



# Legal Update

A WRA Publication Exclusively for the Designated REALTOR®

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## Lease Listing & Property Management Agreement

While most REALTORS® think of Wisconsin agency law in terms of sales transactions, it also has a definite application in rental and property management situations. For example, a licensee must represent his or her client's interests as an agent, and there must be an agency agreement authorizing those brokerage services, per Wis. Stat. § 452.133. These requirements apply to property management and rentals as well as to sales. Rental agents and property managers may not provide brokerage without an agency agreement authorizing those services. Agency agreements may include a sales listing, a rental listing, a buyer agency contract, or a property management agreement. Listings for sales and residential rentals, as well as the buyer agency agreement, are all DRL-approved forms. A property management agreement, on the other hand, may be prepared by a broker, the broker's attorney, or the landlord per § RL 16.03(1)(e).

This *Legal Update* examines two agency agreements that may be used by brokers who have been asked to rent or lease real estate or provide property management services: the WB-37 Exclusive Listing Contract for Lease of Real Property and the WRA Property Management Agreement. Both agreements may be used to authorize a broker to provide brokerage services in a rental or property management setting. In addition, the agency disclosure form has been incorporated into the WB-37 and

into the WRA Property Management Agreement to ensure compliance with that requirement of real estate agency law.

This *Update* begins with a review of the newly revised WB-37 Exclusive Listing Contract for Lease of Real Property. It then explains when a broker should choose a WB-37, as opposed to a property management agreement or a sales listing, and the WB-37 is examined section by section. Use of a commercial commission lien with a lease listing is also discussed, followed by a review of the WRA Property Management Agreement on a section-by-section basis. The *Update* concludes with a sampling of Legal Hotline questions and answers relating to rental and property management issues.

## **WB-37 Exclusive Listing Contract for Lease of Real Property**

*When helping a client with a rental, can an agent list the property for sale and rental?*

Wis. Stat. § 452.135 requires that before any agent provides brokerage services to a party, there must be an agency contract authorizing the agent to do so. Thus a listing contract is required before services may be provided to the owner. The WB-1 Residential Listing Contract provides

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authority to market the property for sale. The WB-37 Exclusive Listing Contract Lease of Real Property should also be used if Caller is attempting to lease the property for the owner.

This section of this Legal Update discusses the revised WB-37 Exclusive Listing Contract for Lease of Real Property, which appears on pages 3 to 5 of this Update. This lease listing form has an optional use date of March 1, 2001 and a mandatory use date of October 1, 2001.

The WB-37 is not a new form. It has, however, been updated, reformatted and given a new title and a slightly different purpose. The form now fills three letter-sized pages, incorporates the agency disclosure and other new provisions and no longer refers to residential real estate in the title of the form. In fact, as part of the revision process, the WB-37 has been adapted to remove or modify any provisions that would confine use of the WB-37 to residential rental transactions. Thus the WB-37 may be used in any type of lease listing scenario including residential, retail, commercial or industrial.

The WB-37 Exclusive Listing Contract for Lease of Real Property is used when a property owner hires a real estate broker to lease the owner's property. The form is mandatory with respect to the lease of residential property. Use of the WB-37 is optional, however, for lease listings in commercial or industrial property settings. This is noted on the top of the form immediately following the title line.

### Rental Listing versus Property Management

When a residential property owner contacts a licensee for assistance with leasing a property, the first issue to address is whether the property owner wants the broker to serve as a rental agent or as a property manager. If the owner is looking for a property man-

ager, the licensee should enter into a property management agreement with the property owner. Whereas a WB-37 Exclusive Listing Contract for Lease of Real Property authorizes a broker to advertise a rental property, get it leased, and handle the rental funds (security deposit and rents), the authorization in a property management situation typically is far more extensive. Property managers generally are expected to handle not only procurement of tenants and execution of leases, they also are put in charge of most, if not all, aspects of the day-to-day operations of the rental property. This will often include responsibility for lawn care, snow removal, repairs, general maintenance, tenancy complaints and terminations, on-site staff, and bookkeeping for the entire property or complex.

The WB-37 and a property management agreement will usually overlap to the extent that they both authorize the agent to advertise vacancies, take tenant applications, qualify and approve tenants, receive earnest money and security deposits, execute leases on behalf of the owner, and collect rents. The property management agreement, however, will go beyond this authorization and will empower the property manager to perform additional services on behalf of the owner. A WB-37 is not required for property managers who lease properties under the authority of a property management agreement.

Another common situation where brokers might question whether a WB-37 is required when the property owner is asking the broker who has the property listed for sale to find a tenant for the property. When this situation arises, a WB-37 is required. Listing a residential property for sale and lease simultaneously requires both a WB-1 and a WB-37. This is true because the WB-1 does not give a licensee the authority to list the property for lease, and the WB-37 does not give the broker the right to list the property for sale. Each form contains

specific provisions addressing the legal requirements for the particular transaction involved. Any attempt by a broker to avoid the requirement to use both forms by altering one form would not only violate license law but would very likely jeopardize the legal rights of the broker in the transaction.

## The WB-37, Section-by- Section

A number of issues must be addressed when drafting a WB-37. The way the completed contract addresses these issues will determine the relative rights and responsibilities of the property owner and the broker.

**Property Description.** Lines 1 to 6 of the WB-37 identify the property to be rented by the broker by street address. The parties are encouraged to add additional description under Additional Provisions (on page 3 of the WB-37) or in an addendum.

**Lease Terms.** The purpose of chart on lines 10 to 14 is to provide the lease terms the broker should be attempting to negotiate. Blanks are provided for rent, security deposit, and other lease terms. Additional lease terms, included property (such as appliances or furniture), included amenities (such as parking or storage areas), specific marketing instructions (such as owner repairs or maintenance work credits), and restrictions on tenants' use and occupancy may be placed under Additional Provisions (on page 3 of the WB-37) or in an addendum.

### Broker's Duties

Lines 15 to 20 detail the duties the broker has agreed to perform for the property owner. A list of specific duties is given with a clear directive to strike any duties which the broker does not accept. This section also provides the owner and broker room to identify any additional duties

which the broker will perform on behalf of the owner. Additional duties may include, but are not limited to, duties typically associated with property management, such as maintenance or repairs.

Brokers who are considering which of the specified duties to accept should carefully consider the potential liability which can result from activities such as verifying applications, qualifying and approving tenants, executing leases on behalf of the owner, etc. Each of these actions carries a significant risk of liability under fair housing and other laws. Accordingly,

REALTORS® may wish to consult with legal counsel before assuming any new types of duties.

### Owner's Obligations

Lines 21 to 25 provide a general statement of the property owner's responsibilities to the broker who has listed the property for lease. Briefly, these responsibilities require the owner to cooperate with the broker's advertising, showing, and leasing efforts and provide all necessary information, documentation and forms needed for those tasks. The owner is to provide a lease form for the broker's use and allow the broker

WB-37 Exclusive Listing Contract for Lease of Real Property  
3-1-01 (Optional Use Date) 10-1-01 (Mandatory Use Date) Page 1 of 3

**WB-37 EXCLUSIVE LISTING CONTRACT FOR LEASE OF REAL PROPERTY**

Mandatory for use as an exclusive listing contract for lease of residential property - Do not use as a property management agreement or listing for sale.

1 Owner gives Broker the exclusive right to negotiate a lease or leases of the property located in the \_\_\_\_\_ of  
2 \_\_\_\_\_ County of \_\_\_\_\_, Wisconsin, further described as:  
3 \_\_\_\_\_  
4 \_\_\_\_\_ ("Premises" which shall mean the entire property or a particular rental unit as appropriate)

5 under the terms of this Listing ~~STRIKE AND COMPLETE AS APPLICABLE~~ Insert additional description at lines 142-152 or in an  
6 addendum per line 153. Identify proposed lease terms at lines 10-14. Note: Specify additional lease terms/marketing instructions in  
7 additional provisions at lines 142-152 or in an addendum. Consider addressing inclusions (furniture, appliances, equipment,  
8 designated parking and storage areas, etc.), marketing terms (potential owner repairs, build-outs, credits, etc.) and restrictions on tenant's  
9 use and occupancy. Also see lines 32-33 regarding repairs and build-outs owner agrees to complete under this Listing.

UNIT NO.	RENT	SECURITY DEP.	OTHER LEASE TERMS/CURRENT STATUS OF UNIT
11 1.	\$	\$	
12 2.	\$	\$	
13 3.	\$	\$	
14 4.	\$	\$	

15 **BROKER'S DUTIES** In consideration for Owner's agreements herein, Owner authorizes Broker and Broker agrees to use  
16 reasonable efforts to negotiate leases of the Premises and to perform the following services: solicit, review and verify applications,  
17 qualify and approve prospective tenants, receive and hold deposits, execute leases on behalf of owner, and collect rents (STRIKE ALL  
18 DUTIES BROKER DOES NOT ACCEPT), and in addition Broker shall provide the following services: \_\_\_\_\_  
19 \_\_\_\_\_ Note: This is not a property management agreement and this Listing  
20 does not obligate Broker to perform any property management duties including maintenance unless specified at lines 18-19 or 142-153.

