

FEBRUARY 2011

# Legal Update

A WRA Publication Exclusively for the Designated REALTOR®

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## Inside This Issue

2

**The Updated Residential Offer**

7

**Title Commitment Primer**

13

**2011 WB-11 Residential Offer to Purchase (Draft)**

## 2011 WB-11 Residential Offer to Purchase


The Department of Regulation and Licensing has made additional revisions to the WB-11 Residential Offer to Purchase, making further improvements and revisions based upon the 2010 version. This newest residential offer form makes no major substantive changes. Rather, these newest revisions clarify some of the provisions in the 2010 version to make the form a bit more understandable and user-friendly for consumer and licensee users.

The optional-use date for the newest revised WB-11 is expected to be March 1, 2011, and the mandatory-use date is projected to be July 1, 2011. The WB-11, as well as the newly revised WB-14 Residential Condominium Offer to Purchase and the WB-13 Vacant Land Offer to Purchase, are in the final stages of the approval process at the Wisconsin DRL.

In the big picture, the new WB-11 is not drastically different. There are few, if any, changes that will be apparent to REALTORS®. The content of each page is essentially unchanged and the provisions remain in the same order as before. Many revisions simply clarify and improve the provisions already in place that generally seem to be working well. Other revisions attempt to resolve a couple of issues that arose as licensees used the 2010 version of the WB-11. Suggested improvements were presented by practitioners, attorneys and the WRA Forms Committee to the DRL Real Estate Contractual Forms Advisory Committee as it worked on the updates to some of the other DRL-approved offer to purchase forms.

This *Legal Update* reviews this latest round of changes made to the WB-11 Residential Offer to Purchase. The section-by-section discussion points out many of the newest changes proposed by the DRL and provides practice tips for getting the best results with this new version of the WB-11. Not every single modification is discussed, however, because some changes are simply grammatical or involve formatting and do not influence the content of the form or create a change requiring licensee explanation. In addition, this *Update* includes a discussion deciphering the basics of title insurance commitments, a topic that is often confusing to consumers and challenging for some licensees to explain.

The draft of the “new, new” WB-11 at the end of the *Update* is just that: a draft. The DRL has not yet given its final approval and the DRL Secretary has not yet signed off on this offer, so REALTORS® must be understand that there might be last-minute changes. There is no guarantee that the attached DRAFT is in its final form.

 **REALTOR® Practice Tip:** REALTORS® may begin using the revised WB-11 residential offer as soon as the form becomes available on ZipForm and in paper form. Please visit the Forms Update Resource page at [www.wra.org/formsupdate](http://www.wra.org/formsupdate) for information about forms availability.

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## The Updated Residential Offer

The sample copy of the updated WB-11 Residential Offer to Purchase appearing on Pages 13-21 of this issue is a draft subject to final DRL approval and possibly some additional formatting and polishing. Please do not attempt to use this draft form as it is still subject to potential changes.

In the following discussions, the existing WB-11 (mandatory-use date March 1, 2010) will be referred to as the “2010 Offer,” and the recently updated WB-11 will be referred to as the “2011 Offer.” All references to line numbers are to the 2011 Offer unless otherwise noted. The format, layout and sequence of provisions in the 2011 Offer are all substantially the same as in the 2010 Offer.

### Longer Blank Lines (Lines 1-5)

**FUNCTIONAL ENHANCEMENT:** The first changes in the 2011 Offer are functional to make the offer easier to use. The blank lines for the date on line 1, the buyer’s name on lines 3-4 and the street address on lines 4-5 have all been made longer to accommodate longer names and encourage clear and legible information with respect to this basic contract information.

### Party Contact Information Follows Corresponding Delivery Method (Lines 36-54)

**ORGANIZATIONAL ENHANCEMENT:** The Delivery of Documents and Written Notices section has been reorganized so that the blank lines for the insertion of any recipients for delivery immediately follow the Personal Delivery lines where the parties’ recipients for delivery are first mentioned.

The blank lines for the insertion of any party delivery address immediately follow the Commercial Delivery and the U.S. Mail lines because these provisions first refer

to the parties’ delivery addresses.

The blank lines for the insertion of any party e-mail address immediately follow the E-Mail lines because these provisions first refer to the parties’ e-mail addresses.

This structural reorganization of this section serves to emphasize the different, separate delivery methods available to the parties and eliminates the appearance that the blank lines all pertain to the e-mail item. In addition, the blank lines asking for parties’ delivery information have been given a uniform sequence such that the seller’s information is now requested first, then the buyer’s information is requested.

### Description of Consumer Transaction Modified (Lines 50-52)

**SUBSTANTIVE ADDITION:** The requirement for a party to give electronic consent for e-mail delivery only applies when a consumer will be using and receiving electronic documents in place of the written documents otherwise required by law. A consumer is defined for these purposes as “an individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.” This definition of a transaction under E-Sign clearly includes real estate transactions in which there is a “sale, lease, exchange, or other disposition of any interest in real property.” In addition, consumers who are parties to a brokered real estate transaction are receiving services. Thus, electronic consent requirements apply to most transactions in which individuals are buying or selling residential properties because they will be using the property or the proceeds for personal, family or household purposes.

For further information regarding e-mail delivery and the requirement

for electronic consent from consumers, Review the February 2008 *Legal Update*, "Electronic Commerce and E-Mail Delivery," at [www.wra.org/LU0802](http://www.wra.org/LU0802), and the article entitled "Behind the Curtain" in the June 2010 *Wisconsin Real Estate Magazine* at <http://news.wra.org/story.asp?a=1326>.

The language that appeared in the E-Mail delivery item in the 2010 Offer explained a consumer transaction as one where the property being purchased was used primarily for personal, family or household purposes, which would refer to buyers acting as consumers, but neglected to refer to sellers in consumer transactions who use the proceeds of the transaction primarily for personal, family or household purposes. That omission has been corrected in the 2011 Offer language.

### ***Insect and Animal Infestation Disclosure Item (Lines 91-92)***

**SUBSTANTIVE CLARIFICATION:** In the residential offer, the definition of "Conditions Affecting the Property or Transaction" contains a list of property defect items. Item r. in the 2010 Offer referred to "Current or previous animal, insect, termite, powder-post beetle or carpenter ant infestations." This item is based on the Wis. Stat. Chapter 709 Real Estate Condition Report (RECR). Specifically, Wis. Stat. § 709.03 provides: "C. 18. I am aware of current or previous termite, powder-post beetle or carpenter ant infestations." The language in the 2010 Offer item r. was supplemented to add a reference to "animal" because the 1999 version of the WB-11 asked sellers to disclose any, "Insect or animal infestation of the Property." The term "insect" was also added because of the prior item in the 1999 offer and so this item would not be limited to just a short list of specific pests.

A concern was raised that prior insect

infestations that were completely eradicated at the time would not fairly be characterized as a legitimate "defect." Asking a seller to disclose every past insect problem was also seen as posing an unnecessary difficulty for sellers with regard to situations that may not have been serious concerns.

It has been the reasoning of the WRA Forms Committee and the DRL Committee, as well as the commentary of other attorneys before, that the list of items in the offer under the definition of "Conditions affecting the Property or transaction" should match the RECR as closely as possible or the seller may fall into a trap.

As a result, the language was modified to match the statute and then add a reference to animal or other insect infestations that actually cause defects. The result is an item r. at lines 91-92 that states, "Current or previous termite, powder-post beetle or carpenter ant infestations or defects caused by other animal or insect infestations."

### ***Smoke and Carbon Monoxide Detector Disclosure Item (Line 108)***

**SUBSTANTIVE ADDITION:** In the residential offer, the definition of "Conditions Affecting the Property or Transaction" contains a list of property defect items. Item dd. in the 2010 Offer referred to "Violation of applicable state or local smoke detector laws; NOTE: State law requires operating smoke detectors on all levels of all residential properties."

