



# LEGAL UPDATE

NOVEMBER 2020, 20.11

## A MONTHLY GUIDE TO WISCONSIN REAL ESTATE LAW & POLICY

### WB-13 Vacant Land Offer to Purchase 2021

The Real Estate Examining Board (REEB) has approved an updated WB-13 Vacant Land Offer to Purchase. The optional use date is January 1, 2021, and the mandatory use date is February 1, 2021.

Changes to the basic transactional provisions made in the WB-11 Residential Offer to Purchase have also been made in the revised WB-13 and the same transactional flow has been adopted.

This *Legal Update* focuses on the changes made to those provisions of the WB-13 that are uniquely about vacant land transactions. The section-by-section discussion points out the new set of changes adopted by the REEB and provides practice tips for getting the best results with this newest version of the WB-13.

#### ① MORE INFO

An “educational use only” copy of the WB-13 with yellow highlights indicating the changes made is available on the WRA Forms Update Resource page at [www.wra.org/formsupdate](http://www.wra.org/formsupdate) as well as a new FIRPTA flow chart and other resources.

### The Vacant Land Offer

The WB-13 Vacant Land Offer to Purchase is an offer that is used in a whole host of situations. It may be used for the purchase of a vacant lot in a subdivision where the buyer will build a new home. It may be used by a developer looking to construct a large retail or manufacturing complex or a farmer adding a field to his property. It may also be used for the purchase of hunting land or timber land. As a result, not every provision in the WB-13 will apply in every transaction. Practitioners, accordingly, are well served to be familiar with the various provisions included in the WB-13 so they may be well-equipped to adeptly use the form, follow the instructions and serve the best interests of their clients and customers.

The 2021 WB-13 Vacant Land Offer to Purchase has adopted the same transactional flow as the WB-11 Residential Offer to Purchase. The provisions relative to vacant land transactions from the prior 2011 version of the WB-13 have been retained unless otherwise noted;

however, some of these provisions were modified and are discussed along with the other 2021 vacant land transaction changes. The following discussion of the new vacant land features and provisions follows the sequence of the provisions in the updated WB-13 offer.

#### Property Identification and Tax Parcel Numbers

Several practitioners had noted sometimes working in transactions where there was no street address that encompassed the group of parcels being sold. In other words, using a street address would not provide an accurate description of the property. They suggested there be a place where tax parcel numbers or PINs could be used as the property description or as a part thereof.

Accordingly, there is a prompt on lines 6-7 following the long blank line at lines 4-5 of the WB-13 suggesting that the property identification might be completed by using a street address – the most common means of identifying the property in a transaction – but also suggesting alternative ways of identifying the property. These include the parcel numbers as well as the legal description and other descriptions placed on the additional provision lines or in an attached addendum.

The language on lines 6-7 states: “the Property known as \_\_\_\_\_ [e.g., Street Address, Parcel Number(s), legal description, or insert additional description, if any, at lines 650-664, or attach as an addendum per line 686] in the \_\_\_\_ ... .”

#### Representation of Zoning

In the 2011 WB-13, the seller represented the zoning of the property being sold on line 34. This was removed for 2021. There are sources for finding the applicable zoning such as on the MLS, and if the buyer needs to confirm zoning, they should instead use the zoning subcontingency under the Proposed Use Contingency on lines 256-257. Knowing the zoning classification is not the same as confirming the zoning will accommodate the buyer’s development plans, which they may investigate and confirm in the Proposed Use Contingency. The Property Development Warning provision at lines 233-243 also now says “Buyer is solely responsible to verify the current zoning allows for the proposed use of the Property at lines 251-255.”