21 **OWNER'S OBLIGATIONS** Owner agrees to make available to Broker copies of all existing data, records, documents, building rules  
22 and regulations, and other materials required in connection with the lease of the Premises, to provide or approve a lease and other forms  
23 for Broker's use, to allow Broker to show the Premises at reasonable times and upon reasonable advance notice as may be allowed by  
24 law, to allow Broker to advertise including placing signage upon the Premises, to cooperate with Broker in Broker's actions under this  
25 Listing and to immediately provide to Broker the names of any prospective tenants. ~~STRIKE ANY ITEMS NOT APPLICABLE~~

26 **OWNERS WARRANTIES, COVENANTS AND REPRESENTATIONS** Owner warrants and represents that any materials and  
27 information given to Broker by Owner are true, accurate and correct and that the lease and other forms provided to Broker by Owner  
28 comply with all applicable laws. Owner has made no rent concessions or other agreements affecting the Premises. Owner shall  
29 immediately notify Broker in writing of any material change in the information provided to Broker. Owner agrees to hold Broker  
30 harmless from loss by reason of Broker's use of said materials, forms and information, including the payment of reasonable attorney  
31 fees in the event of any suit against Broker arising out of the use of said materials, forms and information. Owner agrees to make the  
32 following repairs and build-outs to the Premises: \_\_\_\_\_  
33 \_\_\_\_\_ ~~STRIKE ANY ITEMS NOT APPLICABLE~~

34 Owner represents to Broker that Owner has no notice or knowledge of any of the following conditions affecting the Premises:  
35 (a) Uncorrected building or housing code violations;  
36 (b) A lack of hot or cold running water.  
37 (c) Plumbing or sewage disposal facilities that are not in good operating condition.  
38 (d) Heating facilities serving any dwelling unit that are not in safe operating condition, or are not capable of maintaining a temperature,  
39 measured in occupied areas at the approximate center of the room, midway between floor and ceiling, of at least 67° F (19° C) during  
40 all seasons of the year that the unit is occupied.  
41 (e) A lack of electrical service, or electrical wiring, outlets, fixtures or other components of the electrical system that are not in safe  
42 operating condition.  
43 (f) Any structural or other conditions in the Premises which constitute a substantial hazard to the health or safety of the tenant(s), or  
44 create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the Premises other than negligent use  
45 or abuse of the Premises by tenant(s).  
46 (g) Other conditions or occurrences which would significantly reduce the value of the leasehold interest to a reasonable person with  
47 knowledge of the nature and scope of the condition or occurrence. EXCEPTIONS TO REPRESENTATIONS STATED IN LINES 34-  
48 47: \_\_\_\_\_

49 Owner agrees to promptly inform Broker of any information that would modify the above representations during the term of this Listing.

50 **BROKER'S COMMISSION** If Owner enters into a lease or a rental agreement as to the Premises, Owner agrees to pay Broker a  
51 commission in the amount of \_\_\_\_\_

52 **TERMINATION FEE** If this Listing is terminated because of a sale, exchange or other transfer of legal or equitable title to the  
53 Premises, Owner agrees to pay Broker a termination fee in the amount of \_\_\_\_\_

54 \_\_\_\_\_ which shall be reduced by any commissions paid to Broker in connection with the purchase, sale or option.

WB-37 Exclusive Listing Contract For Lease Of Real Property, page 1

to show the premises at reasonable times and upon reasonable advance notice as allowed by law. The list of owner responsibilities specified in the WB-37 can be shortened by striking inapplicable items or can be lengthened by adding additional responsibilities in the Additional Provisions area of the form.

With respect to the choice of a lease form, the DRL no longer has approved lease forms that must be used by Wisconsin real estate licensees. § RL 16.04(2) allows licensees to use lease forms available in the marketplace, so long as they

are drafted by an attorney and approved by the owner. Therefore, owners of rental properties may direct the broker to use forms drafted by attorneys available in the marketplace. The broker may complete the form as directed by the owner. Brokers may assist the owner by providing forms for the consideration of the owner (or owner's counsel, if appropriate). Brokers providing such forms should assure that any form provided complies with rules regulating rental practices and identifies the drafter. For example, a REALTOR® entering a WB-37 might recommend that a property owner use WRA

Residential Lease or Residential Rental Contract forms.

With respect to showings, owners (and their properly authorized agents) have limited rights to enter the apartment once a tenant moves into a unit. Wis. Stat. § 704.05(2) establishes the tenant's "right to exclusive possession of the premises." This statute requires owners to give advance notice of entry. Owners may enter at reasonable times to inspect the premises, make repairs, or show the property to prospective tenants or purchasers. In the City of Madison and other municipalities, owners must give notice of entry at least 24 hours in advance. In communities without applicable ordinances, owners must give notice of entry at least 12 hours in advance per Wis. Adm. Code § ATCP 134.09(2). Notice may be verbal or written, but it is preferable to give written notice to tenants and keep a copy of all entry notices for the file.

Owners may enter a rented apartment only at reasonable times. Early morning and late evening entry arguably is not reasonable. Entry during normal business hours — 8 a.m. to 5 p.m. is usually reasonable. It may be best to work out an entry time that both the owners and the tenant agree is reasonable — advance notice is not required if the tenant requests or consents to a proposed entry at a specified time. No owner may enter a dwelling without first announcing his or her presence (by knocking or ringing the doorbell) and identifying himself or herself to anyone present in the dwelling.

## Owner's Warranties and Representations

Lines 26 to 49 of the WB-37 state the warranties and representations made by the owner to the broker. The initial warranties and representations relate to any information, materials or forms the owner provides the broker. These warranties are intend-

(Page 2 of 3, WB-37)

55 **EXTENSION OF LISTING:** Owner and Broker agree that they will not illegally discriminate, against any prospective tenant or purchaser on  
56 The Listing term is extended for a period of one year as to any tenant who personally or through any person acting for such tenant either  
57 negotiated regarding the lease of the Premises or submitted a written letter of intent or lease during the term of this Listing (protected  
58 tenant). If the extension is based on negotiation, the extension shall be effective only if the tenant's name is delivered to Owner, in writing,  
59 no later than three days after the expiration of the Listing, unless Owner was directly involved in discussions of the potential terms upon  
60 which tenant might acquire a leasehold interest in the Premises. The requirement of this Listing to deliver the tenant's name in order to  
61 make the extension of the Listing term effective also may be fulfilled as follows: 1) if the Listing is effective only as to certain individuals  
62 who are identified in the Listing, the identification of the individuals in the Listing shall fulfill the delivery of the tenant's name requirement  
63 and 2) if the tenant has requested that the tenant's identity remain confidential, delivery of a notice identifying the broker with whom the  
64 tenant negotiated and the date(s) of any showings or other negotiations shall fulfill the delivery of the tenant's name requirement.  
65 "Negotiated" for the purpose of this paragraph means to discuss the potential terms upon which tenant might acquire a leasehold interest  
66 in the Premises or to attend an individual showing of the Premises. "Submitted" for the purposes of this paragraph means that a written  
67 letter of intent or lease has been delivered to Owner or Broker.  
68 **ATTORNEY FEES:** Should litigation arise between the Parties in connection with this Agreement, the prevailing Party shall have the  
69 right to reasonable attorney's fees.  
70 **FAIR HOUSING:** Owner and Broker agree that they will not illegally discriminate, against any prospective tenant or purchaser on  
71 account of race, color, sexual orientation as defined in Wisconsin Statutes, §111.32(13m), disability, religion, national origin, sex or  
72 marital status of the person maintaining a household, lawful source of income, age, ancestry, familial status or in any other manner  
73 prohibited by federal, state or local fair housing laws or other applicable law or regulation.  
74 **AGENCY DISCLOSURE PROVISIONS:**  
75 **AGENCY DISCLOSURE AND CONSENT TO MULTIPLE REPRESENTATION:** Wisconsin Statute § 452.135(2) requires Broker to  
76 disclose that Seller is Broker's client. Broker's duties to Seller can be found at lines 97-106. Broker's duties to all parties can be found  
77 at lines 80-96. The confidentiality rights of all parties can be found at lines 119-126. See lines 127-131 for information regarding  
78 identification of confidential and non-confidential information at lines 132-135. If a multiple representation relationship is consented to  
79 and does occur, both parties will be Broker's clients.  
80 **DUTIES OWED TO ALL PARTIES:** Wisconsin Statute § 452.133(1) states that in providing brokerage services to a party to a  
81 transaction (including both clients and customers), a broker shall do all of the following:  
82 (a) Provide brokerage services to all parties to the transaction honestly, fairly and in good faith.  
83 (b) Diligently exercise reasonable skill and care in providing brokerage services to all parties.  
84 (c) Disclose to each party all material adverse facts that the broker knows and that the party does not know or cannot discover through  
85 reasonably diligent observation, unless the disclosure of a material adverse fact is prohibited by law.  
86 (d) Keep confidential any information given to the broker in confidence, or any information obtained by the broker that he or she knows  
87 a reasonable party would want to be kept confidential, unless the information must be disclosed under par. (c) or Wis. Stat. § 452.23  
88 (information contradicting third party inspection or investigation reports), or is otherwise required by law to be disclosed or the party  
89 whose interests may be adversely affected by the disclosure specifically authorizes the disclosure of particular confidential information.  
90 A broker shall continue to keep the information confidential after the transaction is complete and after the broker is no longer providing  
91 brokerage services to the party.  
92 (e) Provide accurate information about market conditions that affect a transaction, to any party who requests the information, within a  
93 reasonable time of the party's request, unless disclosure of the information is prohibited by law.  
94 (f) Account for all property of the parties coming into the possession of a broker within a reasonable time of receipt.  
95 (g) When negotiating on behalf of a party, present contract proposals in an objective and unbiased manner and disclose the  
96 advantages and disadvantages of the proposals.  
97 **DUTIES OWED TO CLIENTS ONLY:**  
98 Wisconsin Statute § 452.133(2) states that in addition to his or her duties under lines 80-96, a broker providing brokerage services to  
99 his or her client shall do all of the following:  
100 (a) Loyal represent the client's interests by placing the client's interests ahead of the interests of any other party, unless loyalty to a client  
101 violates the broker's duties under lines 80-96 or Wis. Stat. § 452.137(2) (duties to all clients in multiple representation situations).  
102 (b) Disclose to the client all information known by the broker that is material to the transaction and that is not known by the  
103 client or discoverable by the client through reasonably diligent observation, except for confidential information (see lines 86-91) and  
104 other information, the disclosure of which is prohibited by law.  
105 (c) Fulfill any obligation required by the agency agreement, and any order of the client that is within the scope of the agency  
106 agreement, that are not inconsistent with another duty that the broker has under Wis. Stat. Chapter 452 or any other law.  
107 **MULTIPLE REPRESENTATION (DUAL AGENCY):** Wisconsin Statute § 452.137 states that Broker may represent both parties in the  
108 same transaction only with the written consent of both parties. A multiple representation relationship would exist if Broker was the buyer's  
109 agent for a buyer seeking to acquire an interest in the Property. In a multiple representation relationship, Broker will provide the marketing  
110 and other services agreed upon in this Listing. Broker will continue to provide information and advice to both parties, but is not allowed to  
111 place the interests of either party ahead of the other in negotiations. During negotiations, Broker will prepare approved forms to  
112 accomplish the intent of the party making the proposal. Broker will present the proposal in an objective and unbiased manner, disclosing  
113 the proposal's advantages and disadvantages. Broker shall not disclose confidential information of either party unless required by law.  
114 (NOTE: Wisconsin Administrative Code section RL 24.07 requires disclosure of adverse material facts to all interested parties).  
115 If Seller consents to the multiple representation relationship, Seller is indicating that Seller understands Broker's duties to all parties to a  
116 transaction (see lines 80-96) and Broker's duties to a client (see lines 97-106) and that if a multiple representation relationship arises,  
117 Broker will owe the same duties to buyer that Broker owes to Seller. (See lines 97-106.)

