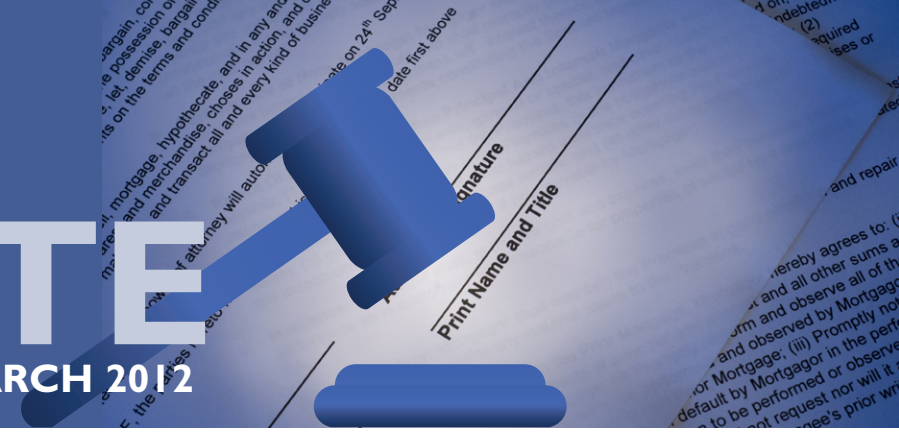


LEGAL UPDATE

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2012 WB-15 Commercial Offer to Purchase

A commercial property may be purchased for use in a retail, manufacturing, industrial or other business enterprise, or it may be an apartment complex or a mixed-use property that combines retail and residential space. The commercial purchaser may be buying a strip mall property, an office building, a day care center or an aquatic facility. Because such a wide spectrum of transactions and properties are swept into the commercial category, it should come as no surprise that no one form can begin to contain the provisions and contingencies that would optimally address the issues present in each commercial deal.

As a result, the WB-15 Commercial Offer to Purchase does not attempt to be the ideal form for every transaction. Rather, practitioners should use this form as a base, adding the provisions and contingencies necessary to address the particular issues and concerns that are important to the parties in the particular circumstances.

The Real Estate Contractual Forms Advisory Committee of the Department of Safety and Professional Services has finalized its revisions to the WB-15, and this updated offer has been approved by the Department Real Estate Examining Board. The optional-use date for the updated WB-15 is March 1, 2012, and the mandatory-use date is July 1, 2012. Enhancements have been made in the hopes of having a better base form for commercial practitioners to work from.

This *Legal Update* addresses some of the commercial, environmental and other business issues encountered when buying or selling a commercial property using the revised versions of the WB-15 and the Wisconsin REALTORS® Association Seller Disclosure Report – Commercial (WRA-RCC). This seller disclosure report is not a Wis. Stat. §709.02 Real Estate Condition Report (RECR), and is specifically intended for commercial, not residential, transactions.

This *Legal Update* first reviews the changes made to the WB-15 Commercial Offer to Purchase. The discussion distinguishes between commercial and business properties, points out some of the changes adopted by the REEB, analyzes key issues to discuss with the parties and provides

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practice tips for getting the best results with the new version of the WB-15. The *Update* concludes with Legal Hotline questions and answers regarding commercial transactions.

Commercial vs. Business Transactions

Commercial transactions involve real estate used for retail, office, industrial, business, manufacturing, recreational and other non-residential purposes. These transactions vary tremendously, running the gamut from the sale of a small retail shop to the purchase of a gas station to the acquisition of a major shopping center and beyond. It is impossible to include in preprinted forms all of the provisions that might be needed or desirable in all of these different types of deals. Accordingly, the approved commercial offer by necessity is very basic. Transaction-specific provisions are added in the Additional Provisions section or in addenda as the drafter builds the necessary contract.

Commercial transactions must be distinguished from business transactions. When a business opportunity or

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ongoing business is being sold, the proper forms to use are the WB-6 Business Listing Contract, WB-16 Offer to Purchase – Business with Real Estate and the WB-17 Offer to Purchase – Business without Real Estate. These transactions will tend to include business assets such as inventory, equipment, furniture, accounts receivable, goodwill, trade names, licenses, personal or real property leases, etc. These assets will be offered for sale, either with or without an accompanying ownership, leasehold or other interest in real estate. A commercial transaction, on the other hand, will involve the sale of primarily real estate alone. Granted some items of personal property may be included, just as in residential and other transactions, and at times the property being sold may have tenants, but the main focus is the real estate. Thus, the sale of a vacant warehouse is handled as a commercial transaction.


For example, the sale of a supper club is a business transaction if it includes the kitchen equipment, furniture, liquor inventory, accounts receivable and payable, a hand-off of the liquor and restaurant licenses, the goodwill in the club name, etc. It is a commercial transaction, on the other hand, if it involves only the sale of the supper club building and lot.

Obviously, the distinctions between a business and a commercial transaction may not always be so neat and tidy. If the buyer intends to use the property for a purpose different than the current use, that generally is a tip-off that it is a commercial transaction. When assets like licenses, leases, equipment, inventory, accounts and goodwill are included, that generally is a business transaction. If there are no clear defining features, licensees should use whichever REEB-approved form best matches the transaction with the fewest number of required changes or modifications.

The Updated WB-15 Commercial Offer to Purchase

The revised commercial offer is based, in large part, on the residential offer to purchase. The two contracts have essentially the same basic procedural provisions for earnest money, document delivery, financing, closing prorations, property dimensions, title evidence and inspections – the same basic standards and procedures followed by licensees when real estate is bought and sold regardless of property type.

The copy of the updated WB-15 Commercial Offer to Purchase appearing on Pages 25-33 of this issue is essentially final and has been substantively approved the DSPS REEB. However, REALTORS® must understand that there might be last-minute formatting changes. This is the second new real estate form that has been officially approved by the new REEB, which has the power to approve mandatory real estate forms in place of the DSPS or the DSPS Secretary, as was previously the case.

 **REALTOR® Practice Tip:** REALTORS® may begin using the revised WB-15 commercial 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 and watch the WRA email Hottips for specific information about forms availability.

In the following discussions, the existing WB-15 (mandatory-use date 9-1-00) will be referred to as the “2000 Offer,” and the recently updated WB-15 (mandatory-use date 7-1-12) will be referred to as the “2012 Offer.” All references to line numbers are to the 2012 Offer unless otherwise designated.

The format, layout and sequence of

provisions in the 2012 Offer are somewhat similar to the 2000 Offer, but more closely resemble the recently revised WB-13 Vacant Land Offer to Purchase and WB-12 Farm Offer to Purchase. The revised commercial offer has essentially the same standard operational provisions as the other offers that have been recently revised.

As far as subject matter, the commercial offer typically involves not residences or vacant land but rather structures, buildings and other facilities used in commercial enterprise. At times the commercial offer may be a complex business contract involving the documentation and environmental concerns seen in the commercial and business world. As a result, flexibility is the key to the WB-15 Commercial Offer to Purchase, which tries to be all things for no transaction but versatile enough to form the basis of a wide array of deals.

Uniform DSPS Offer Revisions

The first order of business was to change the basic offer to purchase provisions in the WB-15 so that they match the basic provisions of the newest WB-11 Residential Offer to Purchase (2011), the revised WB-14 Residential Condominium Offer (2011), the updated WB-13 Vacant Land Offer to Purchase (2011) and the most recently revised WB-12 Farm Offer to Purchase (2012). Real estate professionals and consumers want to know that when it comes to the basics like earnest money, document delivery, financing, closing prorations, property dimensions, title evidence and inspections, the same basic standards and procedures are found in the DSPS-approved offers.

Many provisions are identical and appear in substantially the same order in each offer. Some of the more significant standard uniform provisions that have previously been modified in the

residential, condominium, vacant land and farm offers, have now been modified in the commercial offer in substantially the same manner:

- **Lines 1-2:** reflect the 2006 agency law changes and the potential relationships between the agent drafting the offer and the parties to the offer.
- **Delivery of Documents and Written Notices on lines 35-54:** offers delivery options that include personal delivery, fax, commercial delivery, mail and e-mail (party's electronic consent required if a consumer transaction where property or proceeds are used primarily for personal, family or household purposes).
- **Closing Provision on lines 67-68:** sets the closing date and allows the seller to choose the closing place, unless otherwise modified by the parties in writing, such as in an addendum.
- **Closing Prorations on lines 69-88:** provide different formulas for prorating real estate taxes and permit the parties to re-prorate upon receipt of the actual tax bill, if desired.
- **Definitions Sections on lines 178-226 and 287-312:** define the same terms as the residential offer, with a "Conditions Affecting the Property or Transaction" definition that is unique to the commercial offer, plus a definition of Environmental Site Assessment.
- **Financing Contingency on lines 227-263:** requires loan commitment delivery to be accompanied by buyer's written directions to deliver to seller, along with language clarifications.
- **If This Transaction is Not Contingent Upon Financing Section on lines 264-269:** requires verification of the buyer's funds if the buyer does not include a Financing Contingency.
- **Appraisal Contingency on lines**

270-276: gives the buyer the opportunity to terminate the offer if the property does not appraise at a value greater than or equal to the purchase price.

- **Distribution of Information on lines 313-317:** authorizes the agents to share copies of the offer and information about concessions, third-party gifts, listing data and other related information to help create accurate assessments and appraisals going forward.
- **Earnest Money Disbursement Subsection on lines 318-339:** modified to remove the note that said, "Wis. Admin. Code s. RL 18.09(1)(b) provides that an offer to purchase is not a written disbursement agreement pursuant to which the broker may disburse."
- **Title Evidence Revisions on lines 340-371:** help distinguish between owner's and lender's title policies and the responsibilities for obtaining them, recognize the possibility of specialized deeds depending upon the status of the seller, no longer refer to abstracts and require gap endorsements.
- **Special Assessments/Other Expenses on lines 372-378:** has updated statutory references and clarified language.
- **Default Provisions on lines 396-412:** allow the seller to sue the buyer for actual damages without directing return of earnest money, and a bold, all-caps note reminds the parties (and licensees) that brokers cannot provide legal advice or opinions about the legal rights of parties.
- **Property Dimensions and Surveys on lines 416-420:** warns the buyer of possible variances due to varying measurement techniques, computational formulas and rounding.
- **Buyer's Pre-Closing Walk-Through on lines 421-424:** modified to make clear that this is not an opportunity for an additional inspection.

- **Property Damage Between Acceptance and Closing on lines 425-433:** requires seller to furnish lien waivers for all repairs subject to lien waivers.
- **Notice about Sex Offender Registry on lines 434-436:** directs the parties to the Department of Corrections' online Sex Offender Registry and provides the telephone number.
- **Inspections and Testing on lines 437-449:** contrasts inspection with testing, gives buyers and licensees explicit permission to accompany inspectors and testers, requires copies of all inspection and testing reports to be delivered to the seller, requires sellers to provide access to appraisers and requires separate testing provisions.
- **Inspection Contingency on lines 450-470:** provides for separate component and recommended follow-up inspections by qualified professionals if completed by the deadline, uses the Definition section definition of Defects, and clarifies right to cure language.

This *Legal Update* will overview only a few of the uniform provisions and focus on new language and those provisions specific to commercial offers or otherwise deserving of particular emphasis.

For a detailed discussion of the standard offer provisions found in the various approved offers, see the following issues of *Legal Update*:

- November 2009: "WB-11 Residential Offer to Purchase – 2010 Edition" (www.wra.org/LU0911)
- February 2011: "2011 WB-11 Residential Offer to Purchase" (www.wra.org/LU1102)
- March 2011: "2011 WB-14 Residential Condominium Offer to Purchase" (www.wra.org/LU1103)
- April 2011: "2011 WB-13

Vacant Land Offer to Purchase" (www.wra.org/LU1104)

- October 2011: "WB-12 Farm Offer to Purchase – 2012 Revisions," (www.wra.org/LU1110)

General Provisions (Lines 3-7)

The longer blanks in this section ask for the buyer's name – with enough room to insert the name of a trust, joint venture, list of individuals, etc. There are also longer blank lines for the property's street address, which generally is a sufficient description for most properties, but sometimes a grouping of adjacent parcels involving multiple addresses or legal descriptions might be necessary with a commercial listing. In this or any other situation where the provided space is insufficient, the parties may follow the prompt and insert the description in the Additional Provisions lines on Page 2 or 5, or attach the description as an addendum. This addendum might be a photocopy of the legal description from the seller's deed or title policy provided it is properly labeled as an addendum and incorporated by reference on Page 9 of the WB-15.

Earnest Money (Lines 10-12)

The language in this provision is not different than that in the other offers to purchase. However, this marks the first of many instances in the WB-15 where the blank line for filling in a number of days has been left long enough to write in the selected number plus the word "business" in those cases where the parties wish to measure deadlines in business days rather than days. See the definition of "Deadlines" on lines 216-222, which defines "business days" and explains how to count days and business days when determining a deadline.

Included in Purchase Price (Lines 14-19)

As the buyer and his or her broker complete the commercial offer and determine the price the buyer will offer, they should keep in mind what is included in the purchase price as indicated on lines 14-17. "Seller is including in the purchase price the Property, all Fixtures on the Property on the date of this Offer not excluded at lines 20-22, and the following additional items: ____." The property included in the transaction will include the:

1. **Property:** the real estate described on lines 4-7.
2. **Fixtures Not Excluded:** the starting presumption is that fixtures are included in the purchase price. A "fixture" is defined in the *Merriam-Webster Online Dictionary* (www.merriam-webster.com/dictionary/fixture) as "something that is fixed or attached (as to a building) as a permanent appendage or as a structural part <a plumbing *fixture*> ... an item of movable property so incorporated into real property that it may be regarded as legally a part of it." In the 2012 Offer, fixtures are similarly defined at lines 303-311. If an item of property falls within the definition of a Fixture, then it will automatically be included in the purchase price per lines 14-15, unless it is listed on lines 20-22 and thereby excluded.


REALTOR® Practice Tip:

If there is uncertainty regarding whether any item is a fixture, the old adage that "it is better to be safe than sorry" comes into play; it is best to list the item as either included or excluded rather than leaving it to chance or believing that the other party will interpret and apply the Fixture definition to the item in question in the same fashion and come to the same result. Any items that might strike a party as being "detachable" should be listed in the Included

or the Not Included section to remove the potential for controversy or litigation.

