv. eliminate and prohibit any requirements conditioning participation or membership in a REALTOR® MLS on offering or accepting offers of compensation to buyer brokers or other buyer representatives;

v. agree not to create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregators' website for such purpose) for listing brokers or sellers to make offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers), however, this provision is not violated by (a) a REALTOR® MLS providing data or data feeds to a REALTOR®, REALTOR® MLS Participant, or third party unless the REALTOR® MLS knows those data or data feeds are being used directly or indirectly to establish or maintain a platform for offers of compensation from multiple brokers (i.e., the REALTOR® MLS cannot intentionally circumvent this requirement); or (b) a REALTOR® or REALTOR® MLS Participant displaying both (1) data or data feeds from a REALTOR® MLS and (2) offers of compensation to buyer brokers or other buyer representatives but only on listings from their own brokerage;

vi. unless inconsistent with state or federal law or regulation before or during the operation of this Paragraph 58(vi) of this Settlement Agreement, require that all REALTOR® MLS Participants working with a buyer enter into a written agreement before the buyer tours any home with the following:

- a. to the extent that such a REALTOR® or Participant will receive compensation from any source, the agreement must specify and conspicuously disclose the amount or rate of compensation it will receive or how this amount will be determined;
- b. the amount of compensation reflected must be objectively ascertainable and may not be open-ended (e.g., “buyer broker compensation shall be whatever amount the seller is offering to the buyer”);
- c. such a REALTOR® or Participant may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer;
- vii. prohibit REALTORS® and REALTOR® MLS Participants from representing to a client or customer that their brokerage services are free or available at no cost to their clients, unless they will receive no financial compensation from any source for those services;
- viii. require REALTORS® and REALTOR® MLS Participants acting for sellers to conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that the listing broker or seller will make to another broker, agent, or other representative (e.g., a real estate attorney) acting for buyers; and such disclosure must be in writing, provided in advance of any payment or agreement to pay to another broker acting for buyers, and specify the amount or rate of any such payment;
- ix. require REALTORS® and REALTOR® MLS Participants to disclose to prospective sellers and buyers in conspicuous language that broker commissions are not set by law and are fully negotiable (a) in their listing agreement if it is not a government-specified form, (b) in their agreement with buyers if it is not a government-specified form, and (c) in pre-closing disclosure documents if there are any and they are not government-specified

forms. In the event that the listing agreement, buyer representation agreement, or pre-closing disclosure documents are a government form, then REALTORS® and REALTOR® MLS Participants must include a disclosure with conspicuous language expressly stating that broker commissions are not set by law and are fully negotiable. NAR also shall require that REALTOR® Member Boards and REALTOR® MLSs, to the extent they publish form listing agreements, buyer representation agreements, and pre-closing disclosure documents for use by REALTORS®, Participants, and/or subscribers, must conform those documents to this Paragraph 58(ix).

x. require that REALTORS® and REALTOR® MLS Participants and subscribers must not filter out or restrict MLS listings communicated to their customers or clients based on the existence or level of compensation offered to the buyer broker or other buyer representative assisting the buyer;

xi. rescind or modify any existing rules that are inconsistent with the practice changes reflected in this Settlement Agreement; and

xii. develop educational materials that reflect and are consistent with each provision in these practice changes, and eliminate educational materials, if any, that are contrary to it.

xiii. the practice changes in Paragraph 58 of this Settlement Agreement shall not (a) prevent offers of compensation to buyer brokers or other buyer representatives off of the multiple listing service; or (b) sellers from offering buyer concessions on a REALTOR® MLS (e.g., for buyer closing costs), so long as such concessions are not limited to or conditioned on the retention of or payment to a cooperating broker, buyer broker, or other buyer representative.

59. The obligations set forth in Paragraph 58 of this Settlement Agreement will terminate

**WB Listing Contracts:**

**New Language:**

**BUY-SIDE COMPENSATION - BUYER CUSTOMER OR BUYER CLIENT**

Broker has disclosed, and Seller ~~authorizes and~~ approves offers of compensation to Firm and to cooperating firms working with buyers as customers or clients, as follows (specify the amount, if any, and whether the offer of compensation is offered directly from the Seller or is offered by the Listing Firm): \_\_\_\_\_:

If Compensation offered directly from Seller, ~~said payment from Seller~~ is in addition to the Commission to Listing Firm above. If Compensation offered by the Listing Firm, ~~said payment~~ would come from the total commission paid by Seller indicated in the Commission section.