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ed to shift liability from the broker to the owner if liability results from the use of inaccurate information or improper forms provided by the owner.

Lines 31 to 33 provide a place to record any promises the owner may have made to make repairs. This not only helps to document promises made by the owner to the broker, but it also helps assure compliance with § ATCP 134.07 which requires that any landlord promises to tenants to clean, repair or improve the premises must be made in writing and must specify the date or time period when the work will be completed. The landlord is also obligated to give tenants written notice of any reasons beyond the landlord's control that are delaying completion.

Lines 31 to 33 also provide a place to note any build-outs the owner has agreed to make. A "build-out" often refers to a situation where the premises are being rented before construction is finished. A build-out refers to the completion of construction or the addition of specified improvements that will be finished before a tenant takes occupancy. A build-out also may refer to a situation where a former tenant left improvements that need to be removed or where improvements need to be replaced or modified to make the premises desirable for other tenants. Build-outs are most common in commercial properties.

Line 28 confirms that the owner has not made any rent concessions or other agreements affecting the property. This is important in situations where the broker and others are relying on a list of rents or copies of leases to determine total monthly rents or other material terms of the tenancy. If the owner made a deal with a tenant after the list of rents or the lease was drawn up, it is hoped that a review of these lines will bring out this information.

Lines 34 to 49 of the WB-37 address the provisions of § ATCP 134.04(2). This rule lists code violations and conditions affecting habitability that a landlord is legally obligated to disclose to a residential tenant before accepting earnest money or a security deposit. These lines warrant that the owner has no notice or knowledge regarding any of the conditions specified by the rule. The broker should carefully review these lines with the owner as the broker will be responsible for disclosing this information to tenants.

### Broker's Commission

Lines 50 to 51 specify that a broker working under a WB-37 earns a commission if the owner enters into a lease or rental agreement for the premises. A blank line is provided wherein the parties state the commission amount. The WB-37 does not specify how the commission amount would be calculated or when the commission must be paid. This was intentionally left open-ended to allow brokers and owners to negotiate whatever form of commission arrangement they choose. Each broker, of course, must determine which

Page 3 of 3, WB-37

118 **SELLER (DOES)(DOES NOT) ~~STRIKE ONE~~ CONSENT TO A MULTIPLE REPRESENTATION RELATIONSHIP (DUAL AGENCY).**

119 **CONFIDENTIALITY NOTICE:**

120 A BROKER IS REQUIRED TO MAINTAIN THE CONFIDENTIALITY OF ALL INFORMATION GIVEN TO THE BROKER IN

121 CONFIDENCE AND OF ALL INFORMATION OBTAINED BY THE BROKER THAT HE OR SHE KNOWS A REASONABLE PARTY

122 WOULD WANT TO BE KEPT CONFIDENTIAL, UNLESS THE INFORMATION IS REQUIRED TO BE DISCLOSED BY LAW. THE

123 FOLLOWING INFORMATION IS REQUIRED TO BE DISCLOSED BY LAW:

124 1) MATERIAL ADVERSE FACTS AS DEFINED IN § 452.01(5g) OF THE WISCONSIN STATUTES.

125 2) ANY FACTS KNOWN BY THE BROKER THAT CONTRADICT ANY INFORMATION INCLUDED IN A WRITTEN INSPECTION

126 REPORT ON THE PROPERTY OR REAL ESTATE THAT IS THE SUBJECT OF THE TRANSACTION.

127 TO ENSURE THAT THE BROKER IS AWARE OF WHAT SPECIFIC INFORMATION YOU CONSIDER CONFIDENTIAL, YOU MAY LIST

128 THAT INFORMATION AT LINES 132-133. AT A LATER TIME, YOU ALSO MAY PROVIDE THE BROKER WITH OTHER WRITTEN

129 NOTIFICATION OF WHAT INFORMATION YOU CONSIDER TO BE CONFIDENTIAL. YOU MAY IDENTIFY INFORMATION WHICH MIGHT

130 OTHERWISE BE CONSIDERED CONFIDENTIAL (SUCH AS OWNER'S MOTIVATION TO SELL) AS NON-CONFIDENTIAL AT LINES

131 134-135.

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

133 \_\_\_\_\_

134 **NON-CONFIDENTIAL INFORMATION:** \_\_\_\_\_

135 \_\_\_\_\_

136 **EXCLUSIONS:** All persons whose lease or rental would earn a prior listing broker a commission under a prior listing contract are

137 excluded from this Listing to the extent of the prior broker's legal rights, unless otherwise agreed to in writing. Within one week of this

138 Listing, Seller agrees to deliver to Broker a list of all persons whose lease or rental would earn another broker a commission under a

139 prior listing contract. **CAUTION: Contact previous listing broker if the identity of potential protected persons from previous**

140 **listings is uncertain.** The following other persons are excluded from this Listing until \_\_\_\_\_ **INSERT DATE**

141 \_\_\_\_\_

142 **ADDITIONAL PROVISIONS**

143 \_\_\_\_\_

144 \_\_\_\_\_

145 \_\_\_\_\_

146 \_\_\_\_\_

147 \_\_\_\_\_

148 \_\_\_\_\_

149 \_\_\_\_\_

150 \_\_\_\_\_

151 \_\_\_\_\_

152 \_\_\_\_\_

153 **ADDENDA** The attached \_\_\_\_\_ is/are made part of this Listing.

154 **CAUTION: IF SIGNED, THIS LISTING CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BROKERS MAY PROVIDE A**

155 **GENERAL EXPLANATION OF THE PROVISIONS OF THIS LISTING OR OTHER REAL ESTATE CONTRACTS, BUT ARE**

156 **PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS LISTING OR**

157 **ANY OTHER REAL ESTATE CONTRACT. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED. SELLER**

158 **SHOULD CONSULT OTHER EXPERTS AS APPROPRIATE, FOR EXAMPLE, APPRAISERS, TAX ADVISORS, OR HOME**

159 **INSPECTORS IF SERVICES BEYOND BROKER'S MARKETING SERVICES ARE REQUIRED.**

160 **TERM OF THE LISTING** FROM THE \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_ UP TO

161 AND INCLUDING MIDNIGHT OF THE \_\_\_\_\_ DAY OF \_\_\_\_\_.

162 **NOTE: A SALE, OPTION, EXCHANGE OR PROCUREMENT OF A PURCHASER FOR A PORTION OF THE PREMISES DOES NOT**

163 **TERMINATE THE LISTING AS TO ANY REMAINING PART OF THE PREMISES INCLUDED IN THE LIST PRICE, INCLUDING**

164 **PERSONAL PROPERTY AND EQUIPMENT.**

165 Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

166 (s) \_\_\_\_\_

167 Owner's Signature ▲ Print Name Here: \_\_\_\_\_ Date ▲ \_\_\_\_\_

168 (x) \_\_\_\_\_

169 Owner's Signature ▲ Print Name Here: \_\_\_\_\_ Date ▲ \_\_\_\_\_

170 \_\_\_\_\_

171 Owner's Address ▲ Phone # ▲ Fax # ▲

172 (s) \_\_\_\_\_

173 Agent for Broker ▲ Print Name Here: \_\_\_\_\_ Broker/Firm Name ▲ \_\_\_\_\_

174 \_\_\_\_\_

175 Broker/Firm Address ▲ Phone # ▲ Fax # ▲

### WB-37 Exclusive Listing Contract For Lease Of Real Property, page 2

commission policy is appropriate for that broker, independently of any other real estate office.

### **Termination Fee**

Lines 52 to 54 allow the owner and the broker to agree on an amount which would fairly compensate the broker for the owner's premature termination of the broker's listing contract due to the owner's sale, exchange or other transfer of the property. The listing contract is terminated if the owner sells or transfers the listed property. Accordingly, there is a concern that if the owner sells the property during the listing, the broker may be shortchanged on future commission income, particularly in long-term lease listing contracts. This can be quite unfair to a broker who has agreed to receive a commission as a percentage of future rents or who has spent significant time and effort to lease a property only to have the listing period cut short.

### **Extension of Listing**

The Extension of Listing section on lines 55 to 67 of the WB-37 is substantially similar the Extension of Listing sections found in the DRL-approved exclusive right-to-sell listing contracts. This is the section that establishes listing protection, in this case, with respect to tenants instead of buyers. As stated in the WB-37, "The Listing term is extended for a period of one year as to any tenant who . . . either negotiated regarding the lease of the Premises or submitted a written letter of intent or lease during the term of this Listing (protected tenant)."

Tenants generally may qualify for listing protection in one of four ways under the WB-37.

If (1) the tenant submits a written letter of intent or lease or (2) negotiates directly with the owner, listing protection is automatic and the broker is not required to perform any additional steps to initially protect the tenant for the one-

year override period. On the other hand, if (3) the tenant attends an individual showing or (4) negotiates with a broker during the term of the listing, the tenant is protected only if the broker delivers the tenant's name to the owner within three days of the expiration of the lease listing contract. "Negotiate," for these purposes, means that the tenant discussed the potential terms upon which the tenant may acquire a leasehold interest in the property.

If the tenant is protected under the listing, the broker then has, in essence, a one-party listing for the protected tenants during the one-year override period. This broker must present any written letter of intent, lease or other written proposal a protected tenant writes to the owner, and will earn the listing commission if the proposal is accepted and closes. This is true even if the property subsequently has been listed with another broker.

The WB-37 lease listing also provides that if a one-party listing contract specifically names the tenant(s) to which it relates, any such tenant qualifying for listing protection is automatically protected by virtue of his or her name appearing on the contract.