The new Wis. Stat. § 101.647 requires virtually all homes to have carbon monoxide (CO) detectors beginning on February 1, 2011. CO alarms must be installed in the basement of the dwelling and on each floor level except the attic or storage area of both newly constructed and existing homes. For new construction, the alarms must be hard-wired; in existing homes, the alarms can be

battery-operated and multi-purpose (smoke and CO). Dwellings with no attached garages, no fireplaces and no fuel-burning fireplaces are exempt. Similar to the smoke alarm law, the CO detector law does not have a fine or penalty associated with non-compliance. However, all home inspections will check for CO alarms. Given the importance of this safety measure, item dd. was modified to remove the note and refer to CO detectors as well as smoke detectors: "Violation of state or local smoke and carbon monoxide detector laws."

### ***Statutory Shoreland Mitigation Disclosure Item (Lines 111-113)***

**SUBSTANTIVE ADDITION:** In the residential offer, the definition of "Conditions Affecting the Property or Transaction" contains a list of property defect items. Item ff. in the 2011 Offer is new, added as a result of the new mandatory disclosure item C.26.m in Wis. Stat. § 709.03, effective Jan. 1, 2011. The new item ff. reads: "The Property is subject to a mitigation plan required by DNR rules related to county shoreland zoning ordinances that obligates the owner to establish or maintain certain measures related to shoreland conditions, enforceable by the county."

### ***Longer Blank Lines (Lines 116-117)***

**FUNCTIONAL ENHANCEMENT:** The blank line in the Closing provision was made longer in response to practitioner requests.

### ***Alternate Basis for Closing Prorations (Line 121)***

**SUBSTANTIVE IMPROVEMENT:** The 2010 Offer cautions users to, "Provide basis for fuel prorations if date of closing value will not be used." Some concern was raised that title companies and brokerage closing departments not only might have difficulty obtaining fuel readings and entering them into a closing statement



all on the date of closing, but that similar challenges might be present when obtaining readings for water, sewer, or other utilities or services. When date-of-closing values cannot be satisfactorily computed using average rates, per diems or other techniques, the parties can explain how the amounts used for prorations will be determined. Line 121 has been modified to say: "CAUTION: Provide basis for utility charges, fuel or other prorations if date of closing value will not be used."

### **Alternate Formulas for Computing Real Estate Tax Prorations (Lines 122-126)**

**LANGUAGE IMPROVEMENTS:** To better communicate the original intent of the DRL, a few clarifications have been made in this section. Three alternative formulas are presented for the parties to consider when addressing real estate tax (property tax) prorations. The first choice is net general real estate taxes for the preceding year or the current year, if known. The definition of "net general real estate taxes" has been moved from the introductory language into this first alternative, which also serves as the default. It has also been clarified that it is the real estate tax proration that is to be done using the selected formula:

"Any income, taxes or expenses shall accrue to Seller, and be prorated at closing, through the day prior to closing. Real estate taxes shall be prorated at closing based on [CHECK BOX FOR APPLICABLE PRORATION FORMULA]:

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

### **Reproration Upon Receipt of Tax Bill (Lines 135-139)**

**LANGUAGE IMPROVEMENTS:** The section describing the parties' option to agree to re-prorate the property taxes after the actual real estate tax bill is received at the end of the year has been rewritten to lay out the process in a clearer manner. After having prorated property taxes at closing, the parties can compute the property tax proration once again using the amount of the taxes shown on the bill and then adjust between themselves to the extent the estimated amounts were different. The buyer is to forward a copy of the tax bill to the seller within five days after the buyer receives it, sending it to the address the seller is to provide to the buyer at closing. The reproration is to be done within 30 days of the buyer's receipt of the tax bill. The language in the 2011 Offer says,

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

This now more clearly indicates that the seller agrees to give the buyer a forwarding address at closing and the buyer will use that address to send a copy of the final tax bill to the seller.

### **Rental Weatherization (Lines 144-147)**

**LANGUAGE IMPROVEMENTS:** Some small changes were made to eliminate unnecessary verbiage and

make the provision uniform across the various offer to purchase forms undergoing revision. Clarifications emphasize that compliance shall be needed only if the transaction is not exempt from the Wisconsin Rental Weatherization Standards. The Rental Weatherization provision in the 2011 Offer now reads,

"This transaction (is) (is not) STRIKE ONE exempt from Wisconsin Rental Weatherization Standards (Wis. Admin. Code Ch. Comm 67). If not exempt, (Buyer) (Seller) STRIKE ONE ("Buyer" if neither is stricken) shall be responsible for compliance, including all costs, with Wisconsin Rental Weatherization Standards. If Seller is responsible for compliance, Seller shall provide a Certificate of Compliance at closing."

### **Property Dimensions and Surveys (Lines 197-201)**

**LANGUAGE IMPROVEMENTS:** Some small changes were made to eliminate unnecessary verbiage and make the provision uniform across the various offer to purchase forms undergoing revision. This provision now reads in the 2011 Offer:

"Buyer acknowledges that any land, building or room dimensions, or total acreage or building square footage figures, provided to Buyer by Seller or by a broker, may be approximate because of rounding, formulas used or other reasons, unless verified by survey or other means. CAUTION: Buyer should verify total square footage formula, total square footage/acreage figures, and land, building or room dimensions, if material."

### **Property Damage Between Acceptance and Closing (Line 210)**

**LANGUAGE IMPROVEMENT:** There was concern that not all repairs involve work that is properly subject to construction liens or other

liens. The insertion of the word “lien-able” clarifies that no lien waiver is required in these situations. Line 210 in the 2011 Offer now reads: “No later than closing, Seller shall provide Buyer with lien waivers for all lienable repairs and restoration.”

### **Longer Blank Lines in Financing Contingency (Lines 217-232)**

**FUNCTIONAL ENHANCEMENT:** Some of the blank lines for the loan program or source, and the dollar amounts have been made longer to encourage clear and legible information with respect to this important financing information.

### **If This Offer is Not Contingent on Financing (Lines 257-263)**

**LANGUAGE IMPROVEMENTS:** To better communicate the original intent of the DRL and to make the provision function in a more realistic manner, a few clarifications have been made in this section. Rather than being asked to provide third-party evidence that the buyer will have the funds required for the purchase available at closing, the financial institution or other third party instead is asked to provide “reasonable written verification” that the buyer presently has sufficient funds to close. No one is asked to predict the future or what the buyer’s financial picture will be a few months down the road. This provision in the 2011 Offer now provides:

“IF THIS OFFER IS NOT CONTINGENT ON FINANCING: Within 7 days of acceptance, a financial institution or third party in control of Buyer’s funds shall provide Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close. If such written verification is not provided, Seller has the right to terminate this Offer by delivering written notice to Buyer. Buyer may or may not obtain mortgage financing but does not need the

protection of a financing contingency. Seller agrees to allow Buyer’s appraiser access to the Property for purposes of an appraisal. Buyer understands and agrees that this Offer is not subject to the appraisal meeting any particular value, unless this Offer is subject to an appraisal contingency, nor does the right of access for an appraisal constitute a financing contingency.”

### **Appraisal Contingency (Lines 264-271)**

**LANGUAGE IMPROVEMENTS:** The first sentence now refers to the appraisal of the property arranged for by the buyer or the buyer’s lender, at the buyer’s cost. Improvements were made to the termination feature that may be triggered if the appraised value is not equal to or greater than the purchase price: the buyer may deliver to the seller a copy of the appraisal and a notice of termination.

#### **Change in Delivery Language**

This also is the first instance, sequentially within the 2011 Offer, where there is a situation in which the 2010 Offer (and the 1999 Offer in some examples) used to provide for delivery “to Seller, and to listing broker if Property is listed.” These instances have been changed in the 2011 Offer to simply state: “to Seller.” This same language change is made in the Inspection and Testing section (lines 406-407) and in the Inspection Contingency (lines 421-422).

In most other instances in the WB-11 where there is a delivery of a written notice or document, the delivery is to the other party: to the seller or to the buyer, as the case may be. The only other exceptions to this involve delivery of the earnest money to the listing broker, delivery of an executed earnest money disbursement agreement to the listing broker and delivery of a title commitment to the buyer’s attorney as an alternative to delivery of the title commitment to the buyer.