## Vacant Land Disclosure Report and Property Condition Representations

Effective July 1, 2012, sellers of vacant land are required to complete a Vacant Land Disclosure Report (VLDR). This requirement applies to land with no buildings. The Wis. Stat. § 709.033 disclosure provisions generally must be completed by all persons who transfer Wisconsin real estate that does not include any buildings by sale, exchange or land contract. All sellers who are subject to Wis. Stat. § 709.033,

whether broker-assisted or FSBO, must complete a disclosure report with the necessary provisions or risk buyer rescission of the offer to purchase or other contract for sale.

The VLDR section on lines 83-93 of the revised WB-13 is a new addition given there was no VLDR in 2011 when the WB-13 was last revised. This section is modeled after the Real Estate Condition Report section in the WB-11 and the WB-14. It explains the statutory requirement to complete the VLDR and the buyer's rescission rights thereunder.

83 **VACANT LAND DISCLOSURE REPORT** Wisconsin law requires owners of real property that does not include any  
 84 buildings to provide Buyers with a Vacant Land Disclosure Report. Excluded from this requirement are sales exempt from  
 85 the real estate transfer fee and sales by certain court-appointed fiduciaries, for example, personal representatives, who  
 86 have never occupied the Property. The form of the Report is found in Wis. Stat. § 709.033. The law provides: "§ 709.02  
 87 Disclosure . . . the owner of the property shall furnish, not later than 10 days after acceptance of a contract of sale . . . , to  
 88 the prospective buyer of the property a completed copy of the report . . . A prospective buyer who does not receive a report  
 89 within the 10 days may, within 2 business days after the end of that 10-day period, rescind the contract of sale . . . by  
 90 delivering a written notice of rescission to the owner or the owner's agent." Buyer may also have certain rescission rights if  
 91 a Vacant Land Disclosure Report disclosing defects is furnished before expiration of the 10 days, but after the Offer is  
 92 submitted to Seller. Buyer should review the report form or consult with an attorney for additional information regarding  
 93 rescission rights.

The Property Condition Representations section now specifically references the VLDR on line 96 when indicating the VLDR has been received by the buyer and is incorporated by reference, and providing a blank line to include any additional disclosures that were missed or are new since the date of the VLDR.

"as is" sale). This supports the philosophy of Wis. Stat. Ch. 709 to encourage seller disclosure regarding the condition of the property. The seller is in the best position to know the true condition of the property. Getting this information to buyers enables buyers to make better-informed decisions.

## Conditions Affecting the Property or Transaction

The definition of "Conditions Affecting the Property or Transaction" appears on lines 101-181. These conditions are the disclosure items from the current VLDR as stated in Wis. Stat. § 709.033 plus the new items that were held up and not approved by the state senate when the coronavirus stopped all legislative action in the summer of 2020. These are the same "legislative items" that were added to the WB-11 Take 2 and the WB-14. The WRA is optimistic these items will be quickly enacted once the WRA re-introduces those measures in the new 2021 legislative session. Those "legislative items" include the references to "private" rights-of-way and easement on lines 153 and 154, the items relating to riparian rights for properties on flowages on lines 170-17, agreements with electric cooperatives on lines 180-181 and the FIRPTA disclosure if the seller is a foreign person on line 179.

Restating the VLDR items in the 2021 definition of Conditions Affecting the Property or Transaction encourages sellers to make disclosures or explain why they are not doing so (for example, an

**① MORE INFO**

For insight into the updated RECR content, read "What's That? Changes to the WRA Disclosure Reports? Tell Me More!" in the September 2020 *Wisconsin Real Estate Magazine* at [www.wra.org/WREM/Sep20/Disclosure](http://www.wra.org/WREM/Sep20/Disclosure). Also see "Extreme Disclosure Report Makeover" in the June 2018 *Wisconsin Real Estate Magazine* at [www.wra.org/WREM/June18/RECR](http://www.wra.org/WREM/June18/RECR), the June 2018 *Legal Update*, "Revisions to the Real Estate Condition and Vacant Land Disclosure Reports - 2018," at [www.wra.org/LU1806](http://www.wra.org/LU1806) and "The Best of the Legal Hotline: Buyer Said, Seller Said" in the June 2018 *Wisconsin Real Estate Magazine* at [www.wra.org/WREM/June18/Hotline](http://www.wra.org/WREM/June18/Hotline).