**There is no standard market commission rate. Commissions are not set by law and are fully negotiable. Commissions and types of service may vary by firm. Compensation to others may be offered to firms working with buyers as customers or clients as an incentive to participate in the sale of firms' listings through compensation agreements.**

**NOTE: A Firm may not represent that the firm's services are free or available at no cost to their clients unless they will receive no financial compensation from any source for those services.**

**Placed in line 21 on WB 1 (part of marketing section) → Moermond language:** The Firm and its agents may advertise the following special financing, incentives, or concessions offered by Seller (anything offered here is in addition to and separate from Commission and Compensation to Others, (lines -----):

**WB Buyer Agency/Tenant Representation Agreement:**

***Discussion will happen at next meeting***

**New language**

COMMISSION: Buyer and the Firm agree the Firm's commission shall be \_\_\_\_\_

**-Add at least one more line for compensation structure and amounts.** \_\_\_\_\_

**NOTE: Compensation must be objectively ascertainable (e.g., specific percentage of purchase price, flat dollar amount, hourly rate, etc.) Compensation may not be open-ended (e.g., buyer's firm compensation shall be whatever the seller is offering to the buyer).**

■ **PAYMENT BY OWNER OR OWNER'S AGENT:** The Firm is hereby authorized to seek payment of commission from the owner (e.g., seller) or the owner's agent (e.g., listing firm such as through compensation agreements) provided that all parties to the transaction give prior written consent. Buyer shall pay the Firm's compensation, reduced by any amounts the Firm receives from the owner or the owner's agent.

There is no standard market commission rate. Commissions are not set by law and are fully negotiable. Commissions and types of service may vary by firm and are negotiable based on the firm you hire.

**NOTE: The Firm cannot receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in this Agreement or as amended.**

**NOTE: A Firm may not represent that the firm's services are free or available at no cost to their clients, unless they will receive no financial compensation from any source for those services.**

**Condense both notes into one or move one note to another area**

### **WB Offers to Purchase:**

#### **SELLER PAYMENT OF COMPENSATION TO BUYER'S FIRM:**

[To be used only if the drafting licensee is a buyer's agent with a written buyer agency agreement with Buyer]

- (1) Buyer has entered into a written buyer agency agreement to pay compensation to Buyer's Firm.
- (2) Seller (has) (has not) **STRIKE ONE** ("has" if neither is stricken) entered into a written listing contract with a Listing Firm whereby Seller shall pay compensation to the Listing Firm if the Property is sold.
- (3) As of the date on line 1 of this Offer, pursuant to compensation agreements or other means, the Listing Firm, if any, has agreed to pay compensation to Buyer's Firm upon completion of the transaction if Buyer's Firm is procuring cause or otherwise meets the standard of performance, in the amount of \_\_\_\_\_% of the purchase price or \$\_\_\_\_\_ **COMPLETE AS APPLICABLE** **Do we cover subagency elsewhere? Line 1 above says only complete if buyer agency?**
- (4) Seller agrees to pay to Buyer's Firm, on behalf of Buyer at closing, compensation in the amount of \$\_\_\_\_\_ or \_\_\_\_\_% of the purchase price. This amount may represent the difference between the amount due to Buyer's Firm in the buyer agency agreement and any amount the Listing Firm has agreed to pay. **Such payment is in addition to any compensation offered to Buyer's Firm through any compensation agreements between firms, as applicable.** Payment made under this provision represents an economic adjustment only and does not create any agency relationship between Buyer's Firm and Seller. The Parties hereby consent to Buyer's Firm's acceptance of compensation paid by Seller and/or the Listing Firm, as required by Wis. Stat. § 452.133(3)(a).

**NOTE: The amount or rate of real estate commissions or compensation is not fixed by law. There is no standard market rate commission. Commissions are set by each Firm individually and are negotiable between Seller and the Listing Firm, and between Buyer and the Buyer's Firm.**

Moermond language: **Seller agrees to pay to Buyer's Firm the amount of \$\_\_\_\_\_, or \_\_\_\_\_% (whichever is greater) toward Buyer's brokerage fees, no later than the earlier of closing or the date set for closing, does not create any agency relationship between Buyer's Firm and Seller and the parties agree Buyer's Firm is a direct and intended third party beneficiary of this contract.**