Providing for the delivery of documents and notices to the party in the majority of situations establishes consistency for the benefit of the parties and the licensees in the transaction. As always, the parties may name their real estate agents as their recipients for delivery and provide the contact information for the agents in the Delivery of Documents and Written Notices section on the first page of the offer if that is the preferred practice for that broker.

The Appraisal Contingency in the 2011 Offer provides,

“This Offer is contingent upon the Buyer or Buyer’s lender having the Property appraised at Buyer’s expense by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated subsequent to the date of this Offer indicating an appraised value for the Property equal to or greater than the agreed upon purchase price. This contingency shall be deemed satisfied unless Buyer, within \_\_ days of acceptance, delivers to Seller a copy of the appraisal report which indicates that the appraised value is not equal to or greater than the agreed upon purchase price accompanied by a written notice of termination.


**CAUTION:** An appraisal ordered by Buyer’s lender may not be received until shortly before closing. Consider whether deadlines provide adequate time for performance.”

### **Legal Advice Note (Lines 293-297)**

**FORMATTING ENHANCEMENT:** The note advising parties that licensees cannot provide legal advice and that an attorney should be consulted if legal advice is needed has been placed in bold type for additional emphasis. REALTORS® must never lose sight of the fact that they cannot provide legal advice to the parties in a transaction.

## Conveyance of Title (Lines 326-328)

**SUBSTANTIVE IMPROVEMENT:** A title company attorney voiced concern with the language calling for a warranty deed. The title company often ran into problems at closing when, for instance, the title to the property was actually held by a trust, but the offer calls for a warranty deed. The trustee is unable to warrant title and must use a trustee's deed, but the buyer insists upon a warranty deed because that is what is says in the offer. This leads to a lot of confusion and drama between the parties at closing.

 **REALTOR® Practice Tip:** An agent may be wise to ask for a copy of the deed to the property or the owner's title policy, have the title company run a search and hold or take some other action to

find out how the title to the property is held before any offers are accepted.

Apparently the prompt to indicate if a type of deed other than a warranty deed is to be used is not always heeded and/or the formal title holder is not identified early on. Other times it may be that the agents know the seller is an estate, for instance, but are not remembering that this necessitates a notation in the offer that a personal representative's deed will be given at closing instead of a warranty deed. Accordingly, the DRL Committee adopted the following language at the beginning of the Conveyance of Title section:

**CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty

deed (trustee's deed if Seller is a trust, personal representative's deed if Seller is an estate or other conveyance as provided herein) free and clear of all liens and encumbrances, except: municipal and zoning ...

## Gap Endorsement (Lines 343-347)

**LANGUAGE IMPROVEMENT:** a phrase was added to indicate that any gap coverage provided is "subject to the title insurance policy exclusions and exceptions." This avoids any misunderstanding that the gap endorsement or gap coverage must cover every lien and encumbrance appearing during the gap period when the intent is to extend the same coverage already being provided under the title insurance policy to this additional time frame.



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In those instances where gap coverage is already a feature of the policy being provided, then the seller will have already provided the requisite gap coverage without the addition of any new endorsement or without any additional cost. If no gap coverage or endorsement is available in the particular market or transaction, then the buyer may give notice to the seller and the situation will need to be sorted out by amendment to the offer or under the Title Not Acceptable for Closing section procedures. The Gap Endorsement provision in the 2011 Offer provides:

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

### **Inspections and Testing (Lines 395-409)**

FORMATTING ENHANCEMENT: The NOTE has been moved so that it begins at the margin on line 403 and the entire note is in bold type, consistent with the other NOTES appearing in the WB-11. Lines 406-407 provide for delivery of copies of all testing and inspection reports to the seller, where the offer used to provide for delivery of these reports to the seller and the listing broker (if the property was listed).

### **Inspection Contingency (Lines 416-418)**

SUBSTANTIVE IMPROVEMENT: An issue was raised with regard to follow-up inspections about whether anyone could perform a follow-up inspection because the provision does not specifically state that follow-ups must be performed

by a "qualified independent inspector or independent qualified third party." The language was changed in the new WB-11 at lines 416-418 to provide:

"Buyer may have follow-up inspections recommended in a written report resulting from an authorized inspection, provided they occur prior to the deadline specified at line 421. Inspection(s) shall be performed by a qualified independent inspector or independent qualified third party."

### **Inspection Contingency (Lines 421-423)**

LANGUAGE IMPROVEMENT: Where the 2010 Offer provided for delivery of the bump notice and copies of the inspection reports to the seller, and to the listing broker if the property was listed, the language in the 2011 Offer now states:

"This contingency shall be deemed satisfied unless Buyer, within \_\_\_ days of acceptance, delivers to Seller a copy of the written inspection report(s) and a written notice listing the Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects)."

### **Right to Cure (Lines 427-428)**

LANGUAGE IMPROVEMENT: For the sake of consistency, the following language changes were made: "Seller (shall) (shall not) STRIKE ONE ("shall" if neither is stricken) have a right to cure the Defects. If Seller has the right to cure, Seller may satisfy this contingency by..."

FORMATTING RULE: Throughout the 2011 WB-11, an effort was made to place initial capital letters on terms that are defined in the offer, along with the terms Buyer, Seller, Offer, and Party or Parties.

## **Title Commitment Primer**

REALTORS® are not and should never behave as though they are title experts. Title issues can be very confusing, complex and difficult to decipher with all of that boilerplate language and fine

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print. Parties with title concerns or questions should always confer with their attorneys or the title company.

At the same time it is most helpful if brokers and agents are familiar enough with a standard title insurance commitment to be able identify when a schedule or a listed item looks unfamiliar or unusual, or spot an issue that may require special attention, such that the party may wish to contact his or her attorney or the title company and have them investigate. Happy buyers and successful transactions are much more likely when the buyer understands the level of title protection being furnished.

## **Title Insurance Basics**

The title insurance commitment is the means by which a seller in Wisconsin typically proves that the seller actually owns the property being sold, in other words, the title commitment serves as the “evidence of title” required on lines 340-342 of the 2011 Offer.

Title insurance is basically an insurance policy that protects a property owner against loss resulting from a defect in title if the status of the title to a parcel of real property is other than what is represented by the seller. The title policy insures the property owners’ rights to occupy and enjoy the property, to be free from debts and obligations not created by the owner, and to have the right to use the property as security for loans. The owner’s title insurance policy insures the buyers as the new record owners of the property and assure them that there are no defects or liens that affect their title other than those excluded, excepted or disclosed in the policy.

If the insured property owner suffers a loss as a result of a title defect, the title company will reimburse the insured for that loss and any related legal expenses, up to the face amount of the policy. Specifically, title insurance will:

- Protect the insured from financial loss due to covered claims that may be asserted against the title to the real estate, up to the face amount of the title policy
- Pay legal costs if the title insurer has to defend the title to real estate against a covered claim
- Pay all successful claims against the title to the real estate covered by the policy, up to the face amount of the policy.

The title insurance premium is only paid once, but the coverage continues as long as the party owns the property. If the owner dies, the coverage automatically continues for the benefit of the property owner’s heirs.

Some of the claims, or risks, covered by title insurance include:

- Forgery of deeds, wills, releases or other documents in the chain of title
- False impersonation of the owner
- Lack of competency, capacity or legal authority of a party
- Deed not joined in by a necessary party (co-owner, heir, spouse, corporate officer, or business partner)
- Undisclosed (but recorded) prior mortgage or lien
- Undisclosed (but recorded) easement or use restriction
- Erroneous or inadequate legal descriptions
- Documents signed under invalid or expired power of attorney
- Liens for unpaid estate, inheritance or gift taxes
- Invalid/defective deeds or documents
- Lack of a right of access
- Deed not properly recorded

Without title insurance these problems become the buyer’s problems and could cause significant financial loss.