If there is a tenant who, pursuant to his or her rights under Wisconsin agency law, indicates that his or her identity is to remain secret, such a tenant may be protected by timely delivering to the owner a notice identifying the broker with whom the tenant was working and the date(s) of any showings or other negotiations. The WB-37 listing also provides that the tenant has "submitted an offer" and thus is automatically protected if a written letter of intent or lease has been delivered to the owner or the listing broker (this will include the listing agent).

### **Attorney's Fees**

Lines 68 to 69 state that in any litiga-

tion arising out of the WB-37 (such as the broker suing the owner for earned but unpaid commissions), the prevailing party is entitled to attorney's fees. This is a very important statement because without it attorney's fees could not be collected.

### **Fair Housing**

Lines 70 to 73 state that each party to the WB-37 agrees not to participate in any unlawful act of discrimination against prospective tenants. This is an important reminder given the incidence of fair housing violations that occur during the advertising and rental application phases of the residential rental process.

### **Agency Disclosures and Consent to Multiple Representation**

The disclosure of real estate agency form is incorporated into the WB-37 lease listing in the Agency Disclosure Provisions section on lines 74 to 135. The descriptions of the duties owed to all parties and the duties owed to clients, the mandatory confidentiality notice, and the explanation of multiple representation have all been stated within the body of the WB-37 lease listing. Also included is the consent to multiple representation, the waiver of confidentiality, and the blank lines for listing confidential and non-confidential information. Accordingly, agents listing a rental property will not need to have the owner complete a separate real estate agency disclosure form. Agency disclosure materials found in the WB-37 are substantially the same as those found in the WRA agency disclosure forms.

An agency disclosure form must also be furnished to prospective tenants when the broker is actually negotiating the terms of a lease on behalf of the owner. The form is not required, however, if the broker does not negotiate. For example, a licensee does not negotiate by simply showing the unit or presenting the tenant with a

“non-negotiable,” “take-it-or-leave-it” lease. These activities are basic administrative tasks, which may be performed by a non-licensee as well as a licensee. A real estate license is not required to complete the lease form selected by the owner with the owner’s predetermined rental terms, and leases are not DRL-approved forms.

### **Exclusions**

Lines 136-141 provide that tenants protected under a prior broker’s lease listing contract are excluded from the WB-37 lease listing. There also is an area where the broker may list tenants whom the owner wishes to except because of prior contacts or relationships between owner and tenant. Because courts frown upon putting the owner in jeopardy of paying two commissions, the form cautions the broker and the owner to contact prior brokers for more information regarding protected tenants. In essence, this section works in the same way as the Exclusions section on the DRL-approved exclusive right to sell listing contracts.

### **Using a Broker Commission Lien in a Lease Listing Transaction**

A broker commission lien is used in a commercial lease listing situation to secure the listing broker’s commission due under a listing for lease such as the WB-37 or the WRA’s Exclusive Listing Contract for Lease of Commercial Property. Commercial real estate is defined, for purposes of the commission lien law, as all real estate except property that contains eight or fewer dwelling units, property zoned for agricultural purposes, and undeveloped property zoned for residential purposes.

### **Sample Fact Situation: Lease of Downtown Office Space**

Broker D has been talking with Owner O about entering into a WB-37 Exclusive Listing Contract for

Lease of Real Property with Owner O, whereby Broker D would procure a tenant and negotiate a lease for downtown office space. It occurs to Broker D that if she wants to protect any commissions earned under the listing for lease with a broker lien, she must provide Owner O with a Notice of Intent to Claim Broker Lien before the date that the listing contract for lease listing is signed.

### **Notice of Intent to Claim Broker Lien for Commercial Lease Listing Broker**

The first step in establishing a broker lien for Broker D is to file or record a Notice of Intent to Claim Broker Lien. Broker D will use the Notice of Intent to Claim Broker Lien form. This form must be provided to Owner O at least one day before the commercial lease listing is signed.

It will be to Broker D’s benefit to have the commercial lease listing negotiated and drafted before Broker D completes the Notice of Intent to Claim Broker Lien. When completing the Notice of Intent to Claim Broker Lien, Broker D fills in her company name as the Broker Lien Claimant, and fills in her company’s broker licensee number, the name of the owner (Owner O), and the date of the WB-37 Exclusive Listing Contract for Lease of Real Property. Broker D crosses out the phrases “listing contract” and “buyer agency agreement” so that the form reads “Broker has entered into a written lease or management agreement with the Owner or Acquirer of commercial real estate, as defined in § 779.32(1)(b), Wis. Stats.”

Broker D also fills in the legal description and parcel number of the office building. Broker D dates the form, prints her individual name on the form, and signs her individual name before a notary.

Once the form is notarized, Broker D makes a copy of the completed form

for her files, and delivers the original to Owner O on January 6.

### **Terms of Commercial Lease Listing**

On January 7, Broker D enters into a WB-37 Exclusive Listing Contract for Lease of Real Property with Owner O. Owner O would like a minimum lease term of 36 months for the 1,500-square feet of rentable area. The listing broker’s commission is 7 percent of the base rent, with 3.5 percent due upon the lease signing, 3.5 percent due upon the tenant’s occupancy, and 7 percent due on the anniversary date of the lease signing throughout the balance of the lease term. A 3.5 percent commission is also due upon any lease renewal.

### **Notice of Broker Lien in Commercial Lease Listing Transactions**

The Notice of Broker Lien in the case of a commercial lease listing must be filed with the register of deeds and mailed to the owner no later than 90 days after the broker earns a commission, or the broker receives notice that he or she has earned a commission, whichever is later. A fee is considered to be earned on the date that payment of the fee is due under the broker’s agreement. The broker thus need not file any broker liens until such time that the owner fails to pay a commission that is due and is in default for 89 days.

The broker may use the threat of filing a broker lien to encourage the owner to make timely commission payments. If the owner is 90 days in default, the broker can file a broker lien and satisfy it once the commission payment has been received. If the owner is again 90 days in default with a later payment, the broker can file another broker lien. This hopefully would not be necessary because after the broker has filed one broker lien, the owner is apt to make serious efforts to avoid repeating the broker lien process.

## Waiver of Broker Lien Rights

Meanwhile, Owner O has faxed a copy of the Notice of Intent to Claim Broker Lien to her attorney and is asking whether she can avoid having any broker liens filed against the office building. The attorney suggests that other than making sure that Broker D is paid on time, that maybe Broker D would sign a lien waiver if Owner O can find some other way to secure the payment of her commission payments. Owner O is adamant that Broker D signs a lien waiver, so Broker D agrees to waive the broker lien if Owner O posts a letter of credit as security for the commission payments.

Broker D prepares a Waiver of Broker Lien Rights, using the WRA form. Broker D fills in Owner O's name on the top line and the legal description of the office building. Broker D checks the item labeled "Leasing/Management Broker," and fills in the cut off date — Owner O wants the waiver to cover any commissions due during the first three years of any lease procured during the term of the lease listing. Broker D fills in the date of the Notice of Intent to Claim Broker Lien (January 6), but leaves the filing date and document number blank because the notice of intent in leasing and property management situations is not filed or recorded with the register of deeds. Broker D executes the waiver before a notary and provides the original to Owner O on January 28.

## Terms of Retail Lease

After prolonged negotiations, Owner O enters into a four-year commercial lease with Lessee W on April 19 who takes occupancy on June 1. Broker D earns a 3.5 percent commission upon the April 19 lease signing, a 3.5 percent commission upon the June 1 occupancy, and a 7 percent commission on the anniversary of the lease signing for the next three years.

Payment of Broker D's commission is

secured by the letter of credit posted by Owner O. Although no broker lien is ever filed, the possibility of one has given Broker D the bargaining power to obtain reliable security for the commission payments that are due to her. Although it is not likely that many owners will insist upon lien waivers or post other security, this example illustrates the potential leverage generated by the filing of a Notice of Intent to Claim Broker Lien.

For additional information about the commercial commission lien law and

forms, see Legal Updates 98.06 and 98.09. Legal Update 98.09 is found online at [www.wra.org](http://www.wra.org). Broker lien forms are available on WRA Zip Forms.

## WRA Property Management Agreement

*Can a non-licensee manage an apartment for someone?*

Yes. A property manager does not need to be licensed as a broker, although many are. Rental agents who merely show residential rental

Wisconsin REALTORS® Association, Inc.  
4601 Forest Run Road Madison Wisconsin 53704

**PROPERTY MANAGEMENT AGREEMENT**

Not for use as a listing for lease. (Designed for use by real estate licensees)