The Fixture definition at lines 303-311 provides numerous examples of items that are fixtures and also alert the parties to an important exclusion: “A Fixture does not include trade fixtures owned by tenants of the Property.”

In the unlikely event that there is a trade fixture that is to be included in the purchase price, it would need to be listed on lines 15-17 because it is not a fixture, per the definition, that would be automatically included in the purchase price. A trade fixture might be included if it has been abandoned by a tenant, or if the tenant has transferred the trade fixture to the seller.

 **REALTOR® Practice Tip:** If any tenant trade fixtures are not removed and are being sold as part of the transaction, then it is wise to confirm that there is some documentation that the trade fixtures now belong to the seller. Is there a contract provision, bill of sale or other title document available in the seller’s files?

If the tenant’s trade fixtures are being removed, as is most often the case, and thus are not included in the sale, it may be best to note the tenant trade fixtures as “not included in purchase price” on lines 20-22 to make sure it is clear to the buyer that the trade fixtures are not included, and then make sure that the tenant does remove the trade fixtures.

3. Items Listed. The third aspect of the property included in the purchase price is the items listed on the blank lines on lines 15-17 of the WB-15. These presumably will be personal property items. For example, the seller is including movable restaurant appliances that are not considered fixtures like a stove and refrigerator, or a florist delivery truck is included with the sale of the florist shop.

Bill of Sale

Line 18 of the 2012 Offer indicates that, “All personal property included in purchase price will be transferred by bill of sale or _____.”

A bill of sale is a document used to transfer title to personal property. The WB-25 Bill of Sale is the Department-approved form that licensees should use for this purpose. In the WB-25, the seller warrants free and clear title to the personal property (except for any listed liens and encumbrances, which are made exceptions). It does not, however, provide any warranties regarding the condition of the personal property. If such warranties are desired, the parties must specifically provide for them in the Additional Provisions sections or in an addendum.

Personal property that is being transferred as part of a real estate closing and is included in the purchase price should be conveyed at closing by bill of sale unless there is another appropriate way to transfer title. If a schedule of personal property has been prepared as part of the offer to purchase, the schedule may simply be attached to the WB-25 and referenced at line 26. For more information about the use of the WB-25 Bill of Sale, review the March 2000 *Legal Update*, “Cancellation Agreement & Mutual Release and Bill of Sale,” at www.wra.org/LU0003.


Other title documents that may be provided include, for example, a Department of Transportation title for the florist delivery truck or attorney-drafted documentation that serves to transfer ownership of other personal property.

REALTOR® Practice Tip: The bottom-line message here is to have documentation evidencing the transfer of ownership of the personal property involved in the transaction.

Not Included in List Price (Lines 20-24)

The CAUTION on lines 23-24 provides guidance as to the items that may need to be listed as Not Included in Purchase Price. These items include:

1. Property the Seller is Taking. Any fixtures that the seller is removing or taking should be listed on lines 20-22. Any item that is a fixture by definition will automatically be included in the purchase price unless it is listed as not being included. In those instances where it may not be clear whether the article is or is not a fixture and it is an item being removed from the premises, then wisdom dictates that the article be added to the Not Included in Purchase Price tally.

 **REALTOR® Practice Tip:** Clarity is key and it is better to state what may be thought to be obvious rather than risk a bitter dispute later on. The parties should list every conceivable item that the buyer might think is staying to ensure there is a meeting of the minds.
2. Rented Fixtures. The CAUTION in this section reminds the parties to list fixtures that are rented by the seller and are accordingly owned by someone else – the seller has no right or authority to sell an item belonging to another, for example, a rented LP gas tank. The parties will benefit if there is no potential misunderstanding that can later disrupt a transaction that is proceeding along nicely.
3. Trade Fixtures. Trade fixtures are owned by the tenant who most likely will remove them at the end of the tenancy. By definition they are not automatically included in the purchase via the Fixture definition, but it always helpful to ensure that the trade fixtures are identified to guard against future disagreement.

Tenant Trade Fixtures

Trade fixtures are fixtures installed by tenants in business premises such as offices, factories or stores. It is generally presumed in the law that the tenant does not intend to leave them for the landlord and Wis. Stat. § 704.05(4) permits the tenant to remove them prior to the end of the tenancy:

TENANT'S FIXTURES. At the termination of the tenancy, the tenant may remove any fixtures installed by the tenant if the tenant either restores the premises to their condition prior to the installation or pays to the landlord the cost of such restoration. Where such fixtures were installed to replace similar fixtures which were part of the premises at the time of the commencement of the tenancy, and the original fixtures cannot be restored the tenant may

remove fixtures installed by the tenant only if the tenant replaces them with fixtures at least comparable in condition and value to the original fixtures. The tenant's right to remove fixtures is not lost by an extension or renewal of a lease without reservation of such right to remove. This subsection applies to any fixtures added by the tenant for convenience as well as those added for purposes of trade, agriculture or business; but this subsection does not govern the rights of parties other than the landlord and tenant.

Common law teaches that trade fixtures are items of personal property that a tenant places or affixes to leased property for the purposes of conducting his or her business during the term of the lease. A trade fixture retains its classification as personal

property to the extent that it can be removed without substantial injury to the premises. In fact, trade fixtures are generally classified as personal property for taxation purposes.

Trade fixtures are ordinarily installed or attached to the premises by the tenant for his own use and for the purpose of promoting his business, and with no intention that the trade fixtures will become a part of the premises. Certain circumstances, however, can alter that outcome.

Abandoned Trade Fixtures Become Lessor's Property

In *Bence v. Spinato*, 196 Wis.2d 398, 538 N.W.2d 614 (Ct. App. 1995), Bence owned property that he leased to others for the operation of a car wash. Pursuant to a 1969 lease, Edick Laboratories, Inc. agreed to install all



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equipment necessary for the operation of a car wash and the sale of petroleum products. Spinato operated the car wash pursuant to a sublease with Edick. Spinato also entered into an installment agreement for the purchase of the car wash equipment.


The underground storage tanks (USTs) and gas pumping equipment were already installed when Spinato took occupancy of the car wash. Spinato believed that Edick either owned the USTs, or had contracted with Mobil to install the USTs and then leased them from Mobil.

In 1971 Edick went bankrupt and Spinato took over the car wash equipment. Mobil stopped providing gas and removed its pumps, but not the USTs. Spinato contracted with Union 76 to provide gas and pumps, and entered into a 20-year lease with Bence for the car wash premises. In 1983 the car wash was subleased to another party who continued selling gas until 1988. The local fire department notified the sublessee that the abandoned USTs had to be removed according to Wisconsin law.

In 1991 Bence filed an action to evict Spinato and the sublessee, and to recover delinquent property taxes, sewer and water bills and the costs of removing the USTs, including an environmental clean-up and site restoration expenses. The trial court awarded Bence judgment for the taxes and water and sewer bills, but denied Bence any damages for the UST removal, concluding that Bence owned the USTs. Bence appealed to the Court of Appeals.

The Court analyzed the fact that the USTs were abandoned within the context of landlord/tenant law, noting that underground fuel tanks installed by a lessee constitute trade fixtures. Trade fixtures ordinarily belong to the lessee and are removable by the tenant at the expiration of the lease term. If a lessee fails to remove the trade fixtures within a reasonable time after termination of the agreement, it is presumed under common law that the tenant has abandoned them and the fixtures become part of the realty owned by the lessor. Accordingly, the Court of Appeals concluded that

the USTs became Bence's property after they were abandoned by either Edick or Mobil. Bence owned the USTs and had to pay for the UST removal and clean-up.

 **REALTOR® Practice Tips:** It is important for property owners to consistently exclude tenant trade fixtures in listing contracts, offers and other documents, and always make it clear that the trade fixtures belong to the tenant, or the owners may end up being liable for another's problem.

Binding Acceptance (Lines 29-31)

This language is also the same as the language that appears in the other approved offers, but licensees should be aware that a commercial buyer may not wish to have the seller entertain any secondary offers while that buyer's offer is in play. Such a buyer may choose to strike the sentence on lines 30-31 that reads, "Seller may keep the Property on the market and accept secondary offers after binding acceptance of this Offer," and mistakenly assume that since there is no Secondary Offer provision in the 2012 Offer, that this will effectively preclude the seller from entertaining further offers. If the buyer really does not want the seller to accept any other offers, the buyer may wish to write an affirmative statement that the seller agrees to not accept any additional offers for the purchase of the property in the Additional Provisions lines of the offer or in an addendum, thereby creating a contractual promise if the seller accepts the offer.

E-Mail Delivery (Lines 49-54)

The Provisions for Delivery of Documents and Written Notices that appears on lines 35-54 of the revised WB-15 is the same as the corresponding sections in the other recently approved offers to purchase, but it may be applied differently in some commercial transactions.

Consent by Action

In many situations, Wisconsin law only requires brokers and parties to consent to do business electronically by their actions.

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Wis. Stat. § 137.13(2) simply states that, “Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties’ conduct.” Therefore, an individual contacting a broker by e-mail or asking for property information from a broker’s website is signifying by his or her actions an agreement to work with the broker electronically. Brokers and agents do not have to provide electronic consent in their business dealings with one another because they are acting in a business capacity and are not consumers in a transaction. In non-consumer transactions in which the brokers and the parties agree to use electronic documents, the parties will be able to receive, sign and deliver transaction documents, such as e-mail offers, counter-offers and other documents, electronically. In each instance the person’s conduct is enough to signify approval of electronic communications in these commercial and business scenarios.

When consumers are involved, however, a different law comes into play. Federal E-Sign law provides, with respect to consumers, that whenever a statute, regulation or other rule of law requires that information relating to a transaction be provided in writing, electronic documents may be used only if certain disclosures are first provided to the consumer and the consumer consents electronically to the use of electronic documents and signatures. Wisconsin E-Commerce law does not override this federal requirement.

E-Sign’s electronic consent requirement 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 by E-Sign 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.” The 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.

E-Sign’s consent requirements apply to most transactions in which individuals are buying or selling residential property with the intention of using the property or the proceeds for personal, family or household purposes. However, not all parties in real estate transactions are consumers. Transactions that are strictly commercial or involve two businesses as parties are not consumer transactions and are not subject to the E-Sign electronic consent requirements. For example, when a business owner sells one of his office buildings to an insurance company, neither party is a consumer. Neither the property nor the proceeds are used for personal, family or household purposes, so E-Sign compliance is not required.

It may be less obvious in other transactions whether the property or proceeds are for personal, family or household purposes, or for business or commercial purposes. When transactions do not neatly fall into one category, prudent practice dictates treating them as consumer transactions and complying with the consumer electronic consent requirements. For example, when a “mom and pop” landlord sells a duplex or a young entrepreneur buys a small commercial property to rehab without knowing what she will do with the property, it is not necessarily clear if these are consumer transactions. Note: it is the “personal, family or household” nature of the transaction and the parties’ use of the property and proceeds that trigger


the consumer consent requirement, not necessarily the type of real estate involved. In both of these examples the brokerage services provided to the party arguably are used for personal purposes, and the same may be true for the proceeds. Prudent brokers may choose to implement E-Sign consents in all real estate transactions, including commercial transactions documented on the WB-15, unless they are clearly not selling real estate or providing products or services that are used primarily for personal, family or household purposes.

At the time when an e-mail address is entered at line 53 or 54 of the Delivery of Documents and Written Notices section of the commercial offer, the parties and licensees should consider whether it is strictly a commercial deal or whether there are personal, family or household aspects such that it is safest to have the parties first provide electronic consent before executing the offer.

 **REALTOR® Practice Tip:**

Any real estate licensee drafting an offer for a consumer who includes an e-mail address at line 53 or 54 is affirmatively stating or representing that, if the party is a consumer, the consumer has previously provided electronic consent. A party who signs an offer that includes his or her e-mail address is also affirmatively stating and representing that, if he or she is a consumer, he or she has provided proper electronic consent. The consumer is committing fraud if this is not true. It is arguably incompetent practice to include an e-mail address without first obtaining a consumer’s electronic consent.

However, not all parties in all real estate transactions are consumers. Transactions that are strictly commercial or involve two businesses as parties are likely not consumer transactions and would not be subject to the E-Sign consent requirements.

 **REALTOR® Practice Tip:** When transactions do not neatly fall into one category, prudent practice will dictate treating them as consumer transactions and complying with the consumer electronic consent requirements.

For insight into the electronic consent process, see the following WRA resources:

- *Wisconsin Real Estate Magazine* (June 2010): “Behind the Curtain: E-Commerce and E-Sign Exposed” (www.wra.org/WREM/Jun10/BehindCurtain)
- *Wisconsin Real Estate Magazine* (November 2008): “Best of the Legal Hotline” regarding Electronic Delivery (www.wra.org/WREM/Nov08/ElectronicDelivery)
- *Legal Update* (February 2008): “Electronic Commerce and E-Mail Delivery” (www.wra.org/LU0802)
- E-Commerce REALTOR® Resource page (www.wra.org/E-commerce)

Property Condition Representations (Lines 57-66)

This provision resembles the provisions found in the residential, farm and condominium offers, but there is one important difference: there is no required Real Estate Condition Report for commercial property. The seller, however, agreed in the WB-5 Commercial Listing Contract to complete a seller’s disclosure report, so a seller’s disclosure report should be available if the property is listed. With commercial properties, no Wis. Stat. Chapter 709 RECR is required, but Wis. Admin. Code § REEB 24.07(1)(b) still requires listing brokers to ask the seller about the property and request the seller’s answers in writing.

Broker Duties Regarding Property Condition Disclosures

A seller who does not make property condition disclosures increases the

burden on the listing broker. The listing broker must still inspect the property and ask the seller about “the condition of the structure, mechanical systems and other relevant aspects of the property as applicable,” and request a written response from the seller.


Wis. Admin. Code § REEB 24.07(1)(b) provides: “Listing broker. When listing real estate and prior to execution of the listing contract, a licensee shall inspect the real estate as required by sub. (1), and shall make inquiries of the seller on the condition of the structure, mechanical systems and other relevant aspects of the property as applicable. The licensee shall request that the seller provide a written response to the licensee’s inquiry.” If the seller declines to provide written information, the listing broker will be left to disclose material adverse facts in writing to buyers based upon what the broker observes and what the seller says.