Preparation of a title commitment begins with a search of the records pertaining to the property, including those in the office of the local Register of Deeds, the County Clerk and Treasurer, the Clerk of Courts, the Child Support Lien Docket, the Secretary of State, the Department of Financial Institutions, and the clerks of the state and federal courts. A licensed title examiner analyzes the results of these searches. The examiner must verify that a complete chain of title has been established and review copies of deeds in the chain of title to verify that they meet all of the legal requirements for a valid real estate conveyance. Tax and special assessment searches are reviewed for accuracy and completeness, and any court proceedings are investigated to ascertain any impact on title and on the transaction. The title examiner’s findings and results are placed into a title insurance commitment and delivered to the buyer or the buyer’s attorney (see lines 348-352 of the 2011 Offer). It is called a commitment because the title insurance underwriter is committing to issue a title insurance policy if the requirements stated in the commitment are met.

## **Loan Policies**

Most primary mortgage lenders require a loan title insurance policy when they make a loan. This is a separate policy that is usually paid for by the buyer but provides no protection for the buyer. In Wisconsin the buyer is responsible for this cost, per line 342 of the 2011 Offer. The loan policy insures the mortgagee (the lender) against loss caused by the invalidity or unenforceability of the mortgage lien, which might occur as a result of defective title, or against loss of priority of the mortgage. The amount of insurance for the loan policy is based on the dollar amount of the loan and goes down each year as the loan is paid off.



## Title Insurance Commitments

A title insurance commitment is essentially the title insurance company's offer to issue a title insurance policy, conditioned upon certain requirements being met. The title insurance company checks the various public records and issues a title insurance commitment based upon the title to the property as it stands prior to the contemplated real estate transaction. The title commitment indicates who currently owns the property and lists any liens, such as a mortgage or unpaid tax bills, that the seller should pay off before selling, and any easements and restrictions that will affect future use of the property.

The commitment lists the various conditions, exclusions and exceptions that will apply to that particular title policy, if issued. The title insurance company is promising if all of the requirements in Schedule B-I are met, the company will issue the title insurance policy or policies described in Schedule A for the property interest described in Schedule A. The risks listed on Schedule B-II will be excluded from coverage. In some cases some or all of the exclusions may be eliminated if additional information or documentation is furnished to the title company.

**Schedule A.** The basic blueprint for an owner's policy title commitment starts with Schedule A, which indicates the following:

- (1) **The effective date.** This is the "as of" date or the date to which the real estate records have been searched.
- (2) **The policy or policies to be issued and the proposed insured(s).** The buyers will be named as the proposed insured for any ALTA owner's policy to be issued; the lender will be named as the proposed insured for an ALTA loan policy while the buyers will be named as the proposed borrower.

(3) **The insurance policy amount: usually the purchase price for an owner's policy and the loan amount for a loan policy.** A buyer may choose to obtain a larger amount of insurance by paying the appropriate premium based on the larger insurance amount. Buyers may ask for more insurance when they expect the value of the real estate to increase dramatically in a short period, for example, when the buyer plans on making significant improvements to the property.

(4) **The type of interest or estate in real estate that is being insured.** Most often this will be a "fee simple" in an owner's policy.

(5) **The current title holders of record** (typically, but not always, the sellers).

(6) **The legal description of the property.**

### Schedule B-Section I, Requirements.

Schedule B-I is the road map for the documents and signatures that will be required at closing if the proposed title insurance policy is to be issued. Each requirement listed in this schedule must be satisfied by the parties or waived by the title insurance company before the offered policy will be issued. Typical requirements include:

- (1) Payment of the title insurance policy premiums;
- (2) Payment of the purchase price to the sellers and payment of the loan amount for the benefit of the buyers;
- (3) Execution and recording of the deed and/or mortgage;
- (4) Payment of any outstanding property taxes, special assessments, etc.;
- (5) Payment and satisfaction of existing mortgages;
- (6) Payment and satisfaction of judgments and liens; and
- (7) Rental weatherization compliance for rental property, municipal ordinance compliance, etc.

Other requirements that may appear relate to the authority of the seller to

convey the property if the seller is an entity. For example, if the seller is an LLC, the title company may ask to see the LLC articles of organization, the operating agreement and other evidence that the LLC has authorized the sale and that the member or members signing the deed and other documentation have proper authority. For further discussion of different entities and the requirements for establishing authority to sell and sign a conveyance, review Pages 5-7 of the May 2004 *Legal Update*, "Avoiding Liability When Signing and Making Referrals," at [www.wra.org/LU0405](http://www.wra.org/LU0405).

### Schedule B-Section II, Exceptions.

It is standard practice for Schedule B-II of the title commitment to list exceptions that will be not be covered by the owner's or loan title insurance policy or policies, unless the exception is addressed or eliminated to the satisfaction of the title insurance company. By listing the exceptions the underwriter is signifying that there are no other matters insured against that affect title as of the effective date except those that are stated. If a mistake is made and there is another exception of record, for example, a lien that was missed, then the buyer will have the right to recover any resulting damages from the title insurance company.

Owner's policies often contain standard exceptions. The following lists some of the most common ones and explains what generally can be done to remove the exception on the final title insurance policy (subject to the title insurance company underwriter's evaluation of the specific transaction):

- (1) **The gap period.** This is typically stated on the title commitment using language similar to the following: "Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date but prior to the date the proposed insured

acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.” The gap period exception may be removed from the final title insurance policy if there are no intervening matters that appear on the record during the gap period or if a gap endorsement has been issued (and the requirements of the gap endorsement have been complied with and the endorsement has been paid for).

- (2) **Special assessments.** Special taxes or assessments, if any, payable with the taxes levied or to be levied for the current year and subsequent years. The special assessments exception may be removed if the municipality provides written documentation that there are no special assessments or that they have all been paid.
- (3) **Construction liens.** This is typically described on the title commitment as, “Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by public records.” This exception may be removed if the seller provides a construction work affidavit establishing that no construction work that could give rise to a construction lien has been performed within the last six months. If repair work has been done in the last six months, there must be a list of all contractors and lien waivers.
- (4) **Tenants and Occupants.** Parties in possession or occupying the property such as tenants or unrecorded land contract buyers. This renters’ rights exception is often stated on the title commitment as, “Rights or claims by parties in possession or under the terms of any unrecorded lease or agreement(s) of sale.” The title insurance company might be persuaded to remove this if the seller provides an affidavit indicating there are no tenants or other occupants.
- (5) **Unrecorded Easements.** Easements or claims of easements not shown in the public records. This exception may be removed if the title company is furnished with a current,

satisfactory survey that shows no easements.

- (6) **Adverse Possession.** Any claim of adverse possession or prescriptive easement. This exception may be removed if the title company is furnished with a current, satisfactory survey that shows no adverse possession or prescriptive easements.
- (7) **Encroachments.** Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting title that would be disclosed by an accurate and complete land survey of the land. This exception may be removed if the title company is furnished with a current, satisfactory survey that shows no encroachments, encumbrances or other adverse matter impacting title.
- (8) **Utility Charges.** Liens, hook-up charges or fees, deferred charges, reserve capacity assessments, impact fees, or other charges or fees due and payable on the development or improvement of the property, whether assessed or charged before or after the date of the policy.

Many of these standard exceptions, like for parties in possession, encroachments or easements not of record, are understandable because these items cannot be discerned by the title insurance company based solely upon examination of the public records. If an exception is unacceptable to the buyer, the buyer and the buyer’s attorney may be able to convince the title company to remove it, insure over it (with an endorsement) or eliminate the exception by obtaining a special assessment letter, owner’s affidavit, survey map or other document. The buyer may have the option of paying an additional fee to obtain “extended coverage” that will remove some exceptions.

One classic example of this is illustrated in *First American Title Insurance Company v. Dahlmann*, 2006 WI 65. The survey and encroachment exceptions had been removed from

the policy when Dahlmann purchased the Madison Inn in January 1999. In this case, the Wisconsin Supreme Court held that a substantial encroachment onto the adjacent property was covered by Dahlmann’s title insurance policy, which would not have happened if those exceptions had not been removed. To read more about this case, see Pages 9-10 of the March 2007 *Legal Update* at [www.wra.org/LU0703](http://www.wra.org/LU0703).

Schedule B-Section II will also list the specific mortgages, judgment liens, unpaid taxes and other encumbrances that presumably will be removed at closing when the seller pays the amounts due from the sale proceeds. Also listed are recorded restrictions, utility easements, homeowner covenants and other encumbrances that will remain on title.