1 **GENERAL PROVISIONS** Property Management Agreement ("Agreement") made this \_\_\_\_ day of \_\_\_\_\_  
2 between \_\_\_\_\_ ("Owner"), and  
3 \_\_\_\_\_ ("Manager").  
4 Owner gives Manager the exclusive right to rent, lease, operate and manage the property whose address is:  
5 \_\_\_\_\_  
6 in the City of \_\_\_\_\_ County of \_\_\_\_\_, Wisconsin ("Property").  
7 **NOTE:** For multiple properties provide the additional description(s) in additional provisions or in an addendum, as necessary.  
8 **COLLECTION OF RENTS AND OTHER INCOME** CHECK LINE 9 OR 10 BELOW, IF NEITHER IS CHECKED LINE 10 IS DEEMED CHECKED  
9  Owner shall collect and deposit all rents, security deposits, income, etc. in the Owner's Account ("Property Account").  
10  Manager shall deposit into (Manager's trust account) (Owner's Account) **[STRIKE ONE]** ("Property Account") all rents, security deposits,  
11 income and any other monies payable to Owner under this Agreement ("Property Funds") when such Property Funds are received by Manager.  
12 **DISBURSEMENT OF PROPERTY FUNDS**  
13 Owner designates Manager as a signatory on the Property Account and authorizes Manager to make all disbursements authorized under  
14 this Agreement. Manager shall disburse Manager's compensation when due **[SEE LINES 23-28]** and shall reimburse Manager within 30  
15 days for any funds advanced by Manager from Manager's funds on Owner's behalf as provided herein. Manager shall pay all obligations  
16 and expenditures necessarily and properly incurred on behalf of the Owner in the management and operation of the Property, including  
17 but not limited to insurance premiums, real estate taxes, mortgage payments, supplies, repairs, maintenance, advertising costs and  
18 professional fees ("Monthly Expenses"). Manager shall make disbursements to Owner from the Property Account as and when and in  
19 such amounts as may be requested by Owner, provided that there are sufficient funds to meet Monthly Expenses with provision for  
20 adequate reserves and working capital, etc. Owner shall, upon written notice by Manager, promptly deposit into the Property Account  
21 sufficient monies as may be necessary from time to time to pay all monthly expenses and any other expenses which are the  
22 responsibility of Owner.  
23 **MANAGER'S COMPENSATION** Manager's compensation shall be paid no later than the 5<sup>th</sup> of each month, and shall be calculated as follows:  
24 A management fee equal to \_\_\_\_\_% of the gross amount of all rents paid by tenants of the Property;  
25 A leasing/renewal fee equal to \_\_\_\_\_% of one month's rent upon execution of an original lease and upon any renewal of the lease;  
26 Termination fee of \_\_\_\_\_% of the sales price if the Property's sale terminates this Agreement;  
27 Collection fee of \_\_\_\_\_% of bad debts collected by Manager; Insurance Settlement fee of \_\_\_\_\_% of any gross insurance settlement amount;  
28 Other: \_\_\_\_\_  
29 **MANAGER'S AUTHORITY** The Owner authorizes Manager to perform the following property management duties and Owner agrees to  
30 assume and pay all fees and expenses related to the Property and as provided for in this Agreement. In consideration for Owner's agreements,  
31 Manager agrees to use professional knowledge and skills and reasonable efforts to fulfill Manager's obligations under this authority.  
32 **Advertising:** To advertise the availability for rental of the Property or any part thereof by any reasonable means (including the internet),  
33 to allow Manager to show the Property at reasonable times and upon reasonable advance notice as may be allowed by law, and to display  
34 "For Rent" and other appropriate signs. The Manager agrees to secure the prior approval of the Owner on all advertising expenditures  
35 in excess of \$ **[COMPLETE OR STRIKE AS APPLICABLE]** for any month.  
36 **Leases:** To prepare leases using lease forms provided by or approved by Owner (all lease forms shall identify Owner or an attorney as  
37 drafter), and to negotiate, sign (as agent of Owner), renew and terminate leases for the Property or any part thereof. Lease terms shall be no  
38 longer than one year without the prior authorization of Owner.  
39 **Legal Action:** To sign and serve, as agent of the Owner, such notices as may be appropriate. To the extent allowed by law, to institute  
40 and prosecute any appropriate legal action for and as agent of the Owner, including but not limited to, legal action to terminate tenancies, to  
41 evict, to recover possession of Property, to recover rents and other monies due Owner, and to settle, compromise and release such actions  
42 or suits and reinstate such tenancies as may be deemed necessary by Manager. Manager may retain competent legal counsel, as required,  
43 upon Owner's approval, to institute and prosecute legal actions or suits or to otherwise represent Owner's interests related to the Property.  
44 **Maintenance and Repairs:** To have made all necessary repairs, improvements, and alterations required to maintain the Property in a  
45 good state of repair and appearance. To purchase or lease on behalf of the Owner, all equipment, tools, appliances, materials and supplies  
46 necessary for the continuous maintenance and operation of the Property. To hire outside contractors as necessary. Manager agrees to secure  
47 the prior approval of the Owner on all expenditures in excess of \$ \_\_\_\_\_ for any one item, except when, in the opinion  
48 of the Manager, such maintenance or repairs are necessary to protect the property from damage or to maintain services to the tenants as  
49 called for in their leases ("emergency maintenance or repairs"). Manager will promptly notify Owner of any needed emergency maintenance  
50 or repairs. If Manager does not receive a timely response from Owner, Manager may proceed with the emergency maintenance and repairs.  
51 **Utilities and Service Contracts:** To enter into utility and service contracts as agent of Owner, including but not limited to contracts for  
52 electricity, gas, fuel, water, telephone, cleaning, trash removal, snow removal, lawn care, pest control and other contracts for services and  
53 commodities as Manager shall deem advisable and necessary for the efficient operation and maintenance of the Property. Owner approval  
54 required to exceed 3 year terms. The Owner agrees to assume the obligation of any of these contracts at the termination of this Agreement.  
55 **Employees:** To employ, discharge, and supervise as agent of the Owner all on-site managers, maintenance staff and other employees  
56 required for the efficient operation and maintenance of the Property. All such on-site managers, maintenance staff and other employees shall  
57 be, for all purposes, employees of (Owner) (Manager) **[STRIKE ONE]** ("Employer"). Employer shall be solely responsible for injuries and  
58 damages caused by employees' acts or omissions except for injuries and damages caused by the other Party's negligence or intentional  
59 wrongdoing. Owner shall approve all hiring in advance and Owner shall be responsible for all expenses arising from the employment.  
60 Employer shall be responsible for obtaining Worker's Compensation coverage when applicable.  
61 **BOOKS OF ACCOUNT AND RECORDS**  
62 The Manager shall maintain full and complete books and records with correct entries for all income and expense resulting from the  
63 operation and management of the Property. Such books of account and records shall be the property of the Owner and shall, at all times  
64 during regular business hours be open to the inspection of the Owner or the duly authorized representative of the Owner, at the Manager's

## WRA Property Management Agreement, page 1



property, accept applications and provide information to prospective tenants are not regarded within the definition of "broker." However, actual negotiations of lease terms or entry into a lease by the rental agent are acts of real estate brokerage, and therefore, require licensure. Unlicensed rental agents or managers must not be paid on a percentage of rentals, but rather on a salary basis. They must restrict their activities to showing units, giving basic information, taking rental applications and accepting/receiving rental deposits in the form of checks (but not cash).

Real estate licensees are allowed to draft property management agreements for their own use under § RL 16.03(1)(c). Property management agreements can also be obtained in the marketplace. The Wisconsin REALTORS® Association has developed a property management agreement which may be used if the parties or their attorneys do not draft their own agreement. The WRA Property Management Agreement is designed for use by real estate licensees, but may be modified for use by anyone. The WRA Property Management Agreement appears on pages 8 - 10 of this Update, and is discussed in the following section of this Update.

The WRA Property Management Agreement is a new form. It is not a DRL-approved form so its use is completely optional. Like the revised WB-37 Exclusive Listing Contract Lease of Real Property, this form fills three letter-sized pages and incorporates agency disclosure provisions.

## WRA Property Management Agreement, Section-by-Section

A number of property management issues are raised in the WRA Property Management Agreement. The way the completed contract addresses these issues will determine the relative rights and responsibilities of the property owner and the property

manager. Because each rental property and rental owner is unique, the best approach is to have a customized property management agreement prepared for each situation. When that is not possible, the WRA Property Management Agreement (PMA) may be used.

### Parties & Property Description

Lines 1 to 7 of the PMA identify the parties and the property to be exclusively managed, using the street address. The parties are encouraged to add any additional description under Additional Provisions (on page 3 of the PMA) or in an addendum.

### Collection of Rent and Other Income

Lines 8 to 11 ask the parties to specify whether the owner or the manager shall collect all security deposits, rent, income and other money relative to the operation of the rental property. If this will be the manager's responsibility, the parties must also indicate whether the manager should handle the funds using the owner's account or the manager's trust account.

From the perspective of a manager who is a licensed real estate broker, funds from rental and property man-