Seller Disclosure Report

A condition report like the WRA Seller Disclosure Report – Commercial (WRA-RCC) (hereinafter RCC) nicely fits the bill to the extent that the property is solely commercial as opposed to a combined or mixed-use property. A completed RCC or other commercial disclosure report may be used to supplement the offer and make the seller’s property condition representations on lines 57-62 of the WB-15 Offer.

The property condition representation items in the 2012 Offer were based upon the representation items in the 2010 version of the RCC. In other words, the “Conditions Affecting the Property or Transaction,” listed on lines 181-215 are essentially the same as the disclosure items on the RCC. Therefore, if the seller does not have a seller’s disclosure report, the representations the seller is asked to make on lines 57-58 mirror the representations contained in the RCC. By

one method or another, the seller is asked to disclose the same things about the property in terms of potential commercial considerations and possible property condition defects.

 **REALTOR® Practice Tip:** REALTORS® may use the updated WRA Seller Disclosure Report – Commercial (WRA-RCC). This report is discussed in detail on Pages 12-16 of the February 2009 *Legal Update*, “Revised WB-5 Commercial Listing and Seller Disclosure Report,” at www.wra.org/LU0902. Also see Pages 1-3 of the February 2012 *Legal Update*, “Early 2012 Developments,” at www.wra.org/LU1202.

However, the Property Condition Representations section has been modified to account for the scenario where there is a seller disclosure report (with commercial items), but a residential RECR is also needed because the property is mixed-use and includes one to four dwelling units. A second blank line appears at line 59 to insert the date of the RECR, if any. In other words, this section contemplates that there may be a seller disclosure report to address commercial property conditions, and there also may be a Wis. Stat. Chapter 709 RECR if the property is a combined-use building with retail shops at street level and apartments on the second floor. The RCC addresses the commercial aspects of the property and the RECR reviews residential features and issues. It may also be that only the RECR is used if the property is a four-unit apartment building and the transaction is being documented using commercial forms (residential forms might also be used in such a transaction – licensees are to use whichever forms best fit the transaction with the fewest number of required changes).

REALTORS® and parties should understand that lines 57-62 of the offer should be completed to reflect the reports used in the transaction;

the boxed instructions indicate that they should fill in the dates corresponding to the report or reports that have been given to the buyer and strike the language that does not apply. Alternately, they can also simply place a dash or write “N/A” in the blank relating to a report type that is not being used in the particular transaction. For example, if there is only a seller disclosure report for the commercial property, the date of the disclosure report may be entered on line 58 and a dash may be placed in the blank at line 59, or the words “and Real Estate Condition Report, if applicable, dated ___” may be lined out. In other words, the drafter should fill in what applies to the situation and mark the rest in some fashion to indicate that they do not apply in that instance.

The new CAUTION on lines 63-66 of the WB-15 reminds the parties of when an RECR may be required, that is, when the commercial property includes one to four dwelling units. This may occur, for example, if a commercial property contains one or more living units for an owner or a caretaker. The CAUTION also notes some of the exceptions to the § 709.03 requirement for an RECR, such as new construction or when the seller is an estate and the personal representative has never lived in the dwelling unit. The CAUTION also refers to the RECR rescission rights. Parties with questions regarding the RECR may be given a copy of the report to review, while those with additional legal questions should be directed to their attorney for answers and assistance.

See *Legal Update 02.07*, “Duty to Disclose,” at www.wra.org/LU0207, and the October 2009 *Legal Update*, “Diligent Disclosure,” at www.wra.org/LU0910 for further discussion of seller disclosure obligations.

Estoppel Letters (Lines 97-99)

This new provision is designed for commercial property that is leased, for example, a shopping center or mall. This optional provision requires the seller to provide the buyer with estoppel letters from each non-residential tenant by the deadline specified on line 97. This deadline is measured in terms of day before closing, reflecting the typical commercial practice of providing estoppel letters shortly before closing. In a typical estoppel letter, a tenant certifies and confirms to the purchaser various facts, such as the rental amounts, security deposits, expiration dates and that the lease is not in default. Once signed, an estoppel letter is intended to prevent the tenant from later claiming rights or causes of action against the new owner contrary to the statements made in the estoppel letter.

Estoppel letters are generally drafted by attorneys – each commercial attorney or law firm will likely have a computer form that they use when their clients are requesting this information or when their commercial tenant clients have been asked to provide this information. In other words, there is no licensee form for this function. The seller’s attorney or buyer’s attorney may wish to make a form available for commercial tenants who do not have access to their own form. Clearly this is a situation where there will not be much specific assistance that may be provided by a REALTOR® and the parties and the commercial tenants may all be best served by conferring with legal counsel.

Proposed Use Contingencies (Lines 116-139)

Like in the WB-13 Vacant Land Offer to purchase, the Proposed Use Contingency on lines 116-139 of the WB-15 is an umbrella style contingency provision. Because in

a commercial offer there generally will already be a structure or facility already constructed or in place, there are fewer sub-contingencies than in the vacant land offer where construction would need to begin from the ground up. In the WB-15, the sub-contingencies address existing easements and restrictions, required permits, licenses and approvals, property access and land use approval.


The introductory section to this umbrella contingency includes blank lines where the buyer may state the buyer’s proposed use on lines 116-118. This proposed use is referenced in the sub-contingencies below on lines 123-139. This introductory umbrella language also states that those sub-contingency provisions on lines 123-139 that have been marked, using the check boxes provided at the beginning of each sub-contingency, are deemed satisfied unless the buyer delivers written notice to the seller specifying those sub-contingencies that cannot be satisfied, accompanied by written evidence substantiating why the indicated sub-contingency provisions cannot be satisfied. If the buyer provides this written notice, the offer is then null and void. The seller is not provided with a right to cure, but right to cure or other provisions addressing how items of concern might be resolved may be added in an addendum when the offer to purchase is drafted, if desired by a party.

This process is very much like the process utilized in the Proposed Use Contingency in the vacant land offer, but there is one major difference: each sub-contingency in the WB-15 Proposed Use Contingency has its own separate deadline. That is because the amount of time needed to confirm access to the property is going to be much shorter than the time needed to secure a government permit or a rezoning.

Each Proposed Use sub-contingency

is based upon the buyer obtaining the documentation, report, permit, etc., because the buyer is in the best position to know what assurances he or she needs to proceed with the buyer's use and development plans. This puts the onus on the buyer to act promptly to secure the needed reports – the buyer is not reliant upon the seller to provide reports. Instead it is the buyer who is in charge of getting the needed information. The only variable in each item (other than the deadline) is responsibility for the cost. The parties are to choose whether the buyer or the seller pays for a particular investigation, test, etc., by using the STRIKE ONE feature relative to the expense. These provisions also include a default that makes it the buyer's expense should the expense selection be overlooked. The seller's main role is stated on line 122: the seller agrees to cooperate with the buyer as needed to implement and satisfy the sub-contingencies.

The WB-15 Proposed Use Contingency addresses many of the issues encountered when purchasing commercial property. These contingency provisions may be used to confirm the legality of a continuing use or confirm that the buyer's proposed new use, improvement or development is legal and can be accomplished without any significant delay or cost increase. If that is not the case, then the buyer can deliver notice to the seller explaining why a specific sub-contingency cannot be satisfied, accompanied by corroborating documentation, and the offer will become null and void. Thus, if the buyer discovers that a planned use or improvement is not legal or will involve significant delays or higher costs, the buyer may decide that the buyer's plans are no longer beneficial or cost effective and give notice to end the contract, assuming the buyer can appropriately document the disconnect between the buyer's proposed use and the results of the sub-contingency.

 **REALTOR® Practice Tips:** It will be to the buyer's benefit to consider including a specific description of the buyer's proposed use on lines 116-118 so that the buyer can readily demonstrate if some aspect of the proposed use is shown to be illegal, will be significantly delayed or can be done only at a significant cost increase. The buyer may wish to consider including a project deadline and maximum cost cap with the proposed use description.

Easements and Restrictions (Lines 123-126)

This sub-contingency provides the buyer with an opportunity to obtain copies of easements, covenants and restrictions affecting the property. In addition, the buyer is permitted to receive a written opinion from a qualified independent third party (for example, an attorney) that none of the easements or restrictions will prevent, significantly delay or significantly increase the cost of the buyer's proposed use. A buyer will want to investigate whether the buyer's planned use is permitted under current restrictive covenants, deed restrictions, subdivision restrictions and other restrictions on land use and development; whether any of the restrictions can be changed or varied; or whether the buyer's plans may prove to not be feasible on the seller's property.

It is important to make sure that there are no easements interfering with the buyer's proposed use of the property, such as a utilities easement. In some cases, it is necessary to ensure that other easements required for planned improvements are present and enforceable, such as an access easement. For additional information about easements, see *Legal Update 00.08*, "Express Easements," at www.wra.org/LU0008.

Restrictions and covenants may be specific to the one property or area-wide. The most common example is

subdivision restrictions. Any restriction on free use must be expressed in clear and unambiguous terms. Because public policy favors the free and unrestricted use of property, any covenants and restrictions must be strictly construed to favor the unencumbered use of property. When the meaning of a restrictive covenant is doubtful, all doubt generally is resolved in favor of the property owner's free use of his or her land for all lawful purposes. Lawyers will often be needed to interpret and advise the buyer if the restrictions are unclear.

Approvals (Lines 127-132)

This sub-contingency allows the buyer to make the offer contingent on the buyer receiving permits, licenses and other approvals required for the buyer's specified proposed use. For example, the buyer may wish to make the offer contingent on receiving a liquor license for the proposed addition of a bar area to a restaurant property or a permit for a waterfront improvement.

Access to Property (Lines 133-134)

This sub-contingency provides the buyer with the chance to address legal vehicular access to the property from the public roads. Commercial property buyers may need to confirm legal access for the sake of their customers and clients, delivery vehicles and access by emergency vehicles, particularly if the property is in a remote area. If the buyer is contemplating improvements or additions, that could also mean increased traffic that impacts an evaluation of whether the existing access is sufficient. However, that would require the parties to add another contingency to the offer because, although related, that is a different consideration than whether or not there is legal vehicular access.

Parcels without access to a public road are commonly known as landlocked parcels, which, as the name implies, cannot be accessed without crossing

private property owned by another. Landlocked parcels are not illegal and can be bought and sold just like any other real property. However, landlocked owners do not have a legal means of access to public roads.

A buyer with no legal means of vehicular access to the property (landlocked) may need to purchase additional land or an easement from an adjoining landowner, petition the town board to lay out a highway, or talk to a lawyer about whether a way of necessity or prescriptive easement (by adverse possession) are options.

A prescriptive easement, an easement established by adverse possession, is created when a person uses land without permission in a manner that is hostile, visible, and open in a continuous and uninterrupted way for a period of at least 20 years. In order to establish and enforce prescriptive easement rights, a landlocked owner typically would commence an action in circuit court for possession of the real property access easement. The owner would then prove the elements listed in Wis. Stat. § 893.28, which addresses the establishment of prescriptive rights by adverse use (<https://docs.legis.wisconsin.gov/statutes/statutes/893.pdf>). Once established, a prescriptive easement is permanent.

A way of necessity, by contrast, continues only so long as the necessity exists or until another lawful means of access has been obtained. A way of necessity arises when a landowner conveys a portion of his property to another and that conveyed portion is landlocked. The law will imply a way of necessity over the land retained by the landowner. The focus is simply the landlocked owner's need to have access to the public highway. The use of a way of necessity is considered permissive and cannot constitute the foundation for a prescriptive easement. Generally, a way of necessity should be considered and rejected before a prescriptive easement is granted.

If a landlocked owner cannot obtain access rights through private initiative, he or she can petition the government pursuant to Wis. Stat. § 82.27 (<http://legis.wisconsin.gov/statutes/Stat0082.pdf>), asking the town to build a public road to the landlocked property. A petition may also be filed if there is a private way or road furnishing access that is too narrow or otherwise does not afford reasonable access. The decision to build a public road to the landlocked parcel is at the total discretion of the town. If the town board feels that a road is not in the public interest, they may deny the request of the property owner, leaving the property landlocked.

If the request is approved, the town board shall assess the damages to the owners of the real estate to be acquired by the town and pay just compensation. The landlocked property owner also will be required to pay for the road construction and cost of land acquisition, the town's attorney fees, survey costs and valuation expert fees. For further information regarding this process, see "Landlocked Parcels... a Way Out?" in the June 2004 edition of the *Wisconsin Real Estate Magazine* at www.wraa.org/News/WREM/2004/June/Landlocked_Parcels/.

Land Use Approval (Lines 135-139)

Unlike the Land Use Approval sub-contingency in the Proposed Use Contingencies in the vacant land offer, this sub-contingency is not set apart. Any need for unusual formatting was eliminated when separate deadlines were placed in each of the sub-contingencies in the WB-15. This sub-contingency gives the buyer the opportunity to secure any rezoning, conditional use permits, licenses and variances, as well as building and occupancy permits needed for the buyer's proposed use.

Variances

When it comes to zoning, there are procedures in place for case-by-case modifications to the zoning requirements. Local boards of adjustment (boards of appeals in cities and villages) grant variances on a case-by-case basis. A variance allows an owner to use the land in a manner not permitted by the current zoning ordinance when the ordinance itself has created the problem and the applicant can show hardship. Variances will usually specify exactly how the land can be developed.

A "use variance" permits a use other than that prescribed by the zoning ordinance (e.g., a factory in a residential neighborhood). Because a use variance can change the character of a neighborhood and is in direct contrast to the spirit of a zoning ordinance, courts have consistently required applicants to demonstrate that they have "no reasonable use" for their property without a variance (a high standard).

An "area variance" modifies site development requirements such as lot size, yard, setback and frontage restrictions (e.g., an addition to a structure that encroaches into a setback area). Because these variances are relatively minor and do not have a significant impact on the character of a neighborhood, courts have required applicants to show that strict compliance with the ordinance is "unnecessarily burdensome" (a lower standard).

