



VIRTUAL/TELECONFERENCE
REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL
4822 Madison Yards Way, Madison
Contact: Will Johnson (608) 266-2112
September 12, 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 30, 2024 (3-4)**
- C. Reminders – Scheduling Concerns
- D. Introductions, Announcements, and Recognition**
 - 1. Recognition: Pamela Widen (Resigned: 7/8/2024)
- E. Administrative Matters**
 - 1. Department, Staff and Council Updates
 - 2. Real Estate Examining Board Update
- F. WB Pre-Agency Agreement – Discussion and Consideration (5-7)**
- G. Review of Forms That Should Be Revised to Respond to the Settlement Agreement in the Sitzer-Burnett Class-Action Lawsuit – Discussion and Consideration
- H. Review of Real Estate Contractual Forms for Revision – Discussion and Consideration
- I. Next Steps**
- J. Public Comments**

ADJOURNMENT

NEXT MEETING: NOVEMBER 21, 2024

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://dsps.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
MAY 30, 2024**

PRESENT: Casey Clickner, Debra Conrad, Michael Gordon, Cori Lamont (*excused at 1:44 p.m.*) (*arrived at 1:58 p.m.*), Sonya Mays, Kim Moermond (*excused at 12:39 p.m.*) (*arrived at 12:43 p.m.*), Laura Peck (*excused at 12:27 p.m.*), Angela Rowland, Jonathan Sayas, Thomas Weber Jr., Pamela Widen (*excused at 10:46 a.m.*)

STAFF: Will Johnson, Executive Direction; Renee Parton, Legal Counsel; Dialah Azam, Board Administration Specialist; and other Department Staff

CALL TO ORDER

Sonya Mays, Chairperson, called the meeting to order at 9:31 a.m. A quorum of eleven (11) members was confirmed.

ADOPTION OF AGENDA

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

APPROVAL OF MINUTES FROM MAY 2, 2024

Amendments to the Minutes

- **CHANGE** date at top of minutes from March 7, 2024 to May 2, 2024

MOTION: Debra Conrad moved, seconded by Michael Gordon, to approve the minutes of May 2, 2024 as amended. Motion carried unanimously.

(Pamela Widen excused at 10:46 a.m.)

(Laura Peck excused at 12:27 p.m.)

(Kim Moermond excused at 12:39 p.m.)

(Kim Moermond arrived at 12:43 p.m.)

ADMINISTRATIVE MATTERS

WB Listing Contracts

MOTION: Thomas Weber Jr. moved, seconded by Michael Gordon, to recommend the edits made to the WB-1, and to apply to WB 2, 3, 4, 5, 6, 37 revisions to the Real Estate Examining Board for approval as submitted. Motion carried unanimously.

WB Buyer Agency/Tenant Representation Agreement

MOTION: Michael Gordon moved, seconded by Angela Rowland, to recommend the edits made to the WB-36, and to apply to WB 38 & 39 revisions to the Real Estate Examining Board for approval as submitted. Motion carried.

(Cori Lamont excused at 1:44 p.m.)

(Cori Lamont arrived at 1:58 p.m.)

WB Offers to Purchase

MOTION: Michael Gordon moved, seconded by Casey Clickner, to recommend the edits made to WB Offers to Purchase (WB 11- 17 & 24) as it pertains to an optional contingency to the Real Estate Examining Board for approval as submitted. Motion carried unanimously.

ADJOURNMENT

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

The meeting adjourned at 2:47 p.m.

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

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Chair Sonya Mays		2) Date When Request Submitted: 09/04/2024
		Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others
3) Name of Board, Committee, Council, Sections: Real Estate Contractual Forms Advisory Council		
4) Meeting Date: 09/12/2024	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Discussion and Consideration on WB Pre-Agency Agreement
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 (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:
10) Describe the issue and action that should be addressed:		
11) Authorization		
Signature of person making this request		Date
Supervisor (if required)		Date
Will Johnson		09/04/2024
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Board Admin Specialist prior to the start of a meeting.		

PRE-AGENCY SHOWING AGREEMENT FOR WISCONSIN PROPERTIES

1 Under Wisconsin law, buyers have choices in their relationship with an agent. There are essentially three agency options
2 available for buyers under Wisconsin law: pre-agency, subagency, and buyer agency. Each agency type varies by what
3 level of brokerage services may be provided.

4 A buyer can sign a buyer agency agreement with a firm and be the firm's client with all the services and duties that come
5 with being a firm's client. A buyer could work with the firm that has the property listed or another firm and not sign a buyer
6 agency agreement. The buyer would be a customer of the firm with some services and duties but not client-level duties.
7 When the buyer is a customer of either the listing firm or another firm, the agent working with the buyer cannot put the
8 buyer's interests ahead of the seller's interests. A buyer and a firm also can operate for a limited time in what is known
9 as pre-agency where the buyer is not yet a customer nor a client. During pre-agency, the agent cannot put the buyer's
10 interests ahead of the seller's interests and cannot engage in any negotiation on behalf of the buyer.