### **Cutting the Title Search Short**

Most real estate purchasers assume when they receive a title insurance commitment that the title company has searched the public records and listed any liens and encumbrances of record. They may believe that any title problems will be resolved at closing and that they will receive a “clean title.” After all, title insurance is supposed to protect against title issues that arose before the buyer’s purchase. Unfortunately, these assumptions may be put to the test when it comes to any title commitment exceptions made for recorded covenants, restrictions, easements and mineral rights.

The Schedule B-II exceptions found in most title commitments are standard fare, but there is an unusual exception that has appeared recently in some title commitments in Wisconsin that can cause serious problems for the seller and the buyer. Instead of excepting easements and other items that are not of record, this exception provides an exception for “Covenants, conditions and restrictions, if any, affecting title which appear in the

public records; easements, if any, which appear in the public records or are shown on any recorded plat or certified survey map; reservations of mineral rights or mineral rights, if any, appearing in the public land records ('Recorded Covenants Exception')."


While most people believe it is the job of the title company to search the public records for liens and encumbrances that negatively impact title to the property the buyer is purchasing, this Recorded Covenants Exception essentially says that the title company will not provide coverage for recorded covenants, restrictions, easements and mineral rights. In an effort to reduce costs, the title company apparently is not conducting a full search of the records. The company searches far enough back to find the current deed, mortgages and liens but does not attempt to look for easements, restrictions, etc., farther back in the record.

These reduced costs may be passed to the party paying for the owner's title insurance policy – in Wisconsin that is typically the seller. Other times the title company may be using the reduced costs to generate company profits.

Lines 340-341 of the 2011 Offer indicate that the seller will provide an owner's policy of title insurance in the amount of the purchase price. The Provision of Merchantable Title subsection on lines 348-352 of the newest WB-11 indicates that the title commitment delivered to the buyer must show merchantable title "subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate." It would seem that the Recorded Covenants Exception (or similar language) is not a standard title insurance exception and that it is difficult to prove or disprove merchantable title with a limited records search. Thus, if a seller provides a title insurance commitment that has the Recorded Covenants

Exception, the seller is apparently providing a commitment that is not acceptable for closing. In the Title Not Acceptable for Closing subsection on lines 353-359 of the 2011 Offer, the buyer can object to the seller in writing and the seller has 15 days to correct the situation and get the Recorded Covenants Exception removed. If this is not done, the seller is at risk of losing the sale.

From the buyer's perspective, if Recorded Covenants Exception language is not detected and the buyer closes, the buyer may sue once he discovers, for example, that he cannot make anticipated improvements to the property because they impede a recorded easement.

 **REALTOR® Practice Tip:** If an agent in a transaction becomes aware that the title commitment contains Recorded Covenants Exception language, the agent should point out the language and recommend that the party immediately discuss the exception with his or her attorney or the title company. CAUTION: Agents should not attempt to provide legal advice. Rather, they should point out that there may be a problem and send the party to an appropriate expert for evaluation!

### **Filling the Gap**

The standard gap exception found in most title insurance commitments for owners' title insurance policies puts the buyer at risk for any title defects that appear of record after the effective date of the title insurance commitment and before the buyer's deed is recorded, i.e., the "gap period." Some of the title defects that may appear of record during the gap period include mortgages, deeds to third parties, lis pendens filings for foreclosures or other litigation, construction liens, federal tax liens and judgments. For a description of some of the real life perils possibly awaiting a homebuyer with-

out gap coverage or a gap endorsement, see the article, "Insurance Limits Surprises: 'Gap' coverage can help buyers avoid lien hassles" in the *Journal Sentinel Online* at [www.jsonline.com/realstate/29580224.html](http://www.jsonline.com/realstate/29580224.html).

The actual risk to the buyer of an intervening lien may be greater in short sales because many distressed property owners have other debts and obligations that if left unpaid may trigger property liens.

Lines 343-347 of the 2011 Offer require the seller to provide a gap endorsement "provided the title company will issue the endorsement," or equivalent gap coverage. In those instances where gap coverage is already a feature of the policy being provided, then the seller will have already provided the requisite gap coverage without the addition of any new endorsement or without any additional cost. If no gap coverage or endorsement is available in the particular market or transaction, then the buyer may give notice to the seller and the situation will need to be sorted out by amendment to the offer or under the Title Not Acceptable for Closing section procedures.

If a gap endorsement or equivalent gap coverage is not available, the buyer may give written notice to trigger the Title Not Acceptable for Closing subsection on lines 353-359. While the intent of this provision is more to cause the parties to reach a mutually agreeable solution than to cause the offer to become null and void, that can be the result. This is a serious issue for the buyer and intervening liens can be very expensive for all involved.

Whether a particular title company will provide a gap endorsement or equivalent gap coverage in a particular transaction or for particular types of closings, e.g., short sales and REO sales, is basically a business decision. Some lenders selling foreclosed properties may not comply with a buyer's

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request for gap title insurance because the lender does not know the history of the property and cannot promise that there are no outstanding liens. When REO properties are sold “as-is” and without gap coverage, the buyer must then decide whether or not to assume the risk of all unknown liens and claims against the property.



**REALTOR® Practice Tip:**

Prudent agents may wish to become familiar with which title companies in their market areas do not provide gap endorsements in certain types of transactions. It may be wise to learn which gap coverage alternatives are offered by other title companies or attorneys to ensure the highest level of protection possible for buyers.



**WB-11 RESIDENTIAL OFFER TO PURCHASE**

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

3 **GENERAL PROVISIONS** The Buyer, \_\_\_\_\_  
4 \_\_\_\_\_, offers to purchase the Property known as [Street Address] \_\_\_\_\_  
5 \_\_\_\_\_ in the \_\_\_\_\_  
6 of \_\_\_\_\_, County of \_\_\_\_\_ Wisconsin (insert additional  
7 description, if any, at lines 165-172 or 435-442 or attach as an addendum per line 434), on the following terms:

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

10 ■ EARNEST MONEY of \$ \_\_\_\_\_ accompanies this Offer and earnest money of \$ \_\_\_\_\_  
11 \_\_\_\_\_ will be mailed, or commercially or personally delivered within \_\_\_\_\_ days of acceptance to listing broker or  
12 \_\_\_\_\_.

13 ■ THE BALANCE OF PURCHASE PRICE will be paid in cash or equivalent at closing unless otherwise provided below.  
14 ■ INCLUDED IN PURCHASE PRICE: Seller is including in the purchase price the Property, all Fixtures on the Property on  
15 the date of this Offer not excluded at lines 17-18, and the following additional items: \_\_\_\_\_  
16 \_\_\_\_\_

17 ■ NOT INCLUDED IN PURCHASE PRICE: \_\_\_\_\_  
18 \_\_\_\_\_.

19 **CAUTION: Identify Fixtures that are on the Property (see lines 185-193) to be excluded by Seller or which are rented  
20 and will continue to be owned by the lessor.**

21 **NOTE: The terms of this Offer, not the listing contract or marketing materials, determine what items are  
22 included/excluded.**

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

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

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

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

31 **OPTIONAL PROVISIONS** TERMS OF THIS OFFER THAT ARE PRECEDED BY AN OPEN BOX (  ) ARE PART OF THIS  
32 OFFER ONLY IF THE BOX IS MARKED SUCH AS WITH AN "X." THEY ARE NOT PART OF THIS OFFER IF MARKED N/A  
33 OR ARE LEFT BLANK.

34 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and  
35 written notices to a Party shall be effective only when accomplished by one of the methods specified at lines 36-54.

36 (1) **Personal Delivery:** giving the document or written notice personally to the Party, or the Party's recipient for delivery if  
37 named at line 38 or 39.

38 Seller's recipient for delivery (optional): \_\_\_\_\_

39 Buyer's recipient for delivery (optional): \_\_\_\_\_

40  (2) **Fax:** fax transmission of the document or written notice to the following telephone number:

41 Seller: ( \_\_\_\_\_ ) Buyer: ( \_\_\_\_\_ )

42  (3) **Commercial Delivery:** depositing the document or written notice fees prepaid or charged to an account with a  
43 commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line 38 or 39 for  
44 delivery to the Party's delivery address at line 47 or 48.