Area Variance Standards

In *Town of Bass Lake v. Sawyer County Bd. of Appeals* (Ct. App. 2004), the Town of Bass Lake appealed circuit court judgments upholding variances granted to two applicants. The Board of Adjustment granted variances allowing the applicants to remove dilapidated buildings and replace them with new buildings that violated the lot size and setback restrictions contained in the Sawyer County Zoning Ordinances. The town argued that the applicants

failed to prove that there was “no reasonable use” of the land without a variance, that the property was unique and that the variance was not contrary to the public interest.

Upon appeal, the Court of Appeals noted that after the parties filed their briefs in this appeal, the Wisconsin Supreme Court issued two decisions that significantly impact the law relative to variances. In *Ziervogel v. Washington County Bd. of Adj.*, 2004 WI 23, the Court concluded that the “no reasonable use of the property” standard for unnecessary hardship no longer applies to area variances. Instead the applicant must establish a hardship that is unique to the property rather than the property owner and that is not self-created. In *State v. Waushara County Bd. of Adj.*, 2004 WI 56, the Court indicated that the board’s decision is presumed correct and the reviewing court should focus on the purpose of the zoning ordinance. The facts should be analyzed in light of the purpose and the board must be afforded enough flexibility to appropriately exercise its discretion. The board’s decision should be overruled by the reviewing court only if it is unreasonable or irrational.

In the *Town of Bass Lake* case, the Court concluded that the Board of Adjustment’s decision to grant the variances was not unreasonable or irrational. The purpose of the ordinance was primarily to promote aesthetics. Because the dilapidated buildings could not be substantially repaired without expending more than 50 percent of the structures’ current estimated fair market value, which was prohibited under Sawyer County Wis. Zoning Code § 10.21 (2003), the buildings would remain dilapidated unless the variances were granted. The new buildings would improve the appearance of the area, increase the property values and tax assessments, and, in one case, would be set back further from the lake

and a public easement. The variances are beneficial to the public interest, the Court noted. The Court also observed that properties are very small and irregularly shaped and application of the setback restrictions from each direction would prohibit building any reasonably sized structure. The size and shape were unique to the property and not created by the property owners.


Conditional Use Permits

Conditional uses are land uses that local government has decided are not necessarily well suited to all locations within the zoning district. To qualify for a conditional use, the board must find that both the requisite facts and the conditions detailed in the ordinance exist. Such uses may need to be custom tailored to the specific site. In these circumstances, a conditional use permit (CUP) may be issued only if there are specific conditions attached to the permit. For instance, a cemetery may be a conditional use for a residential area provided that any cemetery buildings or tombstones are sufficiently set back from the property lines or the street. Other consideration often leading to specific restrictions or conditions include traffic and access, public safety, appearance and blending with the surrounding area, etc.

A public hearing is commonly held to gather information about the potential effects of such conditional use projects. Testimony is taken under oath, subject to cross-examination. Unlike a variance, a property owner is not required to show hardship before the board will issue a CUP. The decision to grant or deny a conditional use may be made by the local planning committee, board of adjustment or governing body.

For further discussion of conditional use permits see Pages 2-5 of the November 2005 *Legal Update*, “Zoning Law Developments,” at www.wra.org/LU0511.

 **REALTOR® Practice Tip:** Both with the Approvals and the Land Use Approval sub-contingencies, it may not always be possible for a buyer to actually secure the needed permit or action prior to closing due to local restrictions and rules. The buyer may need to have title to the property before a building permit or CUP may be obtained in some municipalities, while in other circumstances it may be possible to achieve some of the desired results if the buyer and seller work together. There will be significant time commitments and sometimes fees are involved.

 **REALTOR® Practice Tip:** A buyer may wish to add a separate contingency in an addendum to investigate a specific issue with respect to local codes, requirements and procedures. A conversation with local zoning and building and planning officials to first see what is feasible – before the offer is written – will produce the best possible contract for the buyer that is realistic and achievable. Conducting a preliminary investigation and enlisting legal assistance, as needed, should be encouraged by the REALTORS® in the transaction.

Map of the Property Contingency (Lines 510-520)

A buyer is wise to obtain a survey or some other boundary map to confirm property boundaries and spot encroachment concerns. A survey can go a long way in avoiding costly litigation and ugly feuds with neighbors. However, there seems to be a general perception in the real estate industry that a survey is unnecessary in most real estate transactions. There is also a misguided belief that the title insurance policy will “protect” the seller and buyer from boundary line disputes and other encroachment problems. Actually title policies exclude, as a standard exception


to insurance coverage, all facts that would be disclosed by a current, comprehensive survey of the premises. See “Put the Gloves DOWN! How Property Surveys Can Help Avoid Disputes” in the May 2005 *Wisconsin Real Estate Magazine* at [www.wra.org/News/WREM/2005/May/Put the Gloves DOWN!](http://www.wra.org/News/WREM/2005/May/Put%20the%20Gloves%20DOWN!).

The new Map of the Property contingency in the 2012 WB-15 is similar to the map provision in the updated WB-12 Farm Offer to Purchase and WB-13 Vacant Land Offer to Purchase. In this “build your own” map contingency, the buyer selects the desired map components by striking unnecessary elements and writing in other criteria on lines 145-146, thereby customizing the map. Additional map features that may be added are suggested on lines 146-148. The map must be dated after the date of the offer’s acceptance, and the parties may require that the map show minimum or maximum acreage, if desired.


This Map of the Property contingency is different than the provision in the farm and vacant land offers in a couple of ways. First of all, this provision makes an “ALTA/ASCM Land Title Survey” the default or base kind of map that will be supplied because that is the kind of map that will be required to remove the title insurance exceptions relative to survey matters, something that will frequently be needed in commercial transactions. New Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys were issued effective February 23, 2011, and these standards specify that “certain specific and pertinent information” must be presented in survey maps removing title exceptions. These standards may be viewed at www.acsm.net/data/global/images/PDF%20Documents/ACSM/20110223ALTAACSMLandTitleSurveyStandard2011.pdf or www.alta.org/forms/download.cfm?formID=338&type=word.

The WB-15 Map provision also states, “Such survey shall be in satisfactory form and accompanied by any required surveyor’s certificate sufficient to enable Buyer to obtain removal of the standard survey exception on the title policy.” The parties may choose to line out this statement should that not be true in the transaction, although this action should not be taken unless the buyer has confirmed with the title company and/or the buyer’s attorney that this language should not be included. The additional survey map features required by these standards may increase the cost of the survey map.

The contingency fails and the offer is null and void if the buyer delivers to the seller a copy of the map and written notice identifying a significant encroachment, information revealed on the map that is materially inconsistent with prior representations, or the manner in which the map fails to meet the map contingency requirements. The map and notice must be delivered within five days of the earlier of the deadline for delivery of the map or the buyer’s receipt of the map. The WB-15 Map provision also adds another basis for failure of the contingency and the voiding of the offer at lines 154-155: “the existence of conditions that would prohibit the Buyer’s intended use of the Property described at lines 116-118.” Thus, the Map contingency refers back to the buyer’s proposed use as stated within the Proposed Use Contingencies. The broker drafting the offer will want to make sure that the proposed use lines are completed regardless of whether the Proposed Use Contingencies themselves are being utilized.

 **REALTOR® Practice Tip:** Any survey used for the purpose of deleting the encroachments, boundary line disputes or other survey-related exceptions in the title policy must conform to the ALTA/ACSM standards and/or any other standards imposed by

the title company. REALTORS® may be wise to encourage the buyer to have the title insurance company that the buyer prefers clarify the necessary survey standards that must be met to remove these title exceptions. The buyer also may wish to name the title company that will provide the owner’s title insurance policy.

 **REALTOR® Practice Tip:** Agents should remember to enter the buyer’s proposed use on lines 116-188 of the WB-15 in order to give the buyer the full protection of the Map provision and the ability to void the offer should the survey reveal conditions prohibiting the buyer’s intended use.

If the buyer is requesting or the seller is offering to provide a copy of a survey, plat or other map that the seller already has in his or her possession, it may be best to state that separately in additional provisions or in an addendum. It should be indicated that any such map is provided for information purposes only.

Document Review Contingency (Lines 157-177)

This enhanced provision, similar to the existing provision in the 2000 Offer, gives the buyer the opportunity to request a wide range of paperwork. What a buyer might select will depend upon the buyer’s planned use. The goal is to facilitate the review of those documents that would be the most important to a commercial purchaser. This may be a little bit difficult because the WB-15 is used for such a wide range of property types.

The 2012 version of the Document Review contingency includes check box items for documents confirming the sale has been authorized, an inventory and a UCC lien search, as was the case in the 2000 Offer. The revised WB-15 has added a new check box item for rent-rolls, a list

of prompts for additional documents and information that might be helpful, and a confidentiality provision that requires the return of all originals and reproductions should the deal not close. Lines 171-173 indicate, “All documents Seller delivers to Buyer shall be true, accurate, current and complete. Buyer shall keep all such documents confidential and disclose them to third parties only to the extent necessary to implement other provisions of this Offer. Buyer shall return all documents (originals and any reproductions) to Seller if this Offer is terminated.”

Entity Authorization

The first check box item under the Document Review Contingency calls for documents confirming that the seller, if an entity, has the proper authorization to sell the property. When dealing with a company or business entity, a decision to sell an asset such as a commercial building often requires that specific procedures be followed to obtain the appropriate authorization. The process involved will vary depending upon whether the business entity is a corporation, limited liability company (LLC), general partnership, limited partnership or some other type of entity.

REALTORS® should be familiar with the types of documentation that may be provided, although they should never attempt to make a legal decision with regard to what documentation is or is not acceptable or sufficient. That is a decision for the title company or an attorney. The title company will have to accept any authorization to sell documentation before it can issue a title insurance policy on the sale of the commercial property.

Different types of legal entities have different legal requirements for the sale of real estate. In any given situation, the real estate may be the entity's major or only asset, or the company may own many properties

and frequently buy and sell them.

Corporations

Wis. Stat. § 706.03(2) and (3) provide that any one officer of a private corporation is authorized to sign conveyances in the corporate name, unless a different authorization appears in the corporation's articles of incorporation or in a certified corporate resolution that has been recorded with the register of deeds office in the county where the conveyance is occurring. A recorded resolution may specify by name or by title one or more persons who are authorized to execute conveyances in the name and on behalf of the corporation. The named persons do not have to be officers of the corporation. If such a corporate resolution has been recorded, the resolution overrides any other authorizations until another resolution amending or revoking the first resolution is properly adopted and recorded. Only those persons authorized in the recorded resolution may execute any conveyances on behalf of the corporation. A provision in such a recorded resolution or in the articles of incorporation may contain limitations on the officers' authority to sign, for example, “in the ordinary course of business.”

With a corporation, the proper authority to sell depends on whether the sale of the property is or is not in the regular course of business. If it is part of the corporation's normal business to sell all or any portion of its real estate, Wis. Stat. § 180.1201 provides that the sale must be on the terms and conditions and for the price determined by the corporation's board of directors. Shareholder approval is not needed unless required by the articles of incorporation.

If, on the other hand, the sale is not in the regular course of business, or the sale is of all or substantially all of the corporation's assets, the sale again must be on the terms, conditions and for the price determined by the corporation's board

of directors. In addition, Wis. Stat. § 180.1202 requires a resolution of the board of directors approving the proposed transaction and approval by a majority vote of the corporate shareholders. The vote is held at a shareholders' meeting that requires a minimum of 20 days' notice, so obtaining the needed approvals in this situation will take some time.

For example, if a development corporation were selling vacant lots in a subdivision, this would appear to be in the ordinary course of business. The board of directors would determine the terms of the sale. If a manufacturing company was selling its entire facility, however, one would assume that this is not in the regular course of business and that the transaction will require approval by the board of directors in a corporate resolution and by a majority of the shareholders voting at a shareholders' meeting.

REALTOR® Practice Tip:

In determining whether “substantially all” corporate assets are transferred within the meaning of § 180.1202, more than dollar values must be considered, as was shown in *Sterman v. Hornbeck*, 156 Wis. 2d 556, 457 N.W.2d 874 (Ct. App. 1990). The determinative factor is whether the sale changes the nature of corporate activity. Prudent practice suggests that REALTORS® should leave the determination of whether “substantially all” assets are being sold to attorneys and other qualified professionals.

Limited Liability Companies

With an LLC, the authority to transfer its property depends on whether the LLC is member-managed or centrally managed.

- Member-Managed LLC. In a member-managed LLC, Wis. Stat. § 183.0301(1) provides that each member is an agent of the LLC. A member may sign documents and bind the LLC if the member is apparently carrying on the ordinary

course of business for the LLC, unless the member has no authority to act and the person with whom he is dealing is aware of his lack of authority. Under § 183.0702 (1), the property of the LLC that is held in the name of the LLC may be transferred by a conveyance executed by any member in the name of the LLC.

- **Centrally or Manager-Managed LLC.** If one or more managers centrally manage the LLC, a member is not an agent of the LLC and cannot bind the LLC. Rather, each manager is an agent of the LLC and can execute documents and bind the LLC per § 183.0301(2). Under § 183.0702 (2), if there are one or more managers, property that is held in the name of the LLC may be transferred only by a conveyance executed by a manager in the name of the LLC; LLC members will have no authority to transfer title.

 **REALTOR® Practice Tip:**

A buyer may need to receive the LLC's operating agreement or other documents and affirmative representations that authorize the member or manager to sell the real estate on behalf of the LLC seller.

General Partnerships

With a general partnership, a buyer would be looking for documentation indicating which partner or partners are authorized to sell the real estate and execute the offer and deed.

General partnerships are different from corporations and LLCs because they do not have any organizational documents that are required to be filed with any agency or recorded with the register of deeds. Wis. Stat. § 178.05(3) provides that any real property acquired in the partnership name can be conveyed only in the partnership name. Wis. Stat. § 178.06 provides that every partner is an agent of the partnership and may execute documents, including real estate conveyances, in the partnership name

and bind the partnership, unless the partner has no actual authority to act for the partnership and the person with whom the partner is dealing knows that the partner has no such authority. On the other hand, an act of a partner that is not apparently for the purpose of carrying on the partnership's usual business does not bind the partnership unless authorized by the other partners.