85	principal place of business.	[Page 2 of 3 WRA-PMA]
86	The Manager shall furnish to Owner a detailed statement of all income and expense for each month, on or before the 10 <sup>th</sup> day of the	
87	following month. Within forty-five (45) days after the close of each accounting year of Owner (as determined by Owner), the Manager	
88	shall deliver to Owner a detailed statement of all income and expense of such accounting year and shall, if so instructed by Owner, cause	
89	to be prepared at Owner's expense and delivered to Owner, a balance sheet as of the end of said accounting year, and a profit and loss	
90	statement of the Property for such accounting year, which shall be prepared by an accountant designated by Owner.	
91	<b>OWNER COOPERATION</b> Owner agrees to make available to Manager all data, records, documents, rules and regulations, and other	
92	materials required in connection with the management of the Property, to provide or approve a lease for Manager's use, to cooperate fully	
93	with Manager in Manager's actions under this Agreement and to immediately provide to Manager the names of any prospective tenants.	
94	<b>INSURANCE</b> Owner agrees to carry comprehensive insurance covering the Property in the amount Owner deems appropriate for	
95	replacement coverage in his sole judgment, with a minimum of Two Million Dollars (\$2,000,000) liability coverage, and to direct the	
96	company issuing the insurance to name Manager, and all on-site managers, maintenance staff and other employees as additional insureds	
97	under the policy's liability coverage.	
98	<b>INDEMNIFICATION</b> Owner agrees to indemnify and hold Manager harmless for losses, damages, costs and expenses, including	
99	attorney's fees, arising out of this Agreement unless caused by gross negligence or intentional wrongdoing of Manager.	
100	<b>DEFAULT</b> In the event of a material default by either party to this Agreement, this Agreement may be terminated by the non-defaulting	
101	party if such default is not cured within ten (10) days after delivery of written notice of such default to the defaulting party. In the event any	
102	legal proceeding (including appellate proceedings) arises as a result of any default under this Agreement, the prevailing party shall be entitled	
103	to reimbursement of any costs and expenses, including reasonable attorneys fees, incurred by the prevailing party in connection therewith.	
104	<b>DELIVERY</b> Delivery of documents or written notices related to this Agreement may be accomplished by: 1) giving the document or	
105	written notice personally to the party; 2) depositing the document or written notice postage or fees prepaid or charged to an account in	
106	the U.S. Mail or a commercial delivery system, addressed to the party, at the party's address (See lines 185, 189.); 3) electronically	
107	transmitting the document or written notice to the party's fax number (See lines 185, 189.).	
108	<b>MISCELLANEOUS PROVISIONS</b>	
109	This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.	
110	This Agreement represents the entire agreement of the Parties. All prior negotiations and discussions have been merged into this	
111	Agreement. No modification or waiver of this Agreement or any part hereof shall be valid unless in writing and signed by Manager and	
112	Owner. No waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other subsequent breach or	
113	condition, whether of like or different nature. The validity or unenforceability of any provision of this Agreement shall not affect the validity	
114	or enforceability of any other provision of this Agreement.	
115	This Agreement may be executed in one or more counterparts and each of such counterparts shall, for all purposes, be deemed to be	
116	an original, but all of such counterparts shall constitute one and the same instrument. Any signed document transmitted by facsimile	
117	machine (fax) shall be treated in all manner and respects as an original document and the signature of any Party upon a document	
118	transmitted by fax shall be considered an original signature.	
119	This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their personal representatives, successors, and assigns.	
120	<b>AGENCY DISCLOSURE PROVISIONS</b> (Applicable when Manager is practicing as a real estate licensee.)	
121	<b>AGENCY DISCLOSURE AND CONSENT TO MULTIPLE REPRESENTATION:</b> Wisconsin Statute § 452.135(2) requires Broker to	
122	disclose that Owner is Broker's client. Broker's duties to Owner can be found at lines 123 -132. Broker's duties to all parties can be found	
123	at lines 106 -122. The confidentiality rights of all parties can be found at lines 134 -141. See lines 142 -145 for information regarding	
124	identification of confidential and non-confidential information at lines 146 -149. If a multiple representation relationship is consented to	
125	and does occur, both parties will be Broker's clients.	
126	<b>DUTIES OWED TO ALL PARTIES:</b> Wisconsin Statute § 452.133(1) states that in providing brokerage services to a party to a	
127	transaction (including both clients and customers), a broker shall do all of the following:	
128	(a) Provide brokerage services to all parties to the transaction honestly, fairly and in good faith.	
129	(b) Diligently exercise reasonable skill and care in providing brokerage services to all parties.	
130	(c) Disclose to each party all material adverse facts that the broker knows and that the party does not know or cannot discover	
131	through reasonably vigilant observation, unless the disclosure of a material adverse fact is prohibited by law.	
132	(d) Keep confidential any information given to the broker in confidence, or any information obtained by the broker that he or she	
133	knows a reasonable party would want to be kept confidential, unless the information must be disclosed under par. (c) or Wis.	
134	Stat. § 452.23 (Information contradicting third party inspection or investigation reports), or is otherwise required by law to be	
135	disclosed or the party whose interests may be adversely affected by the disclosure specifically authorizes the disclosure of	
136	particular confidential information. A broker shall continue to keep the information confidential after the transaction is complete	
137	and after the broker is no longer providing brokerage services to the party.	
138	(e) Provide accurate information about market conditions that affect a transaction, to any party who requests the information, within	
139	a reasonable time of the party's request, unless disclosure of the information is prohibited by law.	
140	(f) Account for all property of the parties coming into the possession of a broker within a reasonable time of receipt.	
141	(g) When negotiating on behalf of a party, present contract proposals in an objective and unbiased manner and disclose the	
142	advantages and disadvantages of the proposals.	
143	<b>DUTIES OWED TO CLIENTS ONLY:</b>	
144	Wisconsin Statute § 452.133(2) states that in addition to his or her duties under lines 106 -122, a broker providing brokerage services	
145	to his or her client shall do all of the following:	
146	(a) Loyal represent the client's interests by placing the client's interests ahead of the interests of any other party, unless loyalty to a client	
147	violates the broker's duties under lines 106 -122 or Wis. Stat. § 452.137(2) (duties to all clients in multiple representation situations).	
148	(b) Disclose to the client all information known by the broker that is material to the transaction and that is not known by the	
149	client or discoverable by the client through reasonably vigilant observation, except for confidential information (see lines 112-117)	
150	and other information, the disclosure of which is prohibited by law.	
151	(c) Fulfill any obligation required by the agency agreement, and any order of the client that is within the scope of the agency	
152	agreement, that are not inconsistent with another duty that the broker has under Wis. Stat. Chapter 452 or any other law.	
153	<b>MULTIPLE REPRESENTATION (DUAL AGENCY):</b> See Wisconsin Statute § 452.137, if applicable.	

## WRA Property Management Agreement, page 2

agement activities generally may be deposited in one of three types of accounts: (1) a traditional non-interest bearing trust account, (2) an interest-bearing trust account for non-client funds, or (3) the rental owner's account. Rental application deposits, security deposits and rent may be deposited into one of these accounts whether the owner is a third-party owner or a real estate licensee. A broker who holds property management funds in a trust account must disburse any earned property management fees on a regular monthly basis unless otherwise agreed in a written property management agreement.

Traditional non-interest bearing trust account. Non-client funds such as security deposits and rent may be deposited in a regular trust account – the one with which licensees are historically familiar.

Interest-bearing trust account for non-client funds. Rental transaction funds may also be deposited in an interest-bearing trust account provided the broker obtains written authorization of the parties for whom the funds are being held. The authorization must specify how and to whom the interest will be paid. Typically interest from these accounts is payable to one or both parties — no

interest may be paid to or applied to the benefit of the broker. This type of interest-bearing account may be needed by brokers in communities that require that interest be paid to tenants on their security deposits.

Rental owner's account. Funds from property management and leasing activities may also be deposited into the rental owner's account. An "owner's account" is an account maintained by the rental property owner for the deposit and disbursement of the owner's funds. A broker may deposit rental application deposits, security deposits and rent into the owner's account provided these checks are payable to one or more of the owners or to the owner's account (e.g., "Sunset Apartments"). The application form, lease, and other tenant paperwork should direct the tenant to make his payments payable to the owner. If payments are mistakenly made payable to the licensee, the funds must go into the broker's trust account. The owner may designate the broker as a signatory on the owner's account and authorize the broker to make disbursements from the account. Such authorization should be in writing, often in the lease listing or property management agreement

The rules, however, do not authorize brokers to place rental transaction funds in an interest-bearing common trust account (IBRETA). Such deposits may put banks in technical violation of federal banking law. The rules, on the other hand, do not forbid the deposit of rental transaction funds into interest-bearing common trust accounts (IBRETA). Since it is not entirely clear what the effects of such a practice might be, it is best to avoid this practice.

### Disbursement of Property Funds

Lines 12 to 22 of the PMA contain the manager's authorization from the owner to disburse funds from the property account. Specifically, the

134 ■ **CONFIDENTIALITY NOTICE:** [Page 3 of 3 WRA-PMA]  
 135 A BROKER IS REQUIRED TO MAINTAIN THE CONFIDENTIALITY OF ALL INFORMATION GIVEN TO THE BROKER IN CONFIDENCE  
 136 AND OF ALL INFORMATION OBTAINED BY THE BROKER THAT HE OR SHE KNOWS A REASONABLE PARTY WOULD WANT TO  
 137 BE KEPT CONFIDENTIAL, UNLESS THE INFORMATION IS REQUIRED TO BE DISCLOSED BY LAW. THE FOLLOWING  
 138 INFORMATION IS REQUIRED TO BE DISCLOSED BY LAW:  
 139 1) MATERIAL ADVERSE FACTS AS DEFINED IN § 452.01(5g) OF THE WISCONSIN STATUTES.  
 140 2) ANY FACTS KNOWN BY THE BROKER THAT CONTRADICT ANY INFORMATION INCLUDED IN A WRITTEN INSPECTION  
 141 REPORT ON THE PROPERTY OR REAL ESTATE THAT IS THE SUBJECT OF THE TRANSACTION.  
 142 TO ENSURE THAT THE BROKER IS AWARE OF WHAT SPECIFIC INFORMATION YOU CONSIDER CONFIDENTIAL, YOU MAY LIST THAT  
 143 INFORMATION AT LINES 146-147. AT A LATER TIME, YOU ALSO MAY PROVIDE THE BROKER WITH OTHER WRITTEN NOTIFICATION  
 144 OF WHAT INFORMATION YOU CONSIDER TO BE CONFIDENTIAL. YOU MAY IDENTIFY INFORMATION WHICH MIGHT OTHERWISE BE  
 145 CONSIDERED CONFIDENTIAL (SUCH AS OWNER'S MOTIVATION TO LEASE) AS NON-CONFIDENTIAL AT LINES 148-149.  
 146 ■ **CONFIDENTIAL INFORMATION:** \_\_\_\_\_  
 147 \_\_\_\_\_  
 148 ■ **NON-CONFIDENTIAL INFORMATION:** \_\_\_\_\_  
 149 \_\_\_\_\_  
 150 **LEAD-BASED PAINT PROVISIONS** (Manager) (Owner) **STRIKE ONE** shall be responsible for identification and elimination of lead-based  
 151 paint hazards and compliance with all applicable lead-based paint laws. If Property includes "target housing" (pre-1978 residential dwelling  
 152 units) applicable laws may include federal laws such as the Residential Lead-Based Paint Disclosure Program (Section 1018 of Title X), and  
 153 the Pre-Renovation Lead Information Rule (40 CFR Part 745) (For additional information see <http://www.epa.gov/opptintr/lead/index.html>)  
 154 and Wisconsin laws such as Wis. Stat. Chapter 254 and Wis. Adm. Code Chapter DHS 163 (Call DHS (608)261-6878), Wisconsin common  
 155 law (e.g. *ANTWAUN A. v. HERITAGE MUT. INS. CO.*), and any comparable local ordinances.  
 156 **ADDITIONAL PROVISIONS** \_\_\_\_\_  
 157 \_\_\_\_\_  
 158 \_\_\_\_\_  
 159 \_\_\_\_\_  
 160 \_\_\_\_\_  
 161 \_\_\_\_\_  
 162 \_\_\_\_\_  
 163 \_\_\_\_\_  
 164 \_\_\_\_\_  
 165 \_\_\_\_\_  
 166 \_\_\_\_\_  
 167 \_\_\_\_\_  
 168 **ADDENDA** The attached \_\_\_\_\_ is/are made part of this Agreement.  
 169 **TERM**  CHECK LINE 170 OR 172 BELOW. IF NEITHER IS CHECKED LINE 172 IS DEEMED CHECKED  
 170  This Agreement shall begin on \_\_\_\_\_ and shall continue in effect until terminated by either  
 171 Owner or Manager by delivery of a 60 day notice of termination.  
 172  This Agreement shall begin on \_\_\_\_\_ and shall be for a term of one year. This Agreement  
 173 shall be automatically renewed for additional one-year periods unless on or before 30 days prior to the original or renewal expiration date  
 174 Owner or Manager delivers a written termination notice to the other Party.  
 175 **CAUTION: IF SIGNED, THIS AGREEMENT CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BROKERS MAY PROVIDE**  
 176 **A GENERAL EXPLANATION OF THE PROVISIONS OF THIS AGREEMENT OR OTHER CONTRACTS, BUT ARE PROHIBITED BY**  
 177 **LAW FROM GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS AGREEMENT OR ANY OTHER**  
 178 **CONTRACT. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.**  
 179 Dated this \_\_\_\_\_ day of \_\_\_\_\_  
 180 (b)  
 181 Owner's Signature ▲ Print Name Here: ► \_\_\_\_\_ Date ▲ \_\_\_\_\_  
 182 \_\_\_\_\_  
 183 (c)  
 184 Owner's Signature ▲ Print Name Here: ► \_\_\_\_\_ Date ▲ \_\_\_\_\_  
 185 \_\_\_\_\_  
 186 Owner's Address ▲ \_\_\_\_\_ Phone # ▲ \_\_\_\_\_ Fax # ▲ \_\_\_\_\_  
 187 (d)  
 188 Agent for Manager ▲ (Print Name) ► \_\_\_\_\_ Manager/Firm Name ▲ \_\_\_\_\_  
 189 \_\_\_\_\_  
 190 Manager/Firm Address ▲ \_\_\_\_\_ Phone # ▲ \_\_\_\_\_ Fax # ▲ \_\_\_\_\_  
 191 Drafted by Attorneys Richard Staff and Debra Peterson Conrad  
 192 To order contact the Wisconsin REALTORS® Association, (608)241-2047. Copyright © 2001 by Wisconsin REALTORS® Association, Inc.  
 193 No representation is made as to the legal validity of any provision or the adequacy of any provision in any specific transaction.

