WISCONSIN
REAL ESTATE MAGAZINE
WRA A PUBLICATION OF THE WISCONSIN REALTORS® ASSOCIATION
March 2021 Vol. 37, No. 6

Inside this Issue:

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[1]Corelogic mortgage recordings: Dane County 34 consecutive months as of October 2020.
[2]UW Credit Union critical measure survey data from 2020..

EQUAL HOUSING OPPORTUNITY

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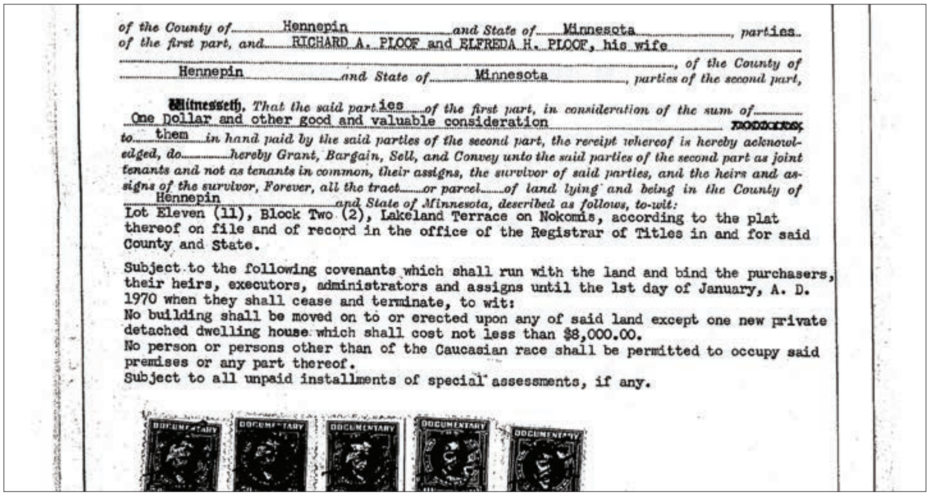

of the County of Hennepin and State of Minnesota, parties of the first part, and RICHARD A. PLOOF and ELFREDA H. PLOOF, his wife, of the County of Hennepin and State of Minnesota, parties of the second part,

Witnesseth, That the said parties of the first part, in consideration of the sum of One Dollar and other good and valuable consideration XXXXXXX to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell, and Convey unto the said parties of the second part as joint tenants and not as tenants in common, their assigns, the survivor of said parties, and the heirs and assigns of the survivor, Forever, all the tract or parcel of land lying and being in the County of Hennepin and State of Minnesota, described as follows, to-wit:
Lot Eleven (11), Block Two (2), Lakeland Terrace on Nokomis, according to the plat thereof on file and of record in the office of the Registrar of Titles in and for said County and State.

Subject to the following covenants which shall run with the land and bind the purchasers, their heirs, executors, administrators and assigns until the 1st day of January, A. D. 1970 when they shall cease and terminate, to wit:
No building shall be moved on to or erected upon any of said land except one new private detached dwelling house which shall cost not less than $8,000.00.
No person or persons other than of the Caucasian race shall be permitted to occupy said premises or any part thereof.
Subject to all unpaid installments of special assessments, if any.

DOCUMENTARY DOCUMENTARY DOCUMENTARY DOCUMENTARY DOCUMENTARY

BY **DAVE CLARK**
PROFESSOR OF ECONOMICS AT MARQUETTE UNIVERSITY
PRINCIPAL AT ECON ANALYTICS, LLC
WISCONSIN MONTHLY HOUSING REPORT

STRONG *Housing Market Continued in 2021*

Following a record year for home sales in 2020, the Wisconsin existing home market started the new year on record pace even as inventories continued to tighten statewide. January home sales increased 9.8% compared to that same month last year, and the median price rose 10.5% to $210,000 over that same period. This established a new January record in Wisconsin for both home sales and the median price, according to the report.

"January is typically the slowest month of the year, so it's encouraging to see such a strong market to start 2021," said WRA Board Chair Mary Duff. In a typical year, the month of January accounts for just 4.8% of annual sales. In contrast, sales usually peak in June, and the volume is nearly two and half times greater, accounting for 11.6% of sales.

Read the full housing report: www.wra.org/HSRJan2021

David Clark, Ph.D., is a professor of economics at Marquette University and principal at ECON Analytics, LLC, and serves as a consultant for the WRA in the analysis of home sales data as well as in the preparation of the monthly Wisconsin Housing Report. For more information, contact Clark at 414-803-6537.