45  (4) **U.S. Mail:** depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the Party,  
46 or to the Party's recipient for delivery if named at line 38 or 39 for delivery to the Party's delivery address at line 47 or 48.

47 Delivery address for Seller: \_\_\_\_\_

48 Delivery address for Buyer: \_\_\_\_\_

49  (5) **E-Mail:** electronically transmitting the document or written notice to the Party's e-mail address, if given below at line  
50 53 or 54. If this is a consumer transaction where the property being purchased or the sale proceeds are used primarily for  
51 personal, family or household purposes, each consumer providing an e-mail address below has first consented electronically  
52 to the use of electronic documents, e-mail delivery and electronic signatures in the transaction, as required by federal law.

53 E-Mail address for Seller (optional): \_\_\_\_\_

54 E-Mail address for Buyer (optional): \_\_\_\_\_

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

57 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this  
 58 Offer at lines 165-172 or 435-442 or in an addendum attached per line 434. At time of Buyer's occupancy, Property shall be in  
 59 broom swept condition and free of all debris and personal property except for personal property belonging to current tenants,  
 60 or that sold to Buyer or left with Buyer's consent. Occupancy shall be given subject to tenant's rights, if any.

61 **DEFINITIONS**

62 ■ **ACTUAL RECEIPT:** "Actual receipt" means that a Party, not the Party's recipient for delivery, if any, has the document or  
 63 written notice physically in the Party's possession, regardless of the method of delivery.

64 ■ **CONDITIONS AFFECTING THE PROPERTY OR TRANSACTION:** "Conditions affecting the Property or transaction" are  
 65 defined to include:

- 66 a. Defects in the roof.
- 67 b. Defects in the electrical system.
- 68 c. Defects in part of the plumbing system (including the water heater, water softener and swimming pool) that is included in  
 69 the sale.
- 70 d. Defects in the heating and air conditioning system (including the air filters and humidifiers).
- 71 e. Defects in the well, including unsafe well water.
- 72 f. Property is served by a joint well.
- 73 g. Defects in the septic system or other sanitary disposal system.
- 74 h. Underground or aboveground fuel storage tanks on or previously located on the Property. (If "yes", the owner, by law,  
 75 may have to register the tanks with the Department of Commerce at P.O. Box 7970, Madison, Wisconsin, 53707, whether  
 76 the tanks are in use or not. Regulations of the Department of Commerce may require the closure or removal of unused  
 77 tanks.)
- 78 i. "LP" tank on the Property (specify in the additional information whether the tank is owned or leased).
- 79 j. Defects in the basement or foundation (including cracks, seepage and bulges).
- 80 k. Property is located in a floodplain, wetland or shoreland zoning area.
- 81 l. Defects in the structure of the Property.
- 82 m. Defects in mechanical equipment included in the sale either as Fixtures or personal property.
- 83 n. Boundary or lot line disputes, encroachments or encumbrances (including a joint driveway).
- 84 o. Defect caused by unsafe concentrations of, or unsafe conditions relating to, radon, radium in water supplies, lead in paint,  
 85 lead in soil, lead in water supplies or plumbing system, or other potentially hazardous or toxic substances on the Property.
- 86 **NOTE: Specific federal lead paint disclosure requirements must be complied with in the sale of most residential**  
 87 **properties built before 1978.**
- 88 p. Presence of asbestos or asbestos-containing materials on the Property.
- 89 q. Defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of, hazardous or toxic substances  
 90 on neighboring properties.
- 91 r. Current or previous termite, powder-post beetle or carpenter ant infestations or Defects caused by animal or other insect  
 92 infestations.
- 93 s. Defects in a wood burning stove or fireplace or of Defects caused by a fire in a stove or fireplace or elsewhere on the  
 94 Property.
- 95 t. Remodeling affecting the Property's structure or mechanical systems or additions to Property during Seller's ownership  
 96 without required permits.
- 97 u. Federal, state, or local regulations requiring repairs, alterations or corrections of an existing condition.
- 98 v. Notice of property tax increases, other than normal annual increases, or pending property reassessment.
- 99 w. Remodeling that may increase Property's assessed value.
- 100 x. Proposed or pending special assessments.
- 101 y. Property is located within a special purpose district, such as a drainage district, that has the authority to impose  
 102 assessments against the real property located within the district.
- 103 z. Proposed construction of a public project that may affect the use of the Property.
- 104 aa. Subdivision homeowners' associations, common areas co-owned with others, zoning violations or nonconforming uses,  
 105 rights-of-way, easements or another use of a part of the Property by non-owners, other than recorded utility easements.
- 106 bb. Structure on the Property is designated as an historic building or part of the Property is in an historic district.
- 107 cc. Any land division involving the Property for which required state or local permits had not been obtained.
- 108 dd. Violation of state or local smoke and carbon monoxide detector laws.
- 109 ee. High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the  
 110 Property.
- 111 ff. The Property is subject to a mitigation plan required by Wisconsin Department of Natural Resources (DNR) rules related  
 112 to county shoreland zoning ordinances that obligates the owner to establish or maintain certain measures related to  
 113 shoreland conditions, enforceable by the county.
- 114 gg. Other Defects affecting the Property.

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

116 **CLOSING** This transaction is to be closed no later than \_\_\_\_\_  
117 \_\_\_\_\_ at the place selected by Seller, unless otherwise agreed by the Parties in writing.

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

121 **CAUTION: Provide basis for utility charges, fuel or other prorations if date of closing value will not be used.**  
122 Any income, taxes or expenses shall accrue to Seller, and be prorated at closing, through the day prior to closing.

123 Real estate taxes shall be prorated at closing based on [CHECK BOX FOR APPLICABLE PRORATION FORMULA]:  
124  The net general real estate taxes for the preceding year, or the current year if available (Net general real estate  
125 taxes are defined as general property taxes after state tax credits and lottery credits are deducted) (NOTE: THIS CHOICE  
126 APPLIES IF NO BOX IS CHECKED)  
127  Current assessment times current mill rate (current means as of the date of closing)  
128  Sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior  
129 year, or current year if known, multiplied by current mill rate (current means as of the date of closing)  
130  \_\_\_\_\_.

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

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

140 **LEASED PROPERTY** If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights  
141 under said lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the  
142 (written) (oral) ~~STRIKE ONE~~ lease(s), if any, are \_\_\_\_\_  
143 \_\_\_\_\_. Insert additional terms, if any, at lines 165-172 or 435-442 or attach as an addendum per line 434.

144 **RENTAL WEATHERIZATION** This transaction (is) (is not) ~~STRIKE ONE~~ exempt from Wisconsin Rental Weatherization  
145 Standards (Wis. Admin. Code Ch. Comm 67). If not exempt, (Buyer) (Seller) ~~STRIKE ONE~~ ("Buyer" if neither is stricken) shall  
146 be responsible for compliance, including all costs, with Wisconsin Rental Weatherization Standards. If Seller is responsible for  
147 compliance, Seller shall provide a Certificate of Compliance at closing.

148 **REAL ESTATE CONDITION REPORT** Wisconsin law requires owners of property which includes 1-4 dwelling units to  
149 provide Buyers with a Real Estate Condition Report. Excluded from this requirement are sales of property that has never been  
150 inhabited, sales exempt from the real estate transfer fee, and sales by certain court-appointed fiduciaries, (for example,  
151 personal representatives who have never occupied the Property). The form of the Report is found in Wis. Stat. § 709.03. The  
152 law provides: "§ 709.02 Disclosure . . . the owner of the property shall furnish, not later than 10 days after acceptance of the  
153 contract of sale . . . , to the prospective Buyer of the property a completed copy of the report . . . A prospective Buyer who does  
154 not receive a report within the 10 days may, within 2 business days after the end of that 10 day period, rescind the contract of  
155 sale . . . by delivering a written notice of rescission to the owner or the owner's agent." Buyer may also have certain rescission  
156 rights if a Real Estate Condition Report disclosing defects is furnished before expiration of the 10 days, but after the Offer is  
157 submitted to Seller. Buyer should review the report form or consult with an attorney for additional information regarding  
158 rescission rights.