Where real estate is in the partnership name, any partner may convey title to the property by a conveyance (offer, deed) executed in the partnership name. However, the partnership may recover the property under Wis. Stat. § 178.07 if the conveyance was not in the apparent usual course of the partnership's business, or the person dealing with the partner knew that the partner was not actually authorized to act on behalf of the partnership. Authorization documentation would not be required, however, if all partners sign, provided it is clear who all the partners are.

Limited Partnerships

With a limited partnership, if the real estate is in the name of the limited partnership, a general partner may convey title to the real estate per Wis. Stat. § 179.065 unless it indicates otherwise in the certificate of limited partnership (filed with the Department of Financial Institutions). Limited partners do not have this authority. Accordingly, the key authorization usually will be found in the certificate of limited partnership. If the limited partnership's real estate is not titled in the name of the limited partnership, the rules in Wis. Stat. § 178.07 for general partnerships will apply with respect to the general partners of the limited partnership. This means that the partnership will be able to recover the property if the general partner or partners signing the conveyance were not actually authorized to do so.

Nonprofit Associations

Under the Uniform Unincorporated Nonprofit Association Act, a "nonprofit association" means an unincorporated organization consisting of three or more members joined by mutual consent for a common, nonprofit purpose. However, as Wis. Stat. § 184.01(2) indicates, a joint tenancy, tenancy in common or tenancy by the entireties does not, by itself, establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

Wis. Stat. § 706.03(3m) states that a nonprofit association may authorize a person to execute conveyances of estates or interests in real property by executing and filing a statement of authority under § 184.05. A person authorized in such a statement can convey real estate held in the name of a nonprofit association. A statement of authority should be recorded in the office of the register of deeds in the county where the property is located.

A statement of authority must include all of the following:

- The name of the nonprofit association, which must contain the words "unincorporated association" or "unincorporated assoc." or end with the abbreviation "U.A." or "UA." The name may not contain language stating or implying that the nonprofit association is incorporated.
- The nonprofit association's street address in this state or its address outside this state if there is no in-state address.
- The name or title of a person who is authorized to transfer real property held in the name of the nonprofit association.
- The action, procedure or vote of the nonprofit association that bestows the authorization for the person to transfer the real property and that authorizes the person to execute the statement of authority.

The statement of authority shall be executed in the same manner as a deed by a person other than the person authorized to transfer the non-profit association's real estate, and is good for five years after the date of recording unless canceled by a similar recorded statement beforehand. See § 184.05 at <https://docs.legis.wisconsin.gov/statutes/statutes/184.pdf>.

Inventory

Inventories clarify what is included and help avoid disputes at closing in all sales. Compliance with this Document Review Contingency check box item would require an inventory of the equipment, appliances, fixtures, supplies, tools or any other personal property included in the sale. The inventory must be consistent with any other representation regarding the inventoried terms made within the offer, as stated at lines 160-161. The inventory enables the parties to agree what items stay and what items will be removed by closing.

UCC Lien Records

This check box item on lines 162-163 calls for a Uniform Commercial Code search with regard to any personal property included in the offer, showing no liens and security agreements on the personal property or the real estate other than those to be released at closing. This information may also be available in the title search. If large machinery is involved, then knowing about any liens is important. Machinery and equipment are often used as collateral to obtain loans for purchasing raw materials, etc.

Rent-Roll

Typically a seller or the listing broker will deliver a rent-roll to the buyer setting forth the amount of rent, security deposits, lease expiration dates, delinquencies and other key facts with respect to any leases of the property or any part thereof. With a rent-roll, the seller represents this information,

while with estoppel letters, the tenants certify this information. A buyer requesting a rent-roll at line 164 may wish to specify any specific applicable standards, for instance, if the buyer is looking to confirm prior representations or needs particular details.

Definitions Section (Lines 178-226 & 287-312)

As with the other offers, an effort has been made to capture the definitions, group them together as best as can be done given the constraints of paper forms with carbon features, and arrange them alphabetically.

“Conditions Affecting the Property or Transaction” Definition (Lines 181-215)

The list of disclosure items comprising the definition of “Conditions Affecting the Property or Transaction” are essentially the same as the disclosure statements in the WRA Seller Disclosure Report – Commercial (WRA-RCC) (hereinafter (RCC) (2012). The language and order are not completely identical, but the same issues are addressed.

The list of disclosure items may not be not perfect for every commercial property or transaction, but is a far better fit than the list from Wis. Stat. § 709.03 or the residential offer. For instance, in some transactions proximity to an airport or freeway may be desirable, while in other instances it is a nuisance to be avoided due to the noise, traffic, etc. In any event, the information will be elicited for the benefit of the parties.

REALTORS® may use the updated WRA-RCC (2012). The 2008 version of this report is discussed in detail on Pages 12-16 of the February 2009 *Legal Update*, “Revised WB-5 Commercial Listing and Seller Disclosure Report,” at www.wra.org/LU0902. Also see Pages 1-3 of the February 2012 *Legal Update*, “Early 2012 Developments,” at www.wra.org/LU1202.

Fixtures Definition (Lines 303-311)

The WB-15 contains the same definition of “Fixture” that appears in the WB-5 Commercial Listing Contract. Note that a “fixture” does not include trade fixtures owned by tenants of the property. As such, tenant trade fixtures should be treated as property not included in the purchase price on lines 20-22 unless the items have been abandoned or conveyed to the seller.

Conveyance of Title (Lines 341-342)

Lines 341-342 indicate, “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).”

As with the WB-11 and the other revised offers, prudent listing agents will indicate in the MLS or in other marketing materials if the seller is a trust or an estate. Cooperating agents may wish to ask the listing agent to confirm the seller's status and then indicate in the offer if the seller is a trust or an estate. If this is the case, the offer calls for a trustee's deed or a personal representative's deed, respectively. This may be significant because from time to time there might be a title issue where a warranty deed would protect the buyer but a trustee's deed or a personal representative's deed would not – because they are quit claim deeds. If the issue was then not covered by the buyer's title policy, there might be a concern for the buyer. In such a case it may be best for the agents to determine what type of deed the seller plans to provide. This may become a point of negotiation between the parties. The buyer may wish to indicate his or her preference in the offer by lining out the inapplicable portions of lines 341-342 or with a statement in additional provisions or in an addendum.

Provision of Merchantable Title (Lines 361-364)

The deadline for the provision of the title commitment will be “not more than ___ days after acceptance (‘15’ if left blank)” to better match the reality of commercial transactions. The Title Evidence language of the WB-15 is substantially the same as that in the WB-13 vacant land offer. Line 362 gives the buyer the ability to choose the deadline for the delivery of the title commitment by inserting a specific number of days after acceptance (“15” if left blank). In the WB-11 residential offer, by way of contrast, the title commitment is due not less than five business days before closing. This revision gives the buyer’s attorney or the buyer a longer period to review the title commitment and address any title concerns.

Title Not Acceptable for Closing (Lines 365-371)

In this Title Evidence subsection, blank lines are provided for the deadlines for the buyer’s notice to the seller regarding any title objections and the seller’s response. Specifically, the buyer may insert the number of days the buyer has after delivery of the title commitment to notify the seller regarding the buyer’s title objections (“15” if left blank) and the number of days the seller has to deliver notice to the buyer of the seller’s election to remove the objections (“5” if left blank). This modification was made to allow the buyer to work through title concerns early on rather than waiting until immediately before closing.

Environmental Evaluation Contingency (Lines 379-395)

Because various commercial enterprises may use different chemicals as raw materials or engage in a production process that produces potentially harmful or toxic substances,

the WB-15 continues to include an environmental provision. In the 2012 Offer, however, it is split off from the Inspection Contingency and appears as a completely separate, stand-alone provision, in contrast to the combined Environmental Evaluation/Inspection contingency in the 2000 version of the WB-15. The provision in the 2012 Offer is called an Environmental Evaluation Contingency and, in conjunction with the definition of Environmental Site Assessment on lines 288-302, provides the framework and standards for an Environmental Site Assessment, also known as a Phase I Site Assessment.

A Phase I Environmental Site Assessment is an assessment of a site to identify all potential or known areas of environmental contamination. This assessment may include, but is not limited to, reviewing records, interviewing persons and conducting inspections of the site. The components of an Environmental Site Assessment are described in the Definitions section on lines 288-298. An Environmental Site Assessment typically includes:

1. an inspection of the property;
2. a review of the ownership and use history of the property, including a search of title records going 80 years back;
3. a review of any historic and recent aerial photographs of the property;
4. a review of environmental licenses, permits or orders issued for the property;
5. an evaluation of the results of any environmental sampling and analysis that has been conducted previously; and
6. a review to determine if the property is listed in any of the lists of sites or facilities considered to pose a threat to human health or the environment including the National Priorities List, the Department of Natural Resources’ Registry Waste Disposal Sites, the DNR’s Remediation

and Redevelopment (RR) Sites Map, including the Geographical Information System (GIS) Registry and related resources.

Any Phase I Environmental Site Assessment must comply with generally recognized industry standards such as the current ASTM International “Standard Practice for Environmental Site Assessments” and state and federal guidelines, as applicable. Unless otherwise agreed, an Environmental Site Assessment does not include subsurface testing of the soil or groundwater or other testing for pollution.

If the Environmental Site Assessment Contingency is selected, the offer is contingent upon a qualified independent environmental consultant of the buyer’s choice conducting an Environmental Site Assessment that does not disclose any defects. For the purposes of this contingency, the definition of a “Defect” includes the definition on lines 223-225, but also includes “a material violation of environmental laws, a material contingent liability affecting the Property arising under any environmental laws, the presence of an underground storage tank(s) or material levels of hazardous substances either on the Property or presenting a significant risk of contaminating the Property due to future migration from other properties. Defects do not include conditions the nature and extent of which Buyer had actual knowledge or written notice before signing the Offer.” The parties may negotiate with regard to who pays the costs of the site assessment and make a selection, while the default is for the seller to pay. The buyer has until the deadline expressed on line 386 to deliver to the seller a copy of the site assessment report and a notice listing defects to which the buyer objects. In other words, this part of the process is substantially the same as the inspection contingencies in the other offers to purchase.

For Environmental Site Assessment overview information from the DNR, visit <http://dnr.wi.gov/org/aw/rr/liability/esa.htm>. For information regarding the selection of an environmental consultant, see <http://dnr.wi.gov/topic/Brownfields/Select.html>. The DNR does not endorse environmental consultants, but does maintain a list of environmental services contractors who have identified themselves as doing environmental work in Wisconsin. See <http://dnr.wi.gov/files/PDF/pubs/rr/RR024.pdf>.

The Phase I Site Assessment is often required in larger commercial transactions. Depending on the results of the Phase I assessment, the parties to the transaction may decide to do further testing. If, for example, the Phase I assessment discloses any prior use that is known to be hazardous – say, for example, the property was once used for a gas station, a machine shop, or a dry cleaner – then the parties will typically engage a contractor for a Phase II Site Assessment. If the Phase II Site Assessment discloses a problem, the problem generally must be removed or remediated before closing. Obviously illegal disposal of toxic and hazardous substances can have potentially severe consequences in terms of soil, groundwater and other contamination.

A Phase II Site Assessment is an assessment conducted to physically confirm the presence or absence of environmental contamination in all potential or known areas identified in the Phase I assessment. The Phase II assessment does not necessarily determine the nature and extent of contamination. This assessment may include, but is not limited to, field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination of the site. Accordingly, the definition of Environmental Site Assessment concludes with a caution to the parties

on lines 299-302 of the 2012 Offer:

“Unless otherwise agreed an Environmental Site Assessment does not include subsurface testing of the soil or groundwater or other testing of the Property for environmental pollution. If further investigation is required, insert provisions for a Phase II Site Assessment (collection and analysis of samples), Phase III Environmental Site Assessment (evaluation of remediation alternatives) or other site evaluation at lines 109-115 or 277-286 or attach as an addendum per line 479.”

Inspection Contingency (Lines 450-470)

The Inspection Contingency in the 2012 Offer has been modified to make it more closely resemble the familiar inspection contingency in the residential and other offers. This provision allows for a three-tiered inspection: a general overall inspection of the property, component inspections of specific identified property features, such as the building roof or a dumpsite on the far corner of the premises, and follow-up inspections recommended in the other inspection reports. All inspections, which are to be ordered and paid for by the buyer, must be completed by the deadline specified on line 461.

The definition of “Defect” at lines 223-225 under the Definitions section is the same as the definition that is consistently used in the various offers. Defects, however, for the purposes of the Inspection Contingency, do not include structural, mechanical or other conditions the nature and extent of which the buyer had actual knowledge or written notice before signing the offer. The contingency satisfaction procedures and the right to cure sections are essentially the same as those in the familiar inspection contingencies appearing in the different offers.

Signature Lines (Lines 482-486 & 492-496)

Under the category of those little changes that mean so much, the blank lines for filling in the parties’ signatures and names have been made longer, and the signature area has been modified to accommodate entity signatures. See the May 2004 *Legal Update*, “Avoiding Liability When Signing and Making Referrals,” at www.wra.org/LU0405 for pointers.

Hotline Questions and Answers – Commercial Property Commission

The broker has a buyer agency contract with a client who has written an offer to purchase on 50 percent of a multiplex building (20 units). The other 50 percent of the property is being retained by the original partner. The property is owned by an LLC and the building is the only asset. The original partner asked if the buyer would be willing to assume the 50-percent interest in the LLC. An attorney is drafting a conveyance and an amendment to the original LLC operating agreement, which will convey 50-percent interest to the client. The broker has a 3-percent commission being paid from proceeds of the sale by the seller on behalf of the buyer. There is no real estate being transferred. Can the broker legally collect a commission? The broker wrote it as a commercial offer to purchase.

Yes, this apparently was the sale of a 50-percent interest in a business venture, in other words, a business opportunity. Arguably the business offer would have been a better choice for forms. The definition of “Broker” in Wis. Stat. § 452.01(2) (a) includes a person who negotiates sales of “a business or its goodwill, inventory, or fixtures, whether or

not the business includes real property.” The agent should review the WB-6 Business Listing Contract and the WB-17 Offer to Purchase – Business Without Real Estate, as well as *Legal Update 00.11*, “The 2000 Business Listing and Offers,” online at www.wra.org/LU0011.