There is one exception to the policy of reflecting the VLDR disclosures in the "Conditions Affecting the Property or Transaction" definition. That definition does not include the Utilities Connection language that appears in the VLDR:

<p><b>F6. Utility Connections. Are you aware that the property is connected to the following utilities on the property or at the lot line? (If "yes," indicate where the utility is located.)</b></p> <p>a. Electricity _____</p> <p>b. Municipal water _____</p> <p>c. Telephone _____</p> <p>d. Cable television _____</p> <p>e. Natural gas _____</p> <p>f. Municipal sewer _____</p>	<p><b>YES</b></p>	<p><b>NO</b></p>	<p><b>N/A</b></p>
	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

It was believed this would be too difficult to accurately state in the definition without causing confusion, and a trap, for instance an item stating “the electricity, municipal water, telephone, etc. are not connected on the Property or up to the lot line” may be easily missed and the seller might fail to disclose unconnected utilities. The utility connections are addressed under the Proposed Use Contingencies in the WB-13 and on the VLDR, so the buyer has the opportunity to ask the seller for specific utility connection information.

## Government Programs

The Government Programs contingency provides the buyer an opportunity to see what federal, state, county, and local programs apply to the property as well as the costs involved. The seller is to deliver a list of all conservation, farmland, environmental, governmental or other land use programs, agreements, restrictions, conservation easements, etc. that apply to the property (farmland preservation, use value assessments, managed forest, conservation reserve, etc.) along with a list of any pending or deferred penalties and fees.

A default of 15 days was added with regard to the seller’s deadline, stated on line 182 of the WB-13, for providing the government program information. This default was aligned with the default time frame for the seller’s provision of the title insurance commitment (see lines 512-515) as the title work and the government program information logically fall together and may overlap.

Lines 195-228 provide short summaries of some of the more common government programs that may apply to the property including the Managed Forest Land program, use value assessments, Farmland Preservation, the Conservation Reserve Program and shoreland zoning ordinances. The language and links in these sections were refreshed and updated to reflect 2021 rather than 2011 standards and laws.

The check box was removed from Managed Forest Land and the language was modified to read, “If all, or part, of the Property is managed forest land under the Managed Forest Law (MFL) program, this designation will continue after closing.” The MFL provision is important because it satisfies the disclosure requirements of Wis. Stat. § 710.12. Additional MFL information may be found at <https://dnr.wi.gov/topic/ForestLandowners/mfl/index.html>.

## Proposed Use Contingencies

The following Legal Hotline question and answer illustrates the critical importance of the Proposed Use Contingency in a vacant land transaction, particularly in a case like this one, where subsoil testing revealed large ledges of rock.

**QUESTION:** *The agent wrote an offer on a vacant lot. The subsoil testing came back showing there is rock 3 feet down and substantial costs would be incurred to build a home. The buyers are not able to build the home they wanted because of this subsoil test. The buyers notified the agent: "We are providing the information received as to the findings of the current subsoil conditions of this lot. After digging the test holes, the results showed large ledges of rock located at shallow depths (see attached proposal from ABC Excavation for boring results). We have estimates from contractors to remove the rock and make sewer stub exposure for available hook up to the house approximately 70ft from the lot line (see attached proposal from DEF Excavating Inc.). As you can see, the cost is significant. It has also been determined that large quantities of fill would need to*

*be brought in at additional cost to back fill and taper from foundation exposure due to lack of depth (approximately 4ft from at grade). A further increase in cost is for the foundation to adjust for the lack of soil depth. These unforeseen costs are also high risk due to the subsoil conditions. We are hereby declining our offer to purchase, in compliance with the subsoil testing contingency. Please return the earnest money at your earliest convenience. The test holes that were dug will be fixed as soon as weather allows. ... Please inform the appropriate personnel of this decision. ..."*