BUYER RELATIONSHIPS WITH AGENTS

11
12 **1. Buyer in Pre-agency:** A buyer in pre-agency is not a client or a customer of the real estate firm and its agents.
13 In pre-agency the firm and its agents may provide the buyer services such as showing properties and act as a
14 neutral information provider, but the firm cannot negotiate for the buyer. "Negotiate" is defined in Wis. Stat. §
15 452.01(5m). One example of negotiations would be drafting an offer for the buyer. If during pre-agency,
16 negotiations are requested or initiated, then at that point pre-agency authorization ends and the firm and the
17 buyer would establish either subagency, where the firm is a subagent of the listing firm, as defined in Wis. Stat. §
18 452.01(7r) and the buyer is a customer, or execute a buyer agency agreement where the buyer is a client, if they
19 wish to proceed together. Both the buyer and the firm have a choice at that point whether to proceed together,
20 and if so, under which agency relationship.

21
22 **2. Buyer as Customer:** If a subagency relationship is chosen by the buyer and the firm or if the buyer initiates
23 subagency with another firm, the buyer is a customer. The buyer would receive the duties owed to all parties,
24 including the authorization for negotiation, but would not receive client level services, and would not receive
25 price advice, e.g., advice such as how much a buyer should offer on a property, or negotiation recommendations
26 or recommendations regarding which property or properties to pursue. Buyers who are customers receive a
27 separate disclosure and agents who are working with buyer customers cannot put the buyer customer's interests
ahead of the seller's interests.

28
29 **3. Buyer as Client:** When a buyer wants to have access to the full suite of brokerage services, the buyer would
30 sign a written buyer agency agreement with the firm and become the firm's client. When a buyer is a client, the
31 firm can put the buyer's interests ahead of the seller's interests while observing duties that agents owe to all
32 parties in a transaction. When a buyer is a client, the firm can provide information and advice such as how much
33 the buyer should offer for the property, and negotiation recommendations or recommendations regarding which
property or properties to pursue, and other client services the firm offers.

PRE-AGENCY AGREEMENT

34
35 The undersigned Prospective Buyer and the Firm hereby enter this Pre-Agency Showing Agreement on the following
36 terms and conditions:

37 **THIS IS NOT AN AGENCY AGREEMENT. THIS AGREEMENT DOES NOT AUTHORIZE AN AGENT TO DRAFT AN**
38 **OFFER TO PURCHASE.** This is an agreement that authorizes the Firm and its agents to help the Prospective Buyer
39 identify and locate properties and to show homes to the Prospective Buyer in a pre-agency relationship. The Firm and
40 agents may show properties and provide information, as requested. Either the Prospective Buyer or the Firm may
41 discontinue working together under pre-agency at any time, upon informing the other, and it is agreed and understood
42 that whether to proceed with any further or additional brokerages services, whether under subagency or under buyer
43 agency, is a choice between the Prospective Buyer and the Firm and agents.

44 **Compensation.** A firm may receive compensation for showing properties to a Prospective Buyer during pre-agency. The
45 Prospective Buyer and the Firm agree the Firm shall be paid \$_____

46
47 (insert amount, if any) for showing properties. The fee cannot be paid to the agent directly and must be paid to the Firm.

48 **Real estate commissions and compensation are not set by law and are fully negotiable. A firm working with a**
49 **buyer for services covered by this Agreement cannot receive compensation or fees from any source that**
50 **exceeds the amount specified in this Agreement, unless agreed to in writing.**

51 **The compensation paid under a Pre-Agency Agreement to the Firm does not prohibit the Firm from receiving**
52 **other compensation as an agent working with a buyer as a client or customer in the purchase of a property.**

53 **FAIR HOUSING / NON-DISCRIMINATION.** The Firm and its agents agree that they will not discriminate based on race,
54 color, sex, sexual orientation as defined in Wisconsin Statutes § 111.32(13m), disability, religion, national origin, marital
55 status, lawful source of income, age, ancestry, family status, status as a victim of domestic abuse, sexual assault, or
56 stalking, or in any other unlawful manner.

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

60 **DUTIES TO ALL PARTIES.** Under Wisconsin law, a firm and its agents owe certain duties to all parties in transaction,
61 including during pre-agency. The Firm and its agents owe the Prospective Buyer:

- 62 ▪ The duty to provide brokerage services fairly and honestly.
- 63 ▪ The duty to provide brokerage services with reasonable skill and care.
- 64 ▪ The duty to disclose in writing certain material adverse facts about a property, unless disclosure of the
65 information is prohibited by law
- 66 ▪ The duty to keep confidential information given to the firm in confidence or information a reasonable person
67 would want to be kept confidential, unless the law requires disclosure. The firm and its agents will not
68 disclose the confidential information of the parties.
- 69 ▪ The duty to provide accurate information about market conditions that affect the transaction within a
70 reasonable time of the party's request for it, unless disclosure of the information is prohibited by law.
- 71 ▪ The duty to safeguard trust funds and other property held by the firm or its agents.
- 72 ▪ The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose
73 the advantages and disadvantages of the proposals.

74	(x) _____		
75	Prospective Buyer	Print Name ▲	Date

76	(x) _____		
77	Prospective Buyer	Print Name ▲	Date

78	(x) _____		
79	Agent for Firm Print Name ►	Firm Name ▲	Date