4,659
CLOSED SALES, JAN 2021
+9.8%
FROM JAN 2020

$210,000
MEDIAN PRICE, JAN 2021
+10.5%
FROM JAN 2020

ACTIVE LISTINGS BY PRICE

PRICE RANGE	NUMBER OF LISTINGS
$0-$124,999	2,761
$125,000-$199,999	3,687
$200,000-$349,999	4,648
$350,000-$499,999	2,314
$500,000 & higher	2,013

MEDIAN PRICES BY REGION

CENTRAL	$161,000
NORTH	$162,750
NORTHEAST	$183,000
SOUTH CENTRAL	$255,000
SOUTHEAST	$222,000
WEST	$216,233

15,423
TOTAL STATEWIDE LISTINGS
JAN 2021
-35.8% FROM JAN 2020

AVERAGE DAYS ON MARKET
91 DAYS JAN 2021
COMPARED WITH
108 DAYS JAN 2020

MONTHS OF INVENTORY
2.1 JAN 2021
3.5 JAN 2020

HOUSING STATISTICS MONTHLY ACTIVITY

Statewide	January 2021	January 2020	% Change	YTD 2021	YTD 2020	% Change
New Listings	5,044	6,153	-18.0%	N/A	N/A	N/A
Total Listings	15,423	24,007	-35.8%	N/A	N/A	N/A
Closed Sales*	4,659	4,245	+9.8%	4,659	4,245	+9.8%
Median Sales Price	$210,000	$190,000	+10.5%	$210,000	$190,000	+10.5%
Months of Inventory	2.1	3.5	-40.0%	N/A	N/A	N/A
Avg. Days on Market	91	108	-15.7%	N/A	N/A	N/A
Affordability Index	220	222	-1.0%	N/A	N/A	N/A

	Median Price			Closed Sales		
Region	**January 2021**	**January 2020**	**% Change**	**January 2021**	**January 2020**	**% Change**
Central	$161,000	$148,750	+8.2%	322	256	+25.8%
North	$162,750	$160,250	+1.6%	474	361	+31.3%
Northeast	$183,000	$168,500	+8.6%	835	820	+1.8%
South Central	$255,000	$235,000	+8.5%	935	793	+17.9%
Southeast	$222,000	$198,350	+11.9%	1,685	1,622	+3.9%
West	$216,233	$188,000	+15.0%	408	393	+3.8%

*Report criteria: Reflecting data through January 2021. *Total statewide closed sales may differ from the summed regional sales due to a small number of sales not being assigned to a county.*

INSIDE THE WRA

The WRA Announces Largest Statewide and Regional Companies to Serve on the 2022 Board of Directors

In accordance with the WRA bylaws, the three largest statewide companies and seven regional companies shall be determined by counting the number of company employees who are members of the WRA according to the WRA membership records as of February 28 of that year.

The following companies will be represented on the 2022 WRA board of directors:

Largest statewide companies
First Weber Group Inc. – Madison
Shorewest REALTORS® – Brookfield
eXp Realty – Middleton

Largest regional companies
Region One: Edina Realty – Eau Claire
Region Two: Coldwell Banker Action Realty – Schofield
Region Three: Coldwell Banker Real Estate Group – Appleton
Region Four: Stark Company – Madison
Region Five: Coldwell Banker Realty – Brookfield

SAVE THE DATE

April 14, 2021 | REALTOR® & Government Day

Advocacy starts with you. Success starts with you. And April 14 is about you: your stories, your opportunities, your voice.

REALTOR® & Government Day is your chance to advocate with lawmakers for your business, private property rights, and for your clients and customers. Don't miss this chance to tell your story.

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Editor: Lauren B. Hubbard
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CONTACT INFORMATION
4801 Forest Run Road, Ste. 201
Madison, WI 53704-7337
608-241-2047 • 800-279-1972
email: editor@wra.org
website: www.wra.org

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Make a Difference with Committee Service!

Applications available for 2022 state and national committees

The WRA and the National Association of REALTORS® (NAR) are looking to fill positions for 2022. If you are interested in serving on a committee at a state or national level, apply online at www.wra.org/committees.

Application deadline: May 1, 2021

Make sure you indicate your committee preference. While we will attempt to honor all preferences, we cannot guarantee them due to space limitations.