### WRA Property Management Agreement, page 3

manager is directed to pay him or herself when due (the fifth day of the month), and to reimburse any expenses he or she has paid from his or her own personal account on behalf of the owner within 30 days. The manager is also directed to pay all necessary and properly incurred operational or property management expenses paid on behalf of the owner. These expenses may include insurance premiums, real estate taxes, mortgage payments, supplies, advertising costs, and maintenance costs. The manager must also disburse funds to the owner upon the owner's request, provided there are sufficient funds in the property account. The manager is to maintain adequate reserves and working capital in the property account and to notify the owner if additional dollars are needed to pay monthly expenses.

### Manager's Compensation

The manager's compensation potentially includes several different components, as indicated on lines 23 to 28 of the PMA.

The manager may receive:

- A management fee equal to a percentage of the gross rents, a leasing and/or renewal fee equal to a percentage of one month's rent payable whenever the manager procures a new lease or a lease renewal;
- A termination fee equal to a percentage of the property sales price if the owner sells the rental property and thereby terminates the property management agreement;
- A bad debt collection fee equal to a percentage of the bad debts collected by the manager;
- An insurance claim settlement fee equal to a percentage of any gross settlement amount;
- And, any other compensation written by the parties on the blank line provided line 28 of the PMA.

The owner and manager shall negotiate what the appropriate percentage rates should be for each of these items.

§ RL 18.09(3)(b) requires a broker providing property management services to disburse the fee earned for his or her services on a monthly basis unless otherwise agreed in a written property management agreement signed by the parties. Line 23 of the PMA specifies that the manager shall pay his or her compensation monthly no later than the fifth day of the month.

### Manager's Authority

Lines 29 to 60 detail aspects of the manager's authority to operate the rental property including advertising, leases, legal action, maintenance and repairs, utilities and service contracts, and employees. The manager agrees to use his or her professional knowledge and skills and reasonable efforts in performing these duties under the agreement. The manager also agrees to pay all expenses related to the property and authorized under the PMA.

Advertising. The manager should use reasonable means to advertise available rental units, including the Internet, to show the rental units and to display "for sale" and other appropriate signs. Advertising expenses in excess of a designated level require the owner's prior consent.

Showings. With respect to showings, owners (and their properly authorized agents and managers) have limited rights to enter the apartment once a tenant moves into a unit. Wis. Stat. § 704.05(2) establishes the tenant's "right to exclusive possession of the premises." This statute requires owners to give advance notice of entry. Owners may then enter at reasonable times to inspect the premises, make repairs, or show the property to prospective tenants or purchasers. In the City of Madison and other municipalities, owners must give entry notice at least 24 hours in advance. In communities without applicable ordinances, owners must give entry notice at least 12 hours in advance per Wis. Adm. Code § ATCP

134.09(2). Notice may be verbal or written, but it is preferable to give written notice to tenants and keep a copy of all entry notices.

Owners may enter a rented apartment only at reasonable times. Early morning and late evening entry arguably is not reasonable. Entry during normal business hours – 8 a.m. to 5 p.m. – is usually reasonable. It may be best to work out an entry time that both the landlord and the tenant agree is reasonable — advance notice is not required if the tenant requests or consents to a proposed entry at a specified time. No landlord may enter a dwelling without first announcing his or her presence (by knocking or ringing the doorbell) and identifying him or herself to anyone present in the dwelling.

Leases. The DRL no longer has approved forms for leases that must be used by Wisconsin real estate licensees. § RL 16.04(2) provides that licensees can use lease forms drafted by the owner or by an attorney. Therefore, lines 36 to 38 direct the manager to use the lease forms provided by or approved by the owner (must be drafted by the owner or attorneys). The manager may assist the owner by providing forms for the consideration of the owner (or owner's counsel, if appropriate). The manager is authorized to negotiate, sign, terminate and renew leases on behalf of the owner. No lease term may exceed one year without the owner's prior approval.

Legal Action. The manager is authorized to sign and serve notices on behalf of the owner. Lines 39 to 43 authorize the manager, to the extent allowed by law, to sue on behalf of the owner to terminate tenancies, evict tenants, recover possession of the rental property, to recover rents and other money due to the owner, and settle and compromise any of these legal claims. The manager is authorized to hire an attorney to assist in these endeavors.

The manager's ability to function as a legal representative of the owner may be limited because of Wis. Stat. § 757.30, which provides in part:

“Penalty for practicing without license. (1) Every person, who without having first obtained a license to practice law as an attorney of a court of record in this state, as provided by law, practices law within the meaning of sub. (2), or purports to be licensed to practice law as an attorney within the meaning of sub. (3), shall be fined not less than \$50 nor more than \$500 or imprisoned not more than one year in the county jail or both, and in addition may be punished as for a contempt. (2) Every person who appears as agent, representative or attorney, for or on behalf of any other person, or any firm, co partnership, association or corporation in any action or proceeding in or before any court of record, court commissioner, or judicial tribunal of the United States, or of any state, or who otherwise, in or out of court, for compensation or pecuniary reward gives professional legal advice not incidental to his or her usual or ordinary business, or renders any legal service for any other person, or any firm, partnership, association or corporation, shall be deemed to be practicing law within the meaning of this section.”

Therefore, unless the licensee was part owner of the rental property or the licensee held a license to practice law in Wisconsin, representing a property owner in a court action would constitute the unlicensed practice of law.

In addition, Wis. Stat. § 799.06(2) provides with respect to small claims court appearances: “A person may commence and prosecute or defend an action or proceeding under this chapter and may appear in his, her or its own proper person or by an attorney regularly authorized to practice in the courts of this state. Under this subsection, a person is considered to be acting in his, her or its own prop-

er person if the appearance is by a full-time authorized employee of the person. An assignee of any cause of action under this chapter shall not appear by a full-time authorized employee, unless the employee is an attorney regularly authorized to practice in the courts of this state.”

Maintenance and Repairs. Lines 44 to 50 put the manager in charge of maintaining the property in a good state of repair and appearance. To this end, the manager is authorized to purchase or lease all necessary equipment, tools, appliances, materials, and supplies; and to hire outside contractors. The manager must have the owner's prior approval for any one expenditure that exceeds a specified amount unless it is for emergency repairs or maintenance (necessary to protect the property from damage or to maintain services for tenants per the leases).

Utilities and Repairs. The manager is authorized by lines 51 to 54 to enter into contracts for electricity, gas, fuel, water, telephone service, cleaning, trash removal, snow removal, lawn care, pest control, and any other services or commodities necessary for the efficient operation and maintenance of the property. Owner approval is required for any contract with a term in excess of three years and the owner agrees to assume all contracts upon termination of the property management agreement.

Employees. Lines 55 to 60 authorize the manager to hire, fire and supervise all on-site managers, maintenance staff and other employees. The parties designate on line 57 whether all on-site managers, maintenance staff and other employees shall be the employees of the owner or the manager. The designated employer shall be responsible for all damages and injuries caused by the employees' actions or omissions unless caused by the other party's negligence or intentional wrongdoing. The employer must maintain workers compensation

coverage for the employees, but the owner shall be responsible for all employment expenses and must approve all hires in advance. In other words, the owner bears the financial costs of the employees while the party who bears the potential legal liability is negotiable between the owner and manager.

### **Books of Account and Records**

Lines 61 to 70 indicate that the manager maintain all books and records for the operation of the rental property, subject to monitoring by the owner. To that end, the owner shall be provided with a detailed monthly income and expense statement, an annual income and expense report. If instructed by the owner, the manager shall retain the accountant selected by the owner. The accountant shall provide the owner with a balance sheet and a profit and loss statement at the conclusion of the accounting year, at the owner's expense.

### **Owner Cooperation**

Lines 71 to 73 contain a general statement of the property owner's responsibilities to the manager. The owner must cooperate with the manager by providing all data, records, documents, rules, regulations and other materials required to manage the property, a lease form for the manager's use, and the names of prospective tenants.

Regarding choice of a lease form, the DRL no longer has approved lease forms that must be used by Wisconsin real estate licensees. § RL 16.04(2) provides that licensees can use lease forms available in the marketplace, so long as they are drafted by an attorney and approved by the owner. A licensed broker/manager may complete the form as directed by the owner. Brokers may assist the owner by providing forms for the consideration of the owner (or owner's counsel, if appropriate). Brokers providing such forms should assure that any form provided complies with rules regulating rental prac-

tices and identifies the drafter. For example, a REALTOR® entering a PMA might recommend that the owner use the WRA Residential Lease or Residential Rental Contract form.