159 **PROPERTY CONDITION REPRESENTATIONS** Seller represents to Buyer that as of the date of acceptance Seller has no  
160 notice or knowledge of Conditions Affecting the Property or Transaction (lines 64-114) other than those identified in Seller's  
161 Real Estate Condition Report dated \_\_\_\_\_, which was received by Buyer prior to Buyer  
162 signing this Offer and which is made a part of this Offer by reference ~~COMPLETE DATE OR STRIKE AS APPLICABLE~~ and  
163 \_\_\_\_\_

164 \_\_\_\_\_ **INSERT CONDITIONS NOT ALREADY INCLUDED IN THE CONDITION REPORT**  
165 **ADDITIONAL PROVISIONS/CONTINGENCIES**

166 \_\_\_\_\_  
167 \_\_\_\_\_  
168 \_\_\_\_\_  
169 \_\_\_\_\_  
170 \_\_\_\_\_  
171 \_\_\_\_\_  
172 \_\_\_\_\_



**173 DEFINITIONS CONTINUED FROM PAGE 2**

174 ■ **DEADLINES:** "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by excluding  
175 the day the event occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day.  
176 Deadlines expressed as a specific number of "business days" exclude Saturdays, Sundays, any legal public holiday under  
177 Wisconsin or Federal law, and other day designated by the President such that the postal service does not receive registered  
178 mail or make regular deliveries on that day. Deadlines expressed as a specific number of "hours" from the occurrence of an  
179 event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24 hours per calendar day.  
180 Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as closing, expire at  
181 midnight of that day.

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

185 ■ **FIXTURE:** A "Fixture" is an item of property which is physically attached to or so closely associated with land or  
186 improvements so as to be treated as part of the real estate, including, without limitation, physically attached items not easily  
187 removable without damage to the premises, items specifically adapted to the premises and items customarily treated as  
188 fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and windows; electric  
189 lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and cooling units and attached  
190 equipment; water heaters and treatment systems; sump pumps; attached or fitted floor coverings; awnings; attached  
191 antennas; garage door openers and remote controls; installed security systems; central vacuum systems and accessories; in-  
192 ground sprinkler systems and component parts; built-in appliances; ceiling fans; fences; storage buildings on permanent  
193 foundations and docks/piers on permanent foundations.

194 **CAUTION: Exclude any Fixtures to be retained by Seller or which are rented (e.g., water softener or other water**  
195 **conditioning systems, home entertainment and satellite dish components, L.P. tanks, etc.) on lines 17-18.**

196 ■ **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 4-7.

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

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

202 **BUYER'S PRE-CLOSING WALK-THROUGH** Within 3 days prior to closing, at a reasonable time pre-approved by Seller or  
203 Seller's agent, Buyer shall have the right to walk through the Property to determine that there has been no significant change  
204 in the condition of the Property, except for ordinary wear and tear and changes approved by Buyer, and that any defects  
205 Seller has agreed to cure have been repaired in the manner agreed to by the Parties.

206 **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING** Seller shall maintain the Property until the earlier of  
207 closing or occupancy of Buyer in materially the same condition as of the date of acceptance of this Offer, except for ordinary  
208 wear and tear. If, prior to closing, the Property is damaged in an amount of not more than five percent (5%) of the selling price,  
209 Seller shall be obligated to repair the Property and restore it to the same condition that it was on the day of this Offer. No later  
210 than closing, Seller shall provide Buyer with lien waivers for all lienable repairs and restoration. If the damage shall exceed  
211 such sum, Seller shall promptly notify Buyer in writing of the damage and this Offer may be canceled at option of Buyer.  
212 Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to the insurance proceeds, if any,  
213 relating to the damage to the Property, plus a credit towards the purchase price equal to the amount of Seller's deductible on  
214 such policy, if any. However, if this sale is financed by a land contract or a mortgage to Seller, any insurance proceeds shall  
215 be held in trust for the sole purpose of restoring the Property.



**IF LINE 217 IS NOT MARKED OR IS MARKED N/A LINES 257-263 APPLY.**

216  
217  **FINANCING CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain a written \_\_\_\_\_  
218 \_\_\_\_\_ [INSERT LOAN PROGRAM OR SOURCE] first mortgage  
219 loan commitment as described below, within \_\_\_\_\_ days of acceptance of this Offer. The financing selected shall be in an  
220 amount of not less than \$ \_\_\_\_\_ for a term of not less than \_\_\_\_\_ years, amortized over not less than  
221 \_\_\_\_\_ years. Initial monthly payments of principal and interest shall not exceed \$ \_\_\_\_\_. Monthly payments may  
222 also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance  
223 premiums. The mortgage may not include a prepayment premium. Buyer agrees to pay discount points and/or loan origination  
224 fee in an amount not to exceed \_\_\_\_\_% of the loan. If the purchase price under this Offer is modified, the financed  
225 amount, unless otherwise provided, shall be adjusted to the same percentage of the purchase price as in this contingency and  
226 the monthly payments shall be adjusted as necessary to maintain the term and amortization stated above.

**CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 228 or 229.**

227  **FIXED RATE FINANCING:** The annual rate of interest shall not exceed \_\_\_\_\_%.  
228  **ADJUSTABLE RATE FINANCING:** The initial annual interest rate shall not exceed \_\_\_\_\_%. The initial interest  
229 rate shall be fixed for \_\_\_\_\_ months, at which time the interest rate may be increased not more than \_\_\_\_\_% per  
230 year. The maximum interest rate during the mortgage term shall not exceed \_\_\_\_\_%. Monthly payments of principal  
231 and interest may be adjusted to reflect interest changes.  
232

233 If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines  
234 165-172 or 435-442 or in an addendum attached per line 434.

235 ■ **BUYER'S LOAN COMMITMENT:** Buyer agrees to pay all customary loan and closing costs, to promptly apply for a  
236 mortgage loan, and to provide evidence of application promptly upon request of Seller. If Buyer qualifies for the loan described  
237 in this Offer or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no  
238 later than the deadline at line 219. **Buyer and Seller agree that delivery of a copy of any written loan commitment to  
239 Seller (even if subject to conditions) shall satisfy Buyer's financing contingency if, after review of the loan  
240 commitment, Buyer has directed, in writing, delivery of the loan commitment. Buyer's written direction shall  
241 accompany the loan commitment. Delivery shall not satisfy this contingency if accompanied by a notice of  
242 unacceptability.**

243 **CAUTION: The delivered commitment may contain conditions Buyer must yet satisfy to obligate the lender to provide  
244 the loan. BUYER, BUYER'S LENDER AND AGENTS OF BUYER OR SELLER SHALL NOT DELIVER A LOAN  
245 COMMITMENT TO SELLER OR SELLER'S AGENT WITHOUT BUYER'S PRIOR WRITTEN APPROVAL OR UNLESS  
246 ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.**

247 ■ **SELLER TERMINATION RIGHTS:** If Buyer does not make timely delivery of said commitment; Seller may terminate this  
248 Offer if Seller delivers a written notice of termination to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written loan  
249 commitment.

250 ■ **FINANCING UNAVAILABILITY:** If financing is not available on the terms stated in this Offer (and Buyer has not already  
251 delivered an acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of  
252 same including copies of lender(s)' rejection letter(s) or other evidence of unavailability. Unless a specific loan source is  
253 named in this Offer, Seller shall then have 10 days to deliver to Buyer written notice of Seller's decision to finance this  
254 transaction on the same terms set forth in this Offer, and this Offer shall remain in full force and effect, with the time for closing  
255 extended accordingly. If Seller's notice is not timely given, this Offer shall be null and void. Buyer authorizes Seller to obtain  
256 any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.

