



**VIRTUAL/TELECONFERENCE
REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL
4822 Madison Yards Way, Madison
Contact: Will Johnson (608) 266-2112
May 2, 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 March 7, 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 (4-12)**
 - 1. WB Listing Contracts
 - 2. WB Buyer Agency/Tenant Representation Agreement
 - 3. 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

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, Laura Peck, Angela Rowland, Jonathan Sayas, Pamela Widen

EXCUSED: Thomas Weber Jr.

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 9:43 a.m. A quorum of ten (10) members was confirmed.

ADOPTION OF AGENDA

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

APPROVAL OF MINUTES FROM JANUARY 25, 2024

MOTION: Pamela Widen moved, seconded by Cori Lamont, to approve the minutes of January 25, 2024 as published. Motion carried unanimously.

ADJOURNMENT

MOTION: Casey Clickner moved, seconded by Laura Peck, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 10:21 a.m.

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

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Cori Lamont, WRA		2) Date When Request Submitted: 4.22.2024 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: 5.2.2024	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Discussion of potential changes to WB forms relating to NAR proposed settlement: WB Listing Contracts WB Buyer Agency/Tenant Representation Agreement WB Offers to Purchase	
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: N/A	
10) Describe the issue and action that should be addressed:			
11) Authorization			
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			
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 Bureau Assistant prior to the start of a meeting.			



To: DSPS Real Estate Contractual Forms Advisory Council
From: WRA Forms Committee
Date: April 17, 2024
Re: Actions in WB forms

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. Some of the terms of the proposed settlement impact language in the WB agency agreements and the WB offers as it relates to offers of compensation.

A portion of the proposed settlement agreement is included as a separate document to accompany this memo. The paragraphs prompting the proposed changes are highlighted in the portion of the proposed settlement agreement included with this memo.

WB Listing Contracts

For context, included below is the entire marketing and part of the commission section of the current WB listing contract:

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.

COMMISSION Seller and the Firm agree the Firm's commission shall be _____.

Current language

COMPENSATION TO OTHERS The Firm offers the following commission to cooperating firms working with buyers such as subagents and buyer's firms: _____
 _____ (Exceptions if any): _____.

There is no standard market commission rate. Commissions and types of service may vary by firm and are negotiable based on the firm you hire. 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 multiple listing services or in compensation agreements.

Proposed change in tracking

COMPENSATION TO OTHERS ~~Seller authorizes~~ Seller authorizes ~~the Firm to offer~~ the Firm to offer ~~compensation~~ compensation ~~the following~~ to cooperating firms working with buyers such as subagents and buyer's firms. ~~The firm offers the following compensation to cooperating firms:~~ _____:
 Seller _____ offers the following compensation to cooperating firms: _____ (Exceptions if any): _____

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 based on the firm you hire and are negotiable based on the firm you hire.~~ 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 ~~multiple listing services or in~~ 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.

CONCESSIONS TO BUYERS Seller offers the following concessions to a buyer working with a buyer's firm: _____.

NOTE: Concessions cannot be limited to or conditioned on the retention of or payment to a cooperating firm, buyer's firm or other buyer's representative.

Proposed change without tracking

COMPENSATION TO OTHERS Seller authorizes the Firm to offer compensation to cooperating firms working with buyers such as subagents and buyer's firms. The firm offers the following compensation to cooperating firms: _____.

Seller offers 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 based on the firm you hire 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.

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.

CONCESSIONS TO BUYERS Seller offers the following concessions to a buyer working with a buyer's firm: _____.

NOTE: Concessions cannot be limited to or conditioned on the retention of or payment to a cooperating firm, buyer's firm or other buyer's representative.

WB Buyer Agency/Tenant Representation Agreement

Current language

COMMISSION: Buyer and the Firm agree the Firm's commission shall be _____.

■ 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 through the multiple listing service or 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 and types of service may vary by firm and are negotiable based on the firm you hire.

Proposed language in tracking

COMMISSION: Buyer and the Firm agree the Firm's commission shall be _____.

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 ~~the multiple~~

~~listing service or~~ 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. Commissions are not set by law and are fully negotiable based on the firm you hire. **There is no standard market commission rate. 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.

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.

Proposed language without tracking

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

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. Commissions are not set by law and are fully negotiable based on the firm you hire.

There is no standard market commission rate. 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.

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.

WB Offers to Purchase

NEW proposed provision for the WB Offers to Purchase – location in offer to be determined.

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**
- (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.

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