### **Insurance**

Lines 74 to 77 require the owner to carry a minimum liability coverage of \$2 million and to name the manager and all on-site managers, employment staff, and other employees as additional insureds. The owner must maintain comprehensive coverage on the rental property in the amount the owner deems appropriate.

### **Indemnification**

In lines 78 to 79 the owner agrees to indemnify and hold the manager harmless for losses, damages, costs and expenses, including attorneys' fees arising out of the PMA. This does not apply if the loss, damage, cost or expense arises from the manager's gross negligence or intentional wrongdoing. This provision should provide a fair amount of comfort and security for the manager because the owner is standing behind the manager in a wide range of circumstances, including ordinary negligence. The manager is well advised to obtain his or her own liability insurance.

### **Default**

If either the owner or the manager commits a material default of the PMA and the default is not cured within 10 days after delivery of a notice of default from the other party, the agreement is terminated, as described in lines 80 to 83. Thus if one party believes the other is in material default of the PMA, that party must give the defaulting party written notice stating the default, and may terminate the PMA only if the default is not cured within 10 days of delivery of the notice.

The provision awarding attorneys' fees to the prevailing party in the event of litigation regarding a default of the PMA may encourage resolu-

tion through informal means such as arbitration or mediation before resorting to the courts.

### **Delivery**

The delivery provisions on lines 84 to 87 are similar to those seen on most real estate forms. Delivery of a written notice or other document to the other party may be by personal delivery, mail or delivery service, or fax.

### **Miscellaneous Provisions**

Lines 88 to 99 contain an assortment of boiler plate contract provisions: (1) the agreement is governed by Wisconsin law, (2) the entire agreement of the parties is reflected in the PMA, (3) any amendments must be in writing and signed by both parties, (4) no waiver of any default or breach shall be construed as a waiver of any subsequent default (if one party lets a default go once, it does not mean that he or she cannot give a notice of default if it happens again), and (5) if one provision in the PMA is found to be unenforceable it shall not affect the enforceability or validity of any other PMA provisions. Lines 88 to 99 also provide that the PMA may be executed in counterparts, that faxed documents shall be treated as original documents, and that faxed signatures shall be treated as original signatures. The PMA is binding upon the parties, and their personal representatives, successors and assigns.

### **Agency Disclosures and Consent to Multiple Representation**

The disclosure of real estate agency form is incorporated into the PMA in the Agency Disclosure Provisions section on lines 100 to 149. The descriptions of the duties owed to all parties and the duties owed to clients, the mandatory confidentiality notice, and the explanation of multiple representation have all been stated within the body of the PMA. Also included are blank lines for listing confidential and non-confidential information. Accordingly, agents entering a

property management agreement will not need to have the owner complete a separate real estate agency disclosure form. Agency disclosure materials found in the PMA are substantially the same as those found in the WRA agency disclosure forms. There are no lines for a consent to multiple representation or a waiver of confidentiality. These will typically not be considerations between a rental property owner and a property manager.

An agency disclosure form must also be furnished to prospective tenants when the broker is actually negotiating the terms of a lease on behalf of the owner. The form is not required, however, if the broker is not negotiating the lease terms. For example, when a licensee is simply showing the unit or presenting the tenant with a "non-negotiable," "take-it-or-leave-it" lease, no negotiation is involved. These activities are basic administrative tasks, which may be performed by a non-licensee as well as a licensee. A real estate license is not required to complete the lease form selected by the owner with the owner's predetermined rental terms, and leases are not DRL-approved forms.

### **Lead-Based Paint Provisions**

In lines 150-155 the parties designate who will deal with lead-based paint (LBP) issues relating to the rental property. This includes the identification and elimination of LBP hazards and compliance with all federal and state LBP laws. As REALTORS® know, this is a serious responsibility that should not be taken lightly. The potential liability involved can be enormous if a child is poisoned by an LBP hazard on the property or if the owner is cited for violation of the federal LBP disclosure or other laws. REALTORS® looking for on the latest LBP information may go to <http://www.wra.org/Resources/LBResources.htm>, on the WRA Web site, for a comprehensive grouping of LBP resources and information.

## Term

Lines 169 to 174 give the parties a choice as far as stating the term of the PMA. The parties can agree to an indefinite term that will come to an end only upon delivery of a 60-day notice of termination, or the parties can select a one-year term that is automatically renewed for additional one-year terms. Automatic renewal ends when a written termination notice is delivered by one party at least 30 days before the original or a renewal expiration date. The second choice will cause the parties to reconsider their relationship each year. It will provide more certainty and stability because the parties will know that if there is no termination notice at renewal time, the agreement will continue on for at least another year. The first choice is more flexible because the agreement may be terminated at any time upon 60 days written notice.

## Legal Hotline Questions And Answers

The WRA Legal Hotline receives a variety of questions relating to property management relationships and rental issues. The following is a small sample of the issues raised by Hotline callers.

*When does an agent for a landlord need a real estate license?*

Rental agents who merely show residential rental property, accept applications and provide information to prospective tenants are not regarded as within the definition of “broker.” However, actual negotiations of lease terms or entry into a lease by the rental agent are acts of real estate brokerage and, therefore, require licensure.

Unlicensed rental agents or managers must not be paid on a percentage of rentals (but rather on a salary basis); and must restrict activities to showing units, giving basic information, taking rental applications, and accept-

ing/receipting rental deposits in the form of checks (but not cash).

*What are the rules that apply to return of security deposits?*

Security deposits, their return and charges against them are the most frequent area of dispute in landlord-tenant relations. The return of security deposits is regulated by Wis. Admin. Code § ATCP 134.06. This rule defines “surrender” of the premises and limits the basis upon which a landlord may withhold security deposits. Security deposits may be withheld for tenant damage, waste or neglect, nonpayment of rent or utility charges, or other lawful reasons designated in NONSTANDARD RENTAL PROVISIONS. The rule also establishes the timing and manner of giving notice when all or part of a security deposit is withheld. A detailed statement of claims must be given with a return of any security deposit balance owed within 21 days after the tenant surrenders the premises. Failure to comply with the rule is a violation of Wis. Stats. § 100.20(5), which allows recovery of double damages, costs, and attorney fees. This rule and its damages provision have been tested in the courts and upheld. See *Pierce v. Norwick*, 202 Wis. 2d 588 (1996).

*Must an agent for a landlord or rental owner make agency disclosures to a tenant? When must the agency disclosure form be given to a prospective tenant?*

Standard of Practice 16-12 provides that “REALTORS®, acting as agents or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. (Amended 1/98)” The most conservative view may be that the agency disclosure form is triggered if the tenant wishes to make any changes in the lease – when the

agent begins to deliver negotiation messages back and forth between landlord and tenant.

§ RL 24.07(8)(e) provides with respect to listings for lease and property management contracts that “Licensees entering into listings for lease or property management contracts with property owners shall provide to their clients the disclosure form required under s. 452.135, Stats. A licensee shall also provide an agency disclosure form to prospective tenants when the licensee is actually negotiating the terms of a lease on behalf of the owner. A licensee is not required to provide an agency disclosure form to a prospective tenant in situations when the licensee does not negotiate the terms of a lease, such as when the rental unit is only being shown to the prospective tenant or a completed and “non-negotiable” lease is presented to a prospective tenant.”

*The tenant paid rent through July, but moved out early before the end of July. He turned in the keys and surrendered the apartment, which is ready for inspection. If the landlord lets a new tenant move in early before the end of July, is the landlord obligated to pay the former tenant any compensation for letting the new tenant move in early?*

If there has been a mutually agreed upon early lease termination (expressed in a written agreement which sets the new lease termination date and prorates rent and any other applicable charges), new tenants may move in early. Since the former tenant in this case paid rent through July, however, he should be compensated for the days in July the new tenant occupies the unit. If there has not been an early termination, no new tenants should be permitted to occupy the premises without the former tenant’s permission. It has to be one way or the other: either the apartment is rented through the end of July or there is an early termination.

*What are the laws regarding evictions between October through February?*

Wisconsin law does not make any distinctions in its eviction laws based on the time of the year. A landlord may wish to see if any local ordinance restricts winter evictions.

*May a property manager or some other agent fill out the landlord's LBP disclosures and otherwise take those steps necessary to comply with the LBP disclosure law?*

A landlord may authorize an agent, such as a property manager, to fulfill the landlord's disclosure responsibilities under the federal LBP law. This includes providing any information known to the landlord or agent about LBP on the premises, and the completion of the LBP disclosure form. Such action by an authorized agent binds the landlord, who is ultimately responsible for full compliance with the disclosure law and for any failure of the agent to provide all required information. Thus, a property manager can complete a LBP disclosure form such as Addendum L for the owner, provided that the property manager is properly authorized. For the property manager's protection, such authority is best given in writing such as in the property management agreement. See *Legal Update 96.07* for discussion of the steps that must be taken by a rental agent or property manager to comply with the federal LBP rules.

*A broker/salesperson is thinking of starting a property management company. Can he operate a separate property management company and still sell real estate for his broker/employer? Can this property management company be a partnership with the broker/salesperson and a non-licensee as the partners?*

The broker/salesperson can operate a property management business as an independent practice pursuant to § RL 17.03(1). To practice independently under this rule, the broker/salesperson must have the written consent of the employing broker and must avoid conflicts of interest. All other normal aspects of a brokerage, such as establishing a trust

account and observing disclosure duties must be present. The broker/employer should have no responsibility for the independent practice if the broker/salesperson establishes his or her individual operations as clearly independent, similar to the way in which salespeople engaging in personal real estate transactions distance these transactions from the company's business.

According to the Department of Regulation and Licensing, this independent practice could be conducted as a licensed partnership with the broker/salesperson as the sole licensed broker/partner. The partnership would be licensed as provided in Wis. Stat. § 452.12(2). The other partners and employees could not be licensees in order to maintain compliance with the independent practice rules.

## Conclusion

A REALTOR® asked to rent out a property for a client must first determine whether the client wants simply basic rental services or whether they want complete property management services. If the client wants simple rental services, the license will use the WB-37 Exclusive Listing Contract for Lease of Real Property. If the client wants a property manager, the licensee may use the WRA Property Management Agreement if a customized, attorney-drafted property management agreement is not available. Both agreements provide helpful guidance to licensees providing brokerage services to rental property owners.

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