The success fee provisions at lines 26-29 of the 2008 WB-36 Buyer Agency Agreement state, “If this Agreement calls for a success fee, it is agreed that Broker has earned the success fee if, during the term of this Agreement (or any extension of it), Buyer or any person acting on behalf of Buyer acquires an interest in property or enters into an enforceable written contract between owner and Buyer to acquire an interest in property, at any terms and price acceptable to owner and Buyer (emphasis added).” Arguably the buyer has acquired an interest in the located property by means of purchasing the LLC interest.

However this theory is not without dispute. If the seller and the buyer refuse to pay the commission, the broker should review the transaction and the buyer agency agreement with legal counsel. In future similar situations, the broker may wish to specify in the WB-36 that the interests being sought may include a business opportunity or an interest in an entity with ownership.

There is a fairly extensive discussion of the buyer’s broker’s compensation, collecting the buyer’s broker’s fees and procuring cause issues arising in buyer agency in the September 2005 *Legal Update*, “Buyer Agency Practice,” online at www.wra.org/LU0509, and additional materials in the December 2006 *Broker Supervision Newsletter*, “Buyer Agency and Procuring Cause,” online at www.wra.org/BSNDDec06.

The broker negotiated an option to purchase on a commercial property, the buyer decided to execute the option to purchase, and the seller has

asked the broker to reduce the commission. The seller hired an attorney who is questioning the broker’s fiduciary responsibilities. The broker wants to place a lien on the property. What steps does the broker need to follow to do this correctly? The closing is coming up very soon so the broker needs to do this ASAP.

Given the complexity and issues surrounding this closing, an attorney’s opinion should be immediately obtained to determine if a broker’s lien for the commission can still be filed. The lien statute is procedurally very strict and slander of title issues may arise if improper liens are filed.

General information on the broker commission lien law can be found in the June 2010 *Legal Update*, “Improved Broker Commission Lien,” at www.wra.org/LU1006. On Pages 2-5 it indicates that, effective May 28, 2010:

- If the agency agreement pertains to commercial real estate and the broker wants to reserve the right to file a commission lien if the broker is not paid, then the broker must include the following language in the broker’s listing contract, buyer agency/tenant representation agreement, lease listing or property management agreement: NOTICE: A broker has the authority under section 779.32 of the Wisconsin Statutes to file a broker lien for commissions or compensation earned but not paid when due against the commercial real estate, or the interest in the commercial real estate, that is the subject of this agreement.
- A Notice of Interest must be recorded with the Register of Deeds at least 30 days prior to a closing. The Notice of Interest will be valid for up to 24 months from the date of recording.

Potential Securities Transaction

An owner of a one-half interest in an LLC that owns a 40-unit

apartment complex wants to sell his interest. Can a real estate broker sell this given the changes to Wisconsin’s securities laws that went into effect on January 1, 2009?

Wis. Stat. § 183.0703 provides that a limited liability company interest is personal property. § 183.0704(1)(a) indicates that unless otherwise provided in the LLC operating agreement, this interest is assignable in whole or in part. An assignee of an LLC interest may become a member only if the other members unanimously consent, per § 183.0706(1). Under § 183.1303, an interest in an LLC may be a security. As specified in Wis. Stat. § 551.102(28)(e), this will depend upon the holder’s level of active participation in the LLC and other factors. It may be helpful for the seller’s attorney to provide an opinion after reviewing the LLC operating agreement as to whether this interest is a security.

If the sale of a one-half interest in an LLC is a personal property transaction that involves securities, it is similar to a commercial transaction where corporate stock is sold instead of selling the actual real estate owned by the corporation.

The old Wis. Stat. § 551.02(3)(f) permitted a person licensed as a real estate broker, whose transactions in securities are isolated transactions incidental to his or her real estate business, to engage in limited transactions that otherwise would require a securities broker-dealer license. However, Chapter 551 of the Wisconsin Statutes was completely revamped effective January 1, 2009 and was made consistent with the 2002 Uniform Securities Act. As a result, the exception for real estate brokers was eliminated from the definition of “Broker Dealer” in the new Wis. Stat. § 551.102(4) because such an exception did not appear in the uniform law.

However, the new definition of broker-dealer does provide an exclusion

for “A person excluded by rule adopted or order issued under this chapter.” The new Wis. Admin. Code § DFI-Sec 1.02(2)(f) provides that a broker-dealer does not include, “A person registered as a real estate broker under ch. 452 and whose transactions in securities are isolated transactions incidental to that business.” In other words, it turns out that the exception that used to appear in the securities statutes now appears instead in the administrative code rules for securities. This would appear to restore to real brokers their ability to work in isolated securities transactions incidental to real estate practice.

A broker should not handle a sale of an LLC interest unless the broker understands the operation of the LLC and can act competently. There are no approved forms for selling an interest in an LLC, so the broker may contact the seller who likely may need to prepare or obtain the appropriate documentation that will be needed. A broker may advertise the sale of an LLC interest in advertising media provided the broker makes it clear that the LLC interest is not real estate. MLS advertising also may be allowed under local MLS rules.

See Wis. Stat. § 551.102(4) at www.legis.state.wi.us/statutes/Stat0551.pdf (Page 1), and Wis. Admin. Code § DFI-Sec 1.02(2) at www.legis.state.wi.us/rsb/code/dfi-sec/dfi-sec001.pdf.

Authority to Transfer

Does an LLC member have the right to sell a property owned by the LLC?

With an LLC, the authority to transfer its property depends on whether the LLC is member-managed or centrally managed.

In a member-managed LLC, Wis. Stat. § 183.0301 provides that each member is an agent of the LLC. A member may sign documents and bind the LLC if the member is apparently

carrying on the ordinary course of business for the LLC, unless the member has no authority to act and the person he is dealing is aware of his lack of authority. Under § 183.0702, the property of the LLC that is held in the name of the LLC may be transferred by a conveyance executed by any member in the name of the LLC.

If one or more managers centrally manage the LLC, a member is not an agent of the LLC and cannot bind the LLC. Rather, each manager is an agent of the LLC and can execute documents and bind the LLC per § 183.0301. If there are one or more managers, property that is held in the name of the LLC may be transferred only by a conveyance executed by a manager in the name of the LLC; LLC members will have no authority to transfer title.

When dealing with an LLC, it may be wise to ask for the LLC’s operating agreement and/or other affirmative representations confirming a member’s or a manager’s authority to bind the LLC and to sell the real estate on behalf of the LLC.

Commercial Forms

An agent is writing an offer on a four-unit residential building. Should the agent use a Residential Offer to Purchase or a Commercial Offer to Purchase?

In this situation, it would appear that either the residential or commercial forms would be permissible. A licensee should use whichever Department-approved form best matches the transaction with the fewest number of required changes or modifications. There is no right or wrong answer. It is a matter of the licensee’s judgment as to what form best fits the specific circumstances. Residential or commercial forms may be used in multi-unit transactions.

Use of the WRA Addendum R to the Offer to Purchase is also often

helpful. The WRA Addendum R was designed for use in the sale of residential rental properties, regardless of the number of units involved. Addendum R tries to contemplate many of the problems that may arise when tenants do not pay their rent, abandon their units, damage the property or terminate their tenancies between the date of the offer and closing. It includes provisions addressing vacancies, delinquencies, evictions, indemnification of the parties, rent schedules, security deposits, personal property, lease terms and much more.

A Lead-Based Paint addendum and brochure will be needed if the property was built before 1978, and the buyer should receive an RECR if the property has one to four units. See Pages 10-11 of *Legal Update 03.11*, “Overcoming Residential Transaction Obstacles,” at www.wra.org/LU0311, for further discussion of Addendum R.

The broker is working with a seller who has an office condominium located in a three-story office building. The broker is planning to use the commercial exclusive right to sell listing contract as well as the commercial offer to purchase. Is the broker correct with the forms he plans to use?

It is a matter of the licensee’s judgment as to what form best fits the individual circumstances. The DSPS does not have a commercial condominium listing or offer, therefore it is up to the broker to determine which listing and offer best match the transaction with the fewest number of required changes or modifications. It may, given it is a condominium, be easier to modify the WB-14 Residential Condominium Offer to Purchase rather than adding in the required condominium elements into the WB-15 Commercial Offer to Purchase.

What is a letter of intent, and can a real estate licensee draft one for a commercial transaction?

A letter of intent (LOI) is an agreement to agree in the future. An LOI is generally considered to be an informal agreement, so it often takes the form of a letter or memorandum. Under Wisconsin law, an understanding and intent to reach an agreement in the future is not legally enforceable. However, an LOI can easily – and accidentally – become a legal contract or create legal obligations that the parties may not have contemplated or intended if the LOI is not precisely drafted. Accordingly, legal counsel should always handle the preparation of an LOI.

An LOI must make it very clear that the parties are simply expressing interest and do not intend to create a contract or become bound until a contract is signed in the future. If the LOI is simply an agreement to negotiate further in the future, the document should expressly state that the parties are not obligated until a formal contract is executed. If an LOI is used in negotiations, it may be presented to the seller for the seller's consideration. The seller is not required to agree to the LOI to continue negotiations, however, it may be used as a tool to facilitate the creation of a commercial deal.

Article 9 of the Code of Ethics provides that REALTORS® shall put all offers and commitments regarding the transaction in writing. Wis. Admin. Code § REEB 24.08 further dictates that licensees put all agreements between the parties in writing to capture their exact agreement unless the writing is outside the scope of the licensee's authority under Wis. Admin. Code Chapter REEB 16.

In the early 1960s, the Attorney General for Wisconsin brought action against the Department of Regulation and Licensing, contesting the ability of real estate licensees to use forms incidental to their practice. By a narrow 4-3 decision, the Wisconsin Supreme Court confirmed the real

estate licensee's limited right to practice law in a real estate transaction. In *State ex rel. Reynolds v. Dinger* (1961), the Supreme Court held that when a licensee uses the state-approved forms to accomplish the intent of the consumer, it is the practice of law and provides a useful benefit to the public. For over 50 years, *Dinger* has afforded real estate licensees the right to draft state-approved forms on behalf of consumers. The drafting of other real estate contractual forms, however, constitutes the unauthorized practice of law. Accordingly, license law restricts a licensee's ability to draft forms to those approved forms enumerated and described in Wis. Admin. Code § REEB 16.04. Therefore, a licensee should not draft an LOI, but may present it for the seller's consideration.

See Page 10 of the September 2006 *Legal Update*, "Contract Law Basics," at www.wra.org/LU0609.

On the day of closing of the sale of a restaurant, the seller had second thoughts about handing over some of the restaurant's signature recipes without restricting the buyer's use. The seller wants some sort of confidentiality or licensing agreement restricting the buyer's use of the recipes to the restaurant. Can the listing agent draft such an agreement or prepare an amendment stating that this issue will be resolved by an agreement to be drafted by attorneys so that the closing can proceed?

There is no standard confidentiality agreement for use by a real estate licensee, so a confidentiality or licensing agreement would need to be drafted by the seller's attorney. If the agents attempt to draft an amendment indicating that the parties will reach a mutually satisfactory licensing or confidentiality agreement, it may be difficult to state an objective performance standard and the amendment may be unenforceable.

Can a licensee (either salesperson or broker) draft a WB-25 Bill of Sale?

Yes, pursuant to Wis. Admin. Code § REEB 16.03, which addresses the use of approved forms. All licensees are permitted to complete forms prepared and approved by the DSPS, which include all WB forms. All licensees are also permitted to use (a) contractual forms for the sale, purchase or rental of real estate or a business opportunity located in another state, if the contractual forms are those which licensees may legally and customarily use for such transactions in the state where the real estate or business opportunity is located; (b) forms prepared by governmental agencies for use in programs administered by them under authority provided by law; and (c) forms to be used for a property management agreement between a broker and a landlord, prepared by the broker entering into the agreement, the broker's attorney, or the landlord, that contain provisions relating to leasing, managing, marketing and overall management of the landlord's property.

Wisconsin real estate brokers (but not salespersons) are permitted to complete all of the above forms as well as forms prepared and approved by the State Bar of Wisconsin for deeds, mortgages, mortgage notes, truth-in-lending disclosures, land contracts, release of mortgage, satisfaction of mortgage, assignment of mortgage, assignment of land contract, and Uniform Commercial Code forms 1, 2, 3, 4, 11, 410, 411, 430, 445, 450 and 451.

For more information about the use of the WB-25 Bill of Sale, review the March 2000 *Legal Update*, "Cancellation Agreement & Mutual Release and Bill of Sale," at www.wra.org/LU0003.

Testing

A buyer of a commercial property has an Environmental Evaluation/Inspection Contingency per the WB-15

Commercial Offer to Purchase. Her inspection report states that "Ducting has insulation that resembles asbestos. Recommend having tested." The buyer wants the materials removed from the property at the owner's expense. Does the buyer have the right to test for asbestos given the Environmental Contingency? If the asbestos test is allowed and found to be positive for asbestos, is containment a valid option instead of removal?

Authorization for testing requires a separate testing contingency because the Environmental Evaluation/Inspection contingency does not provide the buyer the right to conduct testing of the property. Thus, the parties may wish to amend the offer to include an Asbestos Testing Contingency.

Asbestos cannot be identified simply by looking at it unless it is labeled, so the only way to be certain is to get a sample analyzed. Even if a subsequent test showed the substance was asbestos, the seller may not be required to repair or remove the asbestos depending on the circumstances. Generally, undisturbed asbestos that is in good condition will not release asbestos fibers and may best be handled by leaving it alone. Problems with friable or damaged asbestos may be treated by either repair or removal. Repair usually consists of sealing or covering the asbestos material. See the August 2009 *Legal Update*, "Environmental Concerns 2009," at www.wra.org/LU0908, the EPA asbestos page at www.epa.gov/asbestos, or contact the local health department for further information about asbestos

Disclosures

Is the Addendum S necessary in a commercial transaction?

Offer Addendum S - Lead Based Paint Disclosures and Acknowledgments must be used in sales transactions involving target housing. "Target Housing" means any housing

constructed prior to 1978, except for housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or expects to reside in such housing), and except for any 0-bedroom dwellings. "Housing for the Elderly," means retirement communities or similar types of housing designed specifically for households where at least one person is 62 years of age or older at the time of initial occupancy. With both housing for the elderly and housing for persons with disabilities, the exclusion from the LBP rules is lost if children under the age of 6 years reside there or are expected to reside there. "0-Bedroom Dwellings" are residential dwelling units where the living area is not separated from the sleeping area. This includes efficiencies, studio apartments, lofts, dormitory housing, military barracks and rentals of individual rooms in residential dwellings.