COMMITTEE AND DESCRIPTION	STAFF LIAISON
Cultural Diversity in Housing Committee Provides resources and tools for members and local associations on fair housing laws. Monitors and evaluates legislative, legal and regulatory trends with respect to fair housing, cultural diversity and equal opportunity in housing. Administers the Partnership for Success program.	Debbi Conrad
Legal Action Committee Selects and funds legal expenses in administrative matters and cases that are of statewide interest and concern to the real estate industry.	Debbi Conrad, Cori Lamont
Professional Standards Committee Resolves allegations of ethical violations and controversies between REALTORS® as described in the WRA bylaws.	Tracy Rucka
Public Policy Committee Monitors, analyzes and takes positions on state legislation, regulations and public policies that impact the WRA and local REALTOR® associations, MLSs, real estate licensees, appraisers, homeowners, property owners and the real estate industry on behalf of the WRA.	Tom Larson
Real Estate Forms Committee Provides counsel and advice on behalf of the WRA regarding the use of and modification to Wisconsin forms utilized in real estate transactions.	Debbi Conrad
Wisconsin REALTORS® Foundation Board Provides financial support to statewide charities, scholarships to children of REALTORS®, and financial support for relief efforts in response to natural disasters in Wisconsin.	Cori Lamont

BY **DEBBI CONRAD**
SENIOR ATTORNEY AND DIRECTOR OF LEGAL AFFAIRS
FEATURE

Do You Have a Racist Deed?

Discriminatory restrictions and covenants

"No Persons other than the white race shall own or occupy any building on said tract, but this covenant shall not prevent occupancy of persons of a race other than the white race who are domestic servants of the owner or occupant of said buildings."

-Restriction for Crestview Acres 12, Greendale, recorded July 29, 1958

The first racial restriction in Wauwatosa was placed on the Washington Highlands Subdivision in 1919: "At no time shall the land included in Washington Highlands or any part thereof, or any building thereon be purchased, owned, leased or occupied by any person other than of white race. This prohibition is not intended to include domestic servants while employed by the owner or occupied by and [sic] land included in the tract." (Vol. 803, Page 205). The deeds for these properties stated these restrictions would run with the land until January 1, 1950, with automatic renewal for 20-year terms unless five years prior to a term's expiration the owners of 60% of the acreage executed an agreement releasing the land.

These racial covenants appear in deeds and subdivision restrictions and covenants in Wisconsin. Although they are illegal, they haunt the title records and title commitment reports received by buyers looking to purchase these properties. The language of the past prohibiting people of certain races from living in properties is no longer enforceable, but it still shocks potential buyers.

SYSTEMIC RACISM AND SEGREGATION

Throughout the United States in the 1900s, local government, real estate developers, local real estate brokers and boards, financial institutions and title companies joined forces to keep black families out of residential areas through the use of racially restrictive covenants and restrictions. At first there were local ordinances establishing racial restrictions in different neighborhoods and communities. In 1917, however, the U.S. Supreme Court ruled in *Buchanan v. Warley* that ordinances establishing racial restrictions violated the Fourteenth Amendment. Racially restrictive covenants consequently superseded ordinances as the preferred mechanism for establishing residential segregation.