*The agent sent this notice with a Cancellation Agreement and Mutual Release to the listing agent. His response was: "... Here is the CAMR asking for the earnest money to be paid to the seller because on line 306 of WB-13, it just says residential property and not really specifying what kind of property to be built. Thanks, and I wish we could have figured this transaction out."*

*The subsoil was a contingency for a residential building. They cannot build the home they wanted because of this and the costs associated to having to blast through all the rock. Shouldn't buyers get their earnest money back?*

**ANSWER:** Based on the facts as presented, and assuming the notice was delivered timely, it would appear that lines 317-320 of the WB-13 Vacant Land Offer to Purchase would justify the return of the earnest money to the buyer. While the report did not indicate that the residential use of the property would be impossible due to the subsoil conditions, the offer also allows for termination due to the condition significantly increasing the cost of construction. In this case, it doesn't appear that the size of the house or number of bedrooms would change the significant increase in cost of the project, consequently, the "residential use" description for Proposed Use shouldn't have any impact on the buyer's right to the return of their earnest money, however, the buyer should be referred to a real estate attorney to review their rights and obligations under the contract.

Despite the fact that the Proposed Use Contingency can have major importance and save the day for a buyer, licensees in the past would comment this section was hard to understand and work with. One comment was that the buyer obtains the reports but who is paying is left as a choice. It was suggested that the party who obtains the reports pays for the report because that reflects actual practice and because all of the choices are distracting and likely to get missed. Rather than giving a choice for who obtains the report and who pays for the report for each of the subcontingencies, the Proposed Use Contingency on lines 244-286 of the revised WB-13 was retooled to provide that the buyer obtains and pays for all reports in each of the subcontingencies, making the overall provision far less confusing.

Further simplifications and enhancements were made.

- There is no check box at the beginning of the Proposed Use Contingency and the provision applies only if the check boxes for one or more subcontingencies have been marked.
- The Proposed Use Contingency begins with umbrella contingency language that is more direct and better sets the stage, instead of launching immediately into the designation of a proposed use.
- The contingency now has a default of 30 days. That may seem like a longer time period than is normally seen in offer contingencies but many of the reports and items that are needed for the subcontingencies will take a bit of time to acquire.



As before, the optional subcontingencies are deemed satisfied unless the buyer delivers to the seller, by the deadline stated on line 246, (1) written notice specifying those optional provisions that cannot be satisfied and (2) written evidence substantiating why each specific provision referred to in buyer’s notice cannot be satisfied.

244 **PROPOSED USE CONTINGENCIES:** This Offer is contingent upon Buyer obtaining, at Buyer’s expense, the reports or  
 245 documentation required by any optional provisions checked on lines 256-281 below. The optional provisions checked on  
 246 lines 256-281 shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days (“30” if left blank) after acceptance, delivers: (1)  
 247 written notice to Seller specifying those optional provisions checked below that cannot be satisfied and (2) written evidence  
 248 substantiating why each specific provision referred to in Buyer’s notice cannot be satisfied. Upon delivery of Buyer’s notice,  
 249 this Offer shall be null and void. Seller agrees to cooperate with Buyer as necessary to satisfy the contingency provisions  
 250 checked at lines 256-281.

- The proposed use comes after the basic contingency mechanics, on lines 251-255, with a bold heading.
- There is a new prompt and example for the proposed use intended to emphasize the buyer should give as much specific information as may be available: 1400-1600 sq. ft. three-bedroom single family ranch home in northwest corner of lot.