See the May 2010 *Legal Update*, "Lead-Based Paint in Target Housing," at www.wra.org/LU1005 for further discussion of the LBP law and Addendum S.

The client is going to sell her restaurant, which is commercial real estate. Does she have to complete a seller disclosure report or an RECR if she is selling the restaurant "as-is"?

When a property is sold "as-is," it generally means that the seller will not make property condition disclosures and will not repair defects. However, it is not unusual to see the offer say "as-is" in transactions where the seller has already made disclosures, and some "as-is" sellers end up making some repairs. "As-is" means that if the buyer goes through to closing and defects are later found, the buyer cannot go back to the seller for any compensation.

An "as-is" clause alerts the buyer that he or she is responsible for determining the condition of the property

being purchased, that is, having the property thoroughly inspected and tested. When the buyer is purchasing "as-is," it is very important for the buyer to learn as much as possible about the condition of the property.

An Inspection Contingency provides a way for the buyer to get out of the transaction if the condition of the property is such that the buyer no longer wants the property. After the property is inspected, the buyer can decide whether to go forward or give a notice of defects, knowing that the seller may refuse to cure any listed defects, thus making the offer null and void.

See Pages 16-19 of the October 2009 *Legal Update*, "Diligent Disclosure," at www.wra.org/LU0910 for further discussion of "as-is" sales.

Security Deposit

A long-term commercial tenant has vacated property. The property owner bought the property a number of years ago and claims he never received the tenant's security deposit. The tenant has the original lease, which shows a security deposit was paid to the original property owner. The new owner refuses to refund the security deposit. How to proceed?

Lines 35-36 of the WB-15 Commercial Offer to Purchase states, "If Property is currently leased and lease(s) extends beyond closing, Seller shall assign Seller's rights under said lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing." Therefore, if the owner purchased the property subject to a lease agreement with the current tenant, then the previous landlord should have transferred the security deposit over to the new owner. The current owner should quickly consult with an attorney about his or her legal rights relating to the tenant's security deposit and the proper legal action, if any.

Fire Damage

A little more than two weeks before closing of a commercial transaction, the building had a fire that was contained to one small section of the factory, but completely melted all the lines going from the main circuit boxes into the entire building. There was also smoke and water damage to the entire building. The buyer's agent has conservative estimates of approximately \$30,000 in damage. The purchase price is \$117,000. The buyer wants to split the cost of the damage since seller is uninsured and change the price to \$102,000. The seller refused. The buyer's agent convinced the buyer to agree to a price of \$105,000. The seller refuses to go below \$108,000. What are the buyer's options?

Because the damage appears to be well above 5 percent of the purchase price, the buyer has the option, under the language of the approved offers (which reflects statutory law), of canceling the contract.

Rental Weatherization

What weatherization is required for a rented commercial building with one apartment?

In the case of a commercial building, the application of rental weatherization is determined based upon the proportion of floor area occupied by rental residential premises. If less than 50 percent of the total floor area of the building is occupied by residential units, then just the residential units, and not the whole building, must be brought into compliance with the rental weatherization code.

Approved by the Wisconsin Real Estate Examining Board
03-1-12 (Optional Use Date) 07-1-12 (Mandatory Use Date)

WISCONSIN REALTORS® ASSOCIATION
4801 Forest Run Road
Madison, Wisconsin 53704
Page 1 of 9, WB-15

WB-15 COMMERCIAL 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
7 (Insert additional description, if any, at lines 109-115 or 277-286 or attach as an addendum per line 479), on the following terms:
8 ■ PURCHASE PRICE: _____ Dollars (\$ _____).
9 _____
10 ■ EARNEST MONEY of \$ _____ accompanies this Offer and earnest money of \$ _____ will be
11 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 the date of this Offer
15 not excluded at lines 20-22, and the following additional items: _____
16 _____
17 _____
18 All personal property included in purchase price will be transferred by bill of sale or _____
19 _____
20 ■ NOT INCLUDED IN PURCHASE PRICE: _____
21 _____
22 _____
23 **CAUTION: Identify trade fixtures owned by tenant, if applicable, and Fixtures that are on the Property (see lines 303-310) to be excluded**
24 **by Seller or which are rented and will continue to be owned by the lessor.**
25 **NOTE: The terms of this Offer, not the listing contract or marketing materials, determine what items are included/excluded.**
26 **ACCEPTANCE** Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical copies of the Offer.
27 **CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term deadlines running from**
28 **acceptance provide adequate time for both binding acceptance and performance.**
29 **BINDING ACCEPTANCE** This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on or before
30 _____. Seller may keep the Property on the market and accept
31 secondary offers after binding acceptance of this Offer.
32 **CAUTION: This Offer may be withdrawn prior to delivery of the accepted Offer.**
33 **OPTIONAL PROVISIONS** TERMS OF THIS OFFER THAT ARE PRECEDED BY AN OPEN BOX () ARE PART OF THIS OFFER ONLY IF
34 THE BOX IS MARKED SUCH AS WITH AN "X." THEY ARE NOT PART OF THIS OFFER IF MARKED "N/A" OR ARE LEFT BLANK.
35 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and written notices to a
36 Party shall be effective only when accomplished by one of the methods specified at lines 37-54.
37 (1) Personal Delivery: giving the document or written notice personally to the Party, or the Party's recipient for delivery if 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 commercial delivery
43 service, addressed either to the Party, or to the Party's recipient for delivery if named at line 38 or 39, for delivery to the Party's delivery address at
44 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, or to the Party's
46 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 53 or 54. If this is a
50 consumer transaction where the property being purchased or the sale proceeds are used primarily for personal, family or household purposes,
51 each consumer providing an e-mail address below has first consented electronically to the use of electronic documents, e-mail delivery and
52 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 constitutes personal delivery
56 to, or Actual Receipt by, all Buyers or Sellers.

57 **PROPERTY CONDITION REPRESENTATIONS** Seller represents to Buyer that as of the date of acceptance Seller has no notice or knowledge
58 of Conditions Affecting the Property or Transaction (lines 181-215) other than those identified in Seller's disclosure report dated _____
59 and Real Estate Condition Report, if applicable, dated _____, which was/were received by Buyer prior to Buyer
60 signing this Offer and which is/are made a part of this offer by reference **COMPLETE DATES OR STRIKE AS APPLICABLE** and
61 _____

62 **INSERT CONDITIONS NOT ALREADY INCLUDED IN THE DISCLOSURE OR CONDITION REPORT(S)**

63 **CAUTION: If the Property includes 1-4 dwelling units, a Real Estate Condition Report containing the disclosures provided in Wis. Stat. §**
64 **709.03 may be required. Excluded from this requirement are sales of property that has never been inhabited, sales exempt from the real**
65 **estate transfer fee, and sales by certain court-appointed fiduciaries, (for example, personal representatives who have never occupied**
66 **the Property). Buyer may have rescission rights per Wis. Stat. § 709.05.**

67 **CLOSING** This transaction is to be closed no later than _____
68 _____ at the place selected by Seller, unless otherwise agreed by the Parties in writing.

69 **CLOSING PRORATIONS** The following items, if applicable, shall be prorated at closing, based upon date of closing values: real estate taxes,
70 rents, prepaid insurance (if assumed), private and municipal charges, property owners association assessments, fuel and _____
71 _____

72 **CAUTION: Provide basis for utility charges, fuel or other prorations if date of closing value will not be used.**

73 Any income, taxes or expenses shall accrue to Seller, and be prorated at closing, through the day prior to closing.

74 Real estate taxes shall be prorated at closing based on [CHECK BOX FOR APPLICABLE PRORATION FORMULA]:

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

77 Current assessment times current mill rate (current means as of the date of closing)

78 Sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior year, or current year if
79 known, multiplied by current mill rate (current means as of the date of closing)

80 _____

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

84 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
85 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
86 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
87 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
88 estate brokers in this transaction.

89 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Offer at lines 109-115
90 or 277-286 or in an addendum attached per line 479. At time of Buyer's occupancy, Property shall be in broom swept condition and free of all
91 debris and personal property except for personal property belonging to current tenants, or that sold to Buyer or left with Buyer's consent.
92 Occupancy shall be given subject to tenant's rights, if any.

93 **LEASED PROPERTY** If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights under said lease(s)
94 and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the (written) (oral) **STRIKE ONE** lease(s), if any,
95 are _____

96 _____ Insert additional terms, if any, at lines 109-115 or 277-286 or attach as an addendum per line 479.

97 **ESTOPPEL LETTERS:** Seller shall deliver to Buyer no later than _____ days before closing, estoppel letters dated within
98 _____ days before closing, from each non-residential tenant, confirming the lease term, rent installment amounts, amount of security
99 deposit, and disclosing any defaults, claims or litigation with regard to the lease or tenancy.

100 **RENTAL WEATHERIZATION** This transaction (is) (is not) **STRIKE ONE** exempt from Wisconsin Rental Weatherization Standards (Wis. Admin.
101 Code Ch. SPS 367). If not exempt, (Buyer) (Seller) **STRIKE ONE** ("Buyer" if neither is stricken) shall be responsible for compliance, including all
102 costs, with Wisconsin Rental Weatherization Standards. If Seller is responsible for compliance, Seller shall provide a Certificate of Compliance at
103 closing.

104 **TIME IS OF THE ESSENCE** "Time is of the Essence" as to: (1) earnest money payment(s); (2) binding acceptance; (3) occupancy; (4) date of
105 closing; (5) contingency Deadlines **STRIKE AS APPLICABLE** and all other dates and Deadlines in this Offer except: _____
106 _____. If "Time
107 is of the Essence" applies to a date or Deadline, failure to perform by the exact date or Deadline is a breach of contract. If "Time is of the Essence"
108 does not apply to a date or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

109 **ADDITIONAL PROVISIONS/CONTINGENCIES** _____
110 _____
111 _____
112 _____
113 _____
114 _____
115 _____

116 **PROPOSED USE CONTINGENCIES:** Buyer is purchasing the Property for the purpose of: _____

117 _____

118 _____ [insert proposed use and type and size of building, if applicable; e.g.
119 restaurant/tavern with capacity of 350 and 3 second floor dwelling units]. The optional provisions checked on lines 123-139 shall be deemed
120 satisfied unless Buyer delivers to Seller by the deadline(s) set forth on lines 123-139 written notice specifying those items which cannot be
121 satisfied and written evidence substantiating why each specific item included in Buyer's notice cannot be satisfied. Upon delivery of Buyer's notice,
122 this Offer shall be null and void. Seller agrees to cooperate with Buyer as necessary to satisfy the contingencies checked at lines 123-139.

123 **EASEMENTS AND RESTRICTIONS:** This Offer is contingent upon Buyer obtaining, within _____ days of acceptance, at
124 (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if neither is stricken) expense, copies of all public and private easements, covenants and
125 restrictions affecting the Property and a written determination by a qualified independent third party that none of these prohibit or significantly
126 delay or increase the costs of the proposed use or development identified at lines 116 to 118.

127 **APPROVALS:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if neither is stricken) expense,
128 all applicable governmental permits, approvals and licenses, as necessary and appropriate, or the final discretionary action by the granting
129 authority prior to the issuance of such permits, approvals and licenses, for the following items related to Buyer's proposed use:

130 _____

131 or delivering written notice to Seller if the item(s) cannot be obtained or can only be obtained subject to conditions which significantly increase
132 the cost of Buyer's proposed use, all within _____ days of acceptance of this Offer.

133 **ACCESS TO PROPERTY:** This Offer is contingent upon Buyer obtaining, within _____ days of acceptance, at (Buyer's) (Seller's)
134 **STRIKE ONE** ("Buyer's" if neither is stricken) expense, written verification that there is legal vehicular access to the Property from public roads.

135 **LAND USE APPROVAL:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if neither is stricken)
136 expense, a rezoning; conditional use permit; license; variance; building permit; occupancy permit; other _____

137 _____ **CHECK ALL THAT APPLY**, for the Property for its proposed use described
138 at lines 116-118 or delivering written notice to Seller if the item(s) cannot be obtained or can only be obtained subject to conditions which
139 significantly increase the cost of Buyer's proposed use, all within _____ days of acceptance.

140 **MAP OF THE PROPERTY:** This Offer is contingent upon (Buyer obtaining) (Seller providing) **STRIKE ONE** ("Seller providing" if neither is
141 stricken) a _____ survey (ALTA/ACSM Land Title Survey if survey type is not
142 specified) dated subsequent to the date of acceptance of this Offer and prepared by a registered land surveyor, within _____ days of
143 acceptance, at (Buyer's) (Seller's) **STRIKE ONE** ("Seller's" if neither is stricken) expense. The map shall show minimum of _____ acres,
144 maximum of _____ acres, the legal description of the Property, the Property's boundaries and dimensions, visible encroachments upon
145 the Property, the location of improvements, if any, and:

146 _____ **STRIKE AND COMPLETE AS APPLICABLE** Additional map features
147 which may be added include, but are not limited to: staking of all corners of the Property; identifying dedicated and apparent streets; lot
148 dimensions; total acreage or square footage; utility installations; easements or rights-of-way. Such survey shall be in satisfactory form and
149 accompanied by any required surveyor's certificate sufficient to enable Buyer to obtain removal of the standard survey exception on the title policy.

150 **CAUTION: Consider the cost and the need for map features before selecting them. Also consider the time required to obtain the map**
151 **when setting the deadline.**

152 This contingency shall be deemed satisfied unless Buyer, within five (5) days of the earlier of: (1) Buyer's receipt of the map; or (2) the deadline for
153 delivery of said map, delivers to Seller a copy of the map and a written notice which identifies: (1) a significant encroachment; (2) information
154 materially inconsistent with prior representations; (3) failure to meet requirements stated within this contingency; or (4) the existence of conditions
155 that would prohibit the Buyer's intended use of the Property described at lines 116-118. Upon delivery of Buyer's notice, this Offer shall be null and
156 void.