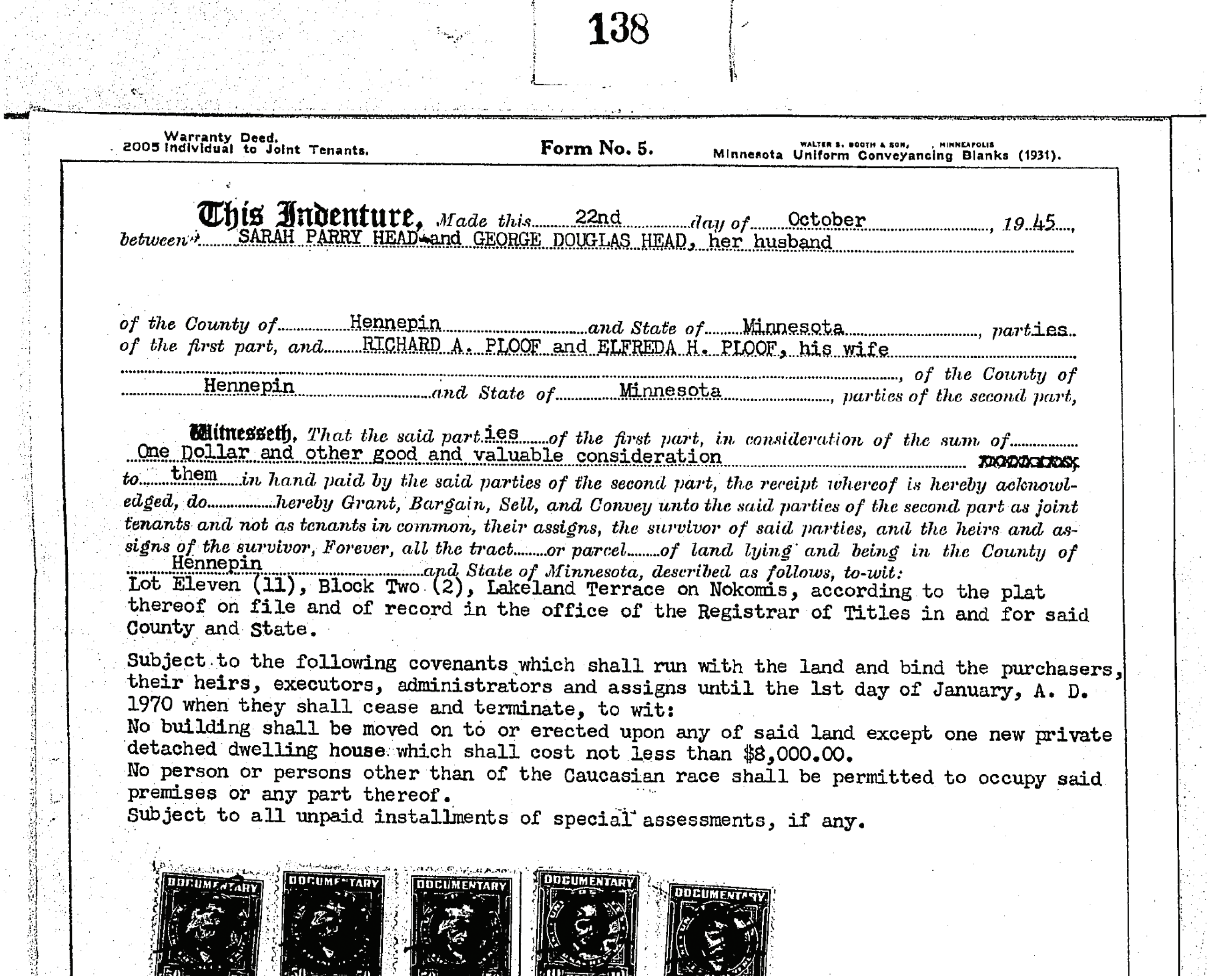
For nearly 50 years, developers wrote racially restrictive covenants into the title of millions of new homes. The easiest way to impose race restrictions on large areas was before the parcels were sold and developed. Some developers included restrictions in the plat maps or the associated covenants and restrictions, while others affixed deed restrictions as they sold off lots and parcels.

In 1926, the Supreme Court affirmed the legality of this practice. The ruling in *Corrigan v. Buckley* stated that while states are barred from creating race-based exclusionary laws and ordinances, private deeds and developer plat maps are not similarly affected by the Fourteenth Amendment. Individuals enter into covenant agreements voluntarily, whereas ordinances are imposed by state and municipal government.

These covenants ran with the land, and anyone who dared to breach a covenant — even decades after it was put into place and even after the property had changed hands multiple times — risked ending up in court. A property owner who sold land subject to this kind of covenant to a person who was not white risked losing the property and their accumulated equity. A violation could trigger a process that would put the property back in the hands of the person who instituted the covenant in the first place. The Wisconsin Supreme Court held in 1942 in *Doherty v. Rice* that a black man was prohibited from building a cabin with a value of less than $600 on a Wisconsin lake, although whites could do so under the racially restrictive covenants governing this lakefront property.

NONJUDICIAL ENFORCEMENT

Then in 1948, following activism from black Americans, the U.S. Supreme Court unanimously ruled racially restrictive covenants were unenforceable. In *Shelley v. Kraemer*, the court held judicial enforcement of racially restrictive covenants was unconstitutional. Nonetheless, developers continued to record such covenants in Milwaukee County and throughout the country and influence