251 **Proposed Use:** Buyer is purchasing the Property for the purpose of: \_\_\_\_\_  
 252 \_\_\_\_\_  
 253 \_\_\_\_\_ **[insert proposed use**  
 254 **and type or style of building(s), size and proposed building location(s), if a requirement of Buyer’s condition to**  
 255 **purchase, e.g.1400-1600 sq. ft. three-bedroom single family ranch home in northwest corner of lot].**

The topics of the sub contingencies, indented underneath the Proposed Use umbrella, remain as before: zoning, subsoils, POWTS, easements and restrictions, approvals/permits, utilities, access to property and the odd man out – land use approval/permits.

256  **ZONING:** Verification of zoning and that the Property’s zoning allows Buyer’s proposed use described at lines  
 257 251-255.  
 258  **SUBSOILS:** Written evidence from a qualified soils expert that the Property is free of any subsoil condition that  
 259 would make the proposed use described at lines 251-255 impossible or significantly increase the costs of such  
 260 development.  
 261  **PRIVATE ONSITE WASTEWATER TREATMENT SYSTEM (POWTS) SUITABILITY:** Written evidence from a  
 262 certified soils tester that: (a) the soils at the Property locations selected by Buyer, and (b) all other conditions that must  
 263 be approved, meet the legal requirements in effect on the date of this Offer to obtain a permit for a POWTS for use of  
 264 the Property as stated on lines 251-255. The POWTS (septic system) allowed by the written evidence must be one of  
 265 the following POWTS that is approved by the State for use with the type of property identified at lines 251-255 CHECK  
 266 ALL THAT APPLY:  conventional in-ground;  mound;  at grade;  in-ground pressure distribution;  holding  
 267 tank;  other: \_\_\_\_\_.  
 268  **EASEMENTS AND RESTRICTIONS:** Copies of all public and private easements, covenants and restrictions  
 269 affecting the Property and a written determination by a qualified independent third party that none of these prohibit or  
 270 significantly delay or increase the costs of the proposed use or development identified at lines 251-255.  
 271  **APPROVALS/PERMITS:** Permits, approvals and licenses, as appropriate, or the final discretionary action by the  
 272 granting authority prior to the issuance of such permits or building permit, approvals and licenses, for the following items  
 273 related to Buyer’s proposed use: \_\_\_\_\_  
 274 \_\_\_\_\_  
 275  **UTILITIES:** Written verification of the location of the following utility service connections (e.g., on the Property, at  
 276 the lot line, across the street, etc.) CHECK AND COMPLETE AS APPLICABLE:  
 277  electricity \_\_\_\_\_;  gas \_\_\_\_\_;  sewer \_\_\_\_\_;  
 278  water \_\_\_\_\_;  telephone \_\_\_\_\_;  cable \_\_\_\_\_;  
 279  other \_\_\_\_\_.  
 280  **ACCESS TO PROPERTY:** Written verification that there is legal vehicular access to the Property from public  
 281 roads.

The land use approvals/permits provision is part of the Proposed Use Contingency umbrella provision, but it is set apart, at the margin, because it has a different time frame, and no default is given. A rezoning, conditional use permit or a variance will likely take much longer than verification of zoning, verification of access or many of the other subcontingencies. It does reference the same proposed use that is used for the other subcontingencies.

282  **LAND USE APPROVAL/PERMITS:** This Offer is contingent upon (Buyer)(Seller) STRIKE ONE (“Buyer” if neither  
 283 stricken) obtaining the following, including all costs: a CHECK ALL THAT APPLY  rezoning;  conditional use permit;  
 284  variance;  other \_\_\_\_\_ for the Property for its proposed use described at lines 251-255.  
 285 Seller agrees to cooperate with Buyer as necessary to satisfy this contingency. Buyer shall deliver, within \_\_\_\_\_ days of  
 286 acceptance, written notice to Seller if any item cannot be obtained, in which case this Offer shall be null and void.