157 **DOCUMENT REVIEW CONTINGENCY:** This Offer is contingent upon Seller delivering the following documents to Buyer within
158 _____ days of acceptance: **CHECK THOSE THAT APPLY; STRIKE AS APPROPRIATE**

159 Documents evidencing that the sale of the Property has been properly authorized, if Seller is a business entity.

160 A complete inventory of all furniture, fixtures, equipment and other personal property included in this transaction which is consistent with
161 representations made prior to and in this Offer.

162 Uniform Commercial Code lien search as to the personal property included in the purchase price, showing the Property to be free and clear
163 of all liens, other than liens to be released prior to or at closing.

164 Rent roll.

165 Other _____

166 _____

167 Additional items which may be added include, but are not limited to: building, construction or component warranties, previous environmental site
168 assessments, surveys, title commitments and policies, maintenance agreements, other contracts relating to the Property, existing permits and
169 licenses, recent financial operating statements, current and future rental agreements, notices of termination and non-renewal, and assessment
170 notices.

171 All documents Seller delivers to Buyer shall be true, accurate, current and complete. Buyer shall keep all such documents confidential and
172 disclose them to third parties only to the extent necessary to implement other provisions of this Offer. Buyer shall return all documents (originals
173 and any reproductions) to Seller if this Offer is terminated.

174 **CONTINGENCY SATISFACTION:** This contingency shall be deemed satisfied unless Buyer, within _____ days of the earlier of
175 receipt of the final document to be delivered or the deadline for delivery of the documents, delivers to Seller a written notice indicating that this

176 contingency has not been satisfied. Such notice shall identify which document(s) have not been timely delivered or do not meet the standard set
177 forth for the document(s). Upon delivery of such notice, this Offer shall be null and void.

178 **DEFINITIONS**

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

181 ■ **CONDITIONS AFFECTING THE PROPERTY OR TRANSACTION:** "Conditions Affecting the Property or Transaction" are defined to include:

- 182 a. Defects in structural components, e.g. roof, foundation, basement or other walls.
- 183 b. Defects in mechanical systems, e.g. HVAC, electrical, plumbing, septic, well, fire safety, security or lighting.
- 184 c. Underground or aboveground storage tanks presently or previously on the Property for storage of flammable or combustible liquids, including
185 but not limited to gasoline and heating oil.
- 186 d. Defect or contamination caused by unsafe concentrations of, or unsafe conditions relating to, lead paint, asbestos, radon, radium in water
187 supplies, mold, pesticides or other potentially hazardous or toxic substances on the premises.
- 188 e. Production of or spillage of methamphetamine (meth) or other hazardous or toxic substances on the Property.
- 189 f. Zoning or building code violations, any land division involving the Property for which required state or local permits had not been obtained,
190 nonconforming structures or uses, conservation easements, rights-of-way.
- 191 g. Special purpose district, such as a drainage district, lake district, sanitary district or sewer district, that has the authority to impose
192 assessments against the real property located within the district.
- 193 h. Proposed, planned or commenced public improvements which may result in special assessments or otherwise materially affect the Property
194 or the present use of the Property.
- 195 i. Federal, state or local regulations requiring repairs, alterations or corrections of an existing condition.
- 196 j. Flooding, standing water, drainage problems or other water problems on or affecting the Property.
- 197 k. Material damage from fire, wind, floods, earthquake, expansive soils, erosion or landslides.
- 198 l. Near airports, freeways, railroads or landfills, or significant odor, noise, water intrusion or other irritants emanating from neighboring property.
- 199 m. Portion of the Property in a floodplain, wetland or shoreland zoning area under local, state or federal regulations.
- 200 n. Property is subject to a mitigation plan required under administrative rules of the Department of Natural Resources related to county
201 shoreland zoning ordinances, which obligates the owner of the Property to establish or maintain certain measures related to shoreland
202 conditions and which is enforceable by the county.
- 203 o. Encroachments; easements, other than recorded utility easements; access restrictions; covenants, conditions and restrictions; shared
204 fences, walls, wells, driveways, signage or other shared usages; or leased parking.
- 205 p. High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property.
- 206 q. Structure on the Property designated as a historic building, any part of the Property located in a historic district, or burial sites or
207 archeological artifacts on the Property.
- 208 r. All or part of the land has been assessed as agricultural land, the owner has been assessed a use-value conversion charge or the payment
209 of a use-value conversion charge has been deferred.
- 210 s. All or part of the Property is subject to, enrolled in or in violation of a certified farmland preservation zoning district or a farmland preservation
211 agreement, or a Forest Crop, Managed Forest (see disclosure requirements in Wis. Stat. § 710.12), Conservation Reserve or comparable
212 program.
- 213 t. A pier is attached to the Property that is not in compliance with state or local pier regulations.
- 214 u. Government investigation or private assessment/audit (of environmental matters) conducted.
- 215 v. Other Defects affecting the Property.

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

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

226 **(Definitions Continued on page 6)**

Property Address: _____ Page 5 of 9, WB-15

IF LINE 228 IS NOT MARKED OR IS MARKED N/A LINES 264-269 APPLY.

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

CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 238 or 239.

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

If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines 109-115 or 277-286 or in an addendum attached per line 479.

NOTE: If purchase is conditioned on buyer obtaining financing for operations or development consider adding a contingency for that purpose.

BUYER'S LOAN COMMITMENT: Buyer agrees to pay all customary loan and closing costs, to promptly apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. If Buyer qualifies for the loan described in this Offer or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the deadline at line 229. **Buyer and Seller agree that delivery of a copy of any written loan commitment to Seller (even if subject to conditions) shall satisfy Buyer's financing contingency if, after review of the loan commitment, Buyer has directed, in writing, delivery of the loan commitment. Buyer's written direction shall accompany the loan commitment. Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability.**

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

SELLER TERMINATION RIGHTS: If Buyer does not make timely delivery of said commitment; Seller may terminate this 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 commitment.

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

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: 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.

ADDITIONAL PROVISIONS/CONTINGENCIES _____

287 **DEFINITIONS CONTINUED FROM PAGE 4**

288 ■ **ENVIRONMENTAL SITE ASSESSMENT:** An "Environmental Site Assessment" (also known as a "Phase I Site Assessment")(see lines 379-395)
289 may include, but is not limited to: (1) an inspection of the Property; (2) a review of the ownership and use history of the Property, including a
290 search of title records showing private ownership of the Property for a period of 80 years prior to the visual inspection; (3) a review of historic and
291 recent aerial photographs of the Property, if available; (4) a review of environmental licenses, permits or orders issued with respect to the Property
292 (5) an evaluation of results of any environmental sampling and analysis that has been conducted on the Property; and (6) a review to determine if
293 the Property is listed in any of the written compilations of sites or facilities considered to pose a threat to human health or the environment
294 including the National Priorities List, the Department of Nature Resources' (DNR) Registry of Waste Disposal Sites, the DNR's Contaminated
295 Lands Environmental Action Network, and the DNR's Remediation and Redevelopment (RR) Sites Map including the Geographical Information
296 System (GIS) Registry and related resources. Any Environmental Site Assessment performed under this Offer shall comply with generally
297 recognized industry standards (e.g. current American Society of Testing and Materials "Standard Practice for Environmental Site Assessments"),
298 and state and federal guidelines, as applicable.

299 **CAUTION: Unless otherwise agreed an Environmental Site Assessment does not include subsurface testing of the soil or groundwater**
300 **or other testing of the Property for environmental pollution. If further investigation is required, insert provisions for a Phase II Site**
301 **Assessment (collection and analysis of samples), Phase III Environmental Site Assessment (evaluation of remediation alternatives) or**
302 **other site evaluation at lines 109-115 or 277-286 or attach as an addendum per line 479.**

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

311 **CAUTION: Exclude Fixtures not owned by Seller such as rented fixtures. See lines 20-22.**

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

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

318 **EARNEST MONEY**

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

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

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

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

340 **TITLE EVIDENCE**

341 ■ **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed (trustee's deed if
342 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
343 encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility
344 and municipal services, recorded building and use restrictions and covenants, present uses of the Property in violation of the foregoing disclosed
345 in Seller's disclosure report, and Real Estate Condition Report, if applicable, and in this Offer, general taxes levied in the year of closing and
346 _____

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

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

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

356 ■ **GAP ENDORSEMENT:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's) (Buyer's) **STRIKE ONE** ("Seller's" if
357 neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after the effective date of the title insurance
358 commitment and before the deed is recorded, subject to the title insurance policy exclusions and exceptions, provided the title company will issue
359 the endorsement. If a gap endorsement or equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for
360 closing (see lines 365-371).

361 ■ **PROVISION OF MERCHANTABLE TITLE:** For purposes of closing, title evidence shall be acceptable if the required title insurance
362 commitment is delivered to Buyer's attorney or Buyer not more than _____ days after acceptance ("15" if left blank), showing title to the
363 Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines 341-348, subject only to liens which
364 will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.

365 ■ **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title within
366 _____ days ("15" if left blank) after delivery of the title commitment to Buyer or Buyer's attorney. In such event, Seller shall have a
367 reasonable time, but not exceeding _____ days ("5" if left blank), from Buyer's delivery of the notice stating title objections, to deliver
368 notice to Buyer stating Seller's election to remove the objections by the time set for closing. In the event that Seller is unable to remove said
369 objections, Buyer may deliver to Seller written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does
370 not waive the objections, Buyer shall deliver written notice of termination and this Offer shall be null and void. Providing title evidence acceptable
371 for closing does not extinguish Seller's obligations to give merchantable title to Buyer.

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

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

379 **ENVIRONMENTAL EVALUATION CONTINGENCY:** This Offer is contingent upon a qualified independent environmental consultant of
380 Buyer's choice conducting an Environmental Site Assessment of the Property (see lines 288-302), at (Buyer's) (Seller's) expense **STRIKE ONE**
381 ("Buyer's" if neither is stricken), which discloses no Defects. For the purpose of this contingency, a Defect (see lines 223-225) is defined to also
382 include a material violation of environmental laws, a material contingent liability affecting the Property arising under any environmental laws, the
383 presence of an underground storage tank(s) or material levels of hazardous substances either on the Property or presenting a significant risk of
384 contaminating the Property due to future migration from other properties. Defects do not include conditions the nature and extent of which Buyer
385 had actual knowledge or written notice before signing the Offer.

386 ■ **CONTINGENCY SATISFACTION:** This contingency shall be deemed satisfied unless Buyer, within _____ days of acceptance,
387 delivers to Seller a copy of the Environmental Site Assessment report and a written notice listing the Defect(s) identified in the Environmental Site
388 Assessment report to which Buyer objects (Notice of Defects).

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

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

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

399 If **Buyer defaults**, Seller may:

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

402 If **Seller defaults**, Buyer may:

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

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

406 The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the discretion of the
 407 courts. If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution instead of the remedies outlined above.

408 By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those disputes covered by the arbitration agreement.

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

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

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

419 **CAUTION: Buyer should verify total square footage or acreage figures and land, building or room dimensions, if material to Buyer's**
 420 **decision to purchase.**

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

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

434 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and persons registered with the
 435 registry by contacting the Wisconsin Department of Corrections on the Internet at <http://www.widocoffenders.org> or by telephone at
 436 (608) 240-5830.

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

444 **NOTE: Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose of the test, (e.g., to**
 445 **determine if environmental contamination is present), any limitations on Buyer's testing and any other material terms of the**
 446 **contingency.**

447 Buyer agrees to promptly restore the Property to its original condition after Buyer's inspections and testing are completed unless otherwise agreed
 448 to with Seller. Buyer agrees to promptly provide copies of all inspection and testing reports to Seller. Seller acknowledges that certain inspections
 449 or tests may detect environmental pollution which may be required to be reported to the Wisconsin Department of Natural Resources.

450 **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 437-449). This Offer is contingent upon
 451 a qualified independent inspector(s) conducting an inspection(s) of the Property which discloses no Defects. This Offer is further contingent upon
 452 a qualified independent inspector or qualified independent third party performing an inspection of _____
 453 _____ (list any Property feature(s) to be separately inspected, e.g., dumpsite, etc.) which
 454 discloses no Defects. Buyer shall order the inspection (s) and be responsible for all costs of inspection(s). Buyer may have follow-up inspections
 455 recommended in a written report resulting from an authorized inspection performed provided they occur prior to the deadline specified at line 461.
 456 Each inspection shall be performed by a qualified independent inspector or qualified independent third party.

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

459 For the purpose of this contingency, Defects (see lines 223-225) do not include conditions the nature and extent of which Buyer had actual
 460 knowledge or written notice before signing the Offer.

461 **CONTINGENCY SATISFACTION:** This contingency shall be deemed satisfied unless Buyer, within _____ days of acceptance,
 462 delivers to Seller a copy of the inspection report(s) and a written notice listing the Defect(s) identified in the inspection report(s) to which Buyer
 463 objects (Notice of Defects).

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

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

471 **CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's property located at
 472 _____, no later than _____. If Seller accepts a bona fide secondary offer,
 473 Seller may give written notice to Buyer of acceptance. If Buyer does not deliver to Seller a written waiver of the Closing of Buyer's Property
 474 Contingency and _____
 475 _____

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

479 **ADDENDA:** The attached _____ is/are made part of this Offer.

480 This Offer was drafted by [Licensee and Firm] _____

481 _____ on _____

482 Buyer Entity Name (if any): _____

483 (x) _____
 484 Buyer's/Authorized Signature ▲ Print Name/Title Here ► _____ Date ▲ _____

485 (x) _____
 486 Buyer's/Authorized Signature ▲ Print Name/Title Here ► _____ Date ▲ _____

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

488 _____ Broker (By) _____

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

492 Seller Entity Name (if any): _____

493 (x) _____
 494 Seller's/Authorized Signature ▲ Print Name/Title Here ► _____ Date ▲ _____

495 (x) _____
 496 Seller's/Authorized Signature ▲ Print Name/Title Here ► _____ Date ▲ _____

497 This Offer was presented to Seller by [Licensee and Firm] _____

498 _____ on _____ at _____ a.m./p.m.

499 This Offer is rejected _____ This Offer is countered [See attached counter] _____
 500 Seller Initials ▲ Date▲ Seller Initials ▲ Date▲

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