257 ■ **IF THIS OFFER IS NOT CONTINGENT ON FINANCING:** Within 7 days of acceptance, a financial institution or third party  
258 in control of Buyer's funds shall provide Seller with reasonable written verification that Buyer has, at the time of verification,  
259 sufficient funds to close. If such written verification is not provided, Seller has the right to terminate this Offer by delivering  
260 written notice to Buyer. Buyer may or may not obtain mortgage financing but does not need the protection of a financing  
261 contingency. Seller agrees to allow Buyer's appraiser access to the Property for purposes of an appraisal. Buyer  
262 understands and agrees that this Offer is not subject to the appraisal meeting any particular value, unless this Offer is subject  
263 to an appraisal contingency, nor does the right of access for an appraisal constitute a financing contingency.

264  **APPRAISAL CONTINGENCY:** This Offer is contingent upon the Buyer or Buyer's lender having the Property  
265 appraised at Buyer's expense by a Wisconsin licensed or certified independent appraiser who issues an appraisal report  
266 dated subsequent to the date of this Offer indicating an appraised value for the Property equal to or greater than the agreed  
267 upon purchase price. This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of acceptance,  
268 delivers to Seller a copy of the appraisal report which indicates that the appraised value is not equal to or greater than the  
269 agreed upon purchase price accompanied by a written notice of termination.

270 **CAUTION: An appraisal ordered by Buyer's lender may not be received until shortly before closing. Consider whether  
271 deadlines provide adequate time for performance.**

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

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

281 If Buyer defaults, Seller may:

282 (1) sue for specific performance and request the earnest money as partial payment of the purchase price; or  
283 (2) terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) sue for actual  
284 damages.

285 If Seller defaults, Buyer may:

286 (1) sue for specific performance; or  
287 (2) terminate the Offer and request the return of the earnest money, sue for actual damages, or both.

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

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

293 **NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD**  
294 **READ THIS DOCUMENT CAREFULLY. BROKERS MAY PROVIDE A GENERAL EXPLANATION OF THE PROVISIONS**  
295 **OF THE OFFER BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL**  
296 **RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT CLOSING. AN ATTORNEY SHOULD BE**  
297 **CONSULTED IF LEGAL ADVICE IS NEEDED.**

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

301 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and persons  
302 registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at  
303 <http://www.widocoffenders.org> or by telephone at (608) 240-5830.

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

309 **[INSERT OTHER REQUIREMENTS, IF ANY (e.g., PAYMENT OF ADDITIONAL EARNEST MONEY, WAIVER OF ALL**  
310 **CONTINGENCIES, OR PROVIDING EVIDENCE OF SALE OR BRIDGE LOAN, etc.)]** within \_\_\_\_ hours of Buyer's Actual  
311 Receipt of said notice, this Offer shall be null and void.

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

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

322 \_\_\_\_\_ . If "Time is of the Essence" applies to a date or  
323 deadline, failure to perform by the exact date or deadline is a breach of contract. If "Time is of the Essence" does not apply to  
324 a date or deadline, then performance within a reasonable time of the date or deadline is allowed before a breach occurs.

325 **TITLE EVIDENCE**

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

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

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

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

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

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

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

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



360 ■ **SPECIAL ASSESSMENTS/OTHER EXPENSES:** Special assessments, if any, levied or for work actually commenced prior  
361 to the date of this Offer shall be paid by Seller no later than closing. All other special assessments shall be paid by  
362 Buyer.

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

369 **EARNEST MONEY**

370 ■ **HELD BY:** Unless otherwise agreed, earnest money shall be paid to and held in the trust account of the listing broker  
371 (Buyer's agent if Property is not listed or Seller's account if no broker is involved), until applied to the purchase price or  
372 otherwise disbursed as provided in the Offer.

373 **CAUTION: Should persons other than a broker hold earnest money, an escrow agreement should be drafted by the**  
374 **Parties or an attorney. If someone other than Buyer makes payment of earnest money, consider a special**  
375 **disbursement agreement.**

376 ■ **DISBURSEMENT:** If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after  
377 clearance from payor's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money.  
378 At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest  
379 money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. If said  
380 disbursement agreement has not been delivered to broker within 60 days after the date set for closing, broker may disburse  
381 the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller;  
382 (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; or (4)  
383 any other disbursement required or allowed by law. Broker may retain legal services to direct disbursement per (1) or to file an  
384 interpleader action per (2) and broker may deduct from the earnest money any costs and reasonable attorneys fees, not to  
385 exceed \$250, prior to disbursement.

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

395 **INSPECTIONS AND TESTING** Buyer may only conduct inspections or tests if specific contingencies are included as a part of  
396 this Offer. An "inspection" is defined as an observation of the Property which does not include an appraisal or testing of the  
397 Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source,  
398 which are hereby authorized. A "test" is defined as the taking of samples of materials such as soils, water, air or building  
399 materials from the Property and the laboratory or other analysis of these materials. Seller agrees to allow Buyer's inspectors,  
400 testers and appraisers reasonable access to the Property upon advance notice, if necessary to satisfy the contingencies in  
401 this Offer. Buyer and licensees may be present at all inspections and testing. Except as otherwise provided, Seller's  
402 authorization for inspections does not authorize Buyer to conduct testing of the Property.

403 **NOTE: Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose of the**  
404 **test, (e.g., to determine if environmental contamination is present), any limitations on Buyer's testing and any other**  
405 **material terms of the contingency. Buyer agrees to promptly restore the Property to its original condition after**  
406 **Buyer's inspections and testing are completed unless otherwise agreed to with Seller. Buyer agrees to promptly**  
407 **provide copies of all inspection and testing reports to Seller. Seller acknowledges that certain inspections or tests**  
408 **may detect environmental pollution which may be required to be reported to the Wisconsin Department of Natural**  
409 **Resources.**



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

414 \_\_\_\_\_ (list any Property component(s) to be separately inspected, e.g.,  
415 swimming pool, roof, foundation, chimney, etc.) which discloses no Defects. Buyer shall order the inspection(s) and be  
416 responsible for all costs of inspection(s). Buyer may have follow-up inspections recommended in a written report resulting  
417 from an authorized inspection, provided they occur prior to the deadline specified at line 421. Inspection(s) shall be performed  
418 by a qualified independent inspector or independent qualified third party.

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

421 This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of acceptance, delivers to Seller a copy of the  
422 written inspection report(s) and a written notice listing the Defect(s) identified in those report(s) to which Buyer objects (Notice  
423 of Defects).

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

425 For the purposes of this contingency, Defects (see lines 182-184) do not include structural, mechanical or other conditions the  
426 nature and extent of which Buyer had actual knowledge or written notice before signing this Offer.

427 **RIGHT TO CURE:** Seller (shall)(shall not) **STRIKE ONE** ("shall" if neither is stricken) have a right to cure the Defects. If  
428 Seller has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within 10 days of  
429 Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects, (2) curing the Defects in a good and  
430 workmanlike manner and (3) delivering to Buyer a written report detailing the work done within 3 days prior to closing. This  
431 Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and: (1)  
432 Seller does not have a right to cure or (2) Seller has a right to cure but: (a) Seller delivers written notice that Seller will not cure  
433 or (b) Seller does not timely deliver the written notice of election to cure.

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

435 **ADDITIONAL PROVISIONS/CONTINGENCIES**  
436 \_\_\_\_\_  
437 \_\_\_\_\_  
438 \_\_\_\_\_  
439 \_\_\_\_\_  
440 \_\_\_\_\_  
441 \_\_\_\_\_  
442 \_\_\_\_\_

443 This Offer was drafted by [Licensee and Firm] \_\_\_\_\_  
444 \_\_\_\_\_ on \_\_\_\_\_.

445 (x) \_\_\_\_\_  
446 Buyer's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

447 (x) \_\_\_\_\_  
448 Buyer's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

449 **EARNEST MONEY RECEIPT** Broker acknowledges receipt of earnest money as per line 10 of the above Offer.

450 \_\_\_\_\_ Broker (By) \_\_\_\_\_

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

455 (x) \_\_\_\_\_  
456 Seller's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

457 (x) \_\_\_\_\_  
458 Seller's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

459 This Offer was presented to Seller by [Licensee and Firm] \_\_\_\_\_  
460 \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

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

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