## Map of the Property

The Map of the Property Contingency on lines 287-304 of the updated WB-13 now has a 30-day default. The only other revisions pertain to the implementation mechanism. The buyer's deadline for providing a notice objecting to the map is five days after the deadline for delivery of the map. New language was added regarding timely delivery of the map described in the provision:

Once the deadline for delivery has passed, if Seller was responsible to provide the map and failed to timely deliver the map to Buyer, Buyer may terminate this Offer if Buyer delivers a written notice of termination to Seller prior to Buyer's Actual Receipt of said map from Seller.

This language is similar to the Seller Termination provision under the Financing Commitment Contingency.

## Other provisions

1. The Inspection Contingency on lines 320-353 is structured like the similar provision in the WB-11 – minus the home inspector references. There are new examples of property components that may be separately inspected at line 326: dumpsite, timber quality, invasive species, etc. There are defaults for the time frames like those in the WB-11 and the definition of “defect” was added in a note on lines 339-342 for ease of use.
2. The Financing Commitment Contingency and associated provisions on lines 354-414 are the same as the WB-11, as is the Appraisal Contingency on lines 415-434.
3. The 2021 version of the WB-13 adds a Closing of Buyer's Property Contingency and a Bump Clause provision on lines 435-454. These provisions were not included in the 2011 WB-13, but they were included to maintain the parallelism between the various offers.
4. There is a Secondary Offer provision in the updated WB-13 as is the case in the 2011 WB-13.
5. The Homeowners Association provision from the WB-11 was added to the WB-13 on lines 462-465 as this would often apply if the vacant land offer were used to purchase property in a subdivision or other development with a homeowners association.

## Title Evidence

Small changes were made in this section in the WB-13. The Conveyance of Title subsection

at lines 489-498 was updated to refer to the Vacant Land Disclosure Report instead of the Real Estate Condition Report. The Title Not Acceptable for Closing on lines 516-523 has modified time frames. If the buyer gives notice of an objection to title, the seller will have the specified number of days from the buyer's delivery of the notice if the seller will remove the objections by closing. The default in that instance is now 15 days (five days in the 2011 WB-13). If the seller is unable to remove said objections, the buyer shall have five days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall be extended accordingly. The five-day time period is a new addition in an effort to lay out a series of definite time frames rather than leave it indefinite.

### ① MORE INFO

For further discussion of the vacant land offer, see the “New Vacant Land Offer to Purchase Is Here: The wait is over” in the May 2011 *Wisconsin Real Estate Magazine* at [www.wra.org/WREM/May11/WB13](http://www.wra.org/WREM/May11/WB13) and the April 2011 *Legal Update*, “2011 WB-13 Vacant Land Offer to Purchase,” at [www.wra.org/LU1104](http://www.wra.org/LU1104).

The sections for Closing Prorations, Leased Property, and Definitions, and the other provisions through the end of the updated vacant land offer are the same as those appearing in the WB-11, including the FIRPTA provision.

### ① MORE INFO

Changes to the basic transactional provisions of the offer were made in the WB-11 Residential Offer to Purchase (mandatory use date 1-1-2020), and those changes were refined in the second 2020 WB-11. All applicable basic transactional provisions in the WB-11 are found in the revised WB-13. Those basic WB-11 changes are discussed in the resources found at [www.wra.org/formsupupdate](http://www.wra.org/formsupupdate). Specifically see the July 2020 *Legal Update*, “WB-11 Residential Offer to Purchase – Take 2,” at [www.wra.org/LU2007](http://www.wra.org/LU2007), the September 2019 *Legal Update*, “WB-11 Residential Offer to Purchase – 2020 Edition – Part 1,” at [www.wra.org/LU1909](http://www.wra.org/LU1909), the October 2019 *Legal Update*, “WB-11 Residential Offer to Purchase – 2020 Edition – Part II” at [www.wra.org/LU1910](http://www.wra.org/LU1910) and the November 2019 *Legal Update*, “WB-11 Residential Offer to Purchase – 2020 Edition – Part III” at [www.wra.org/LU1911](http://www.wra.org/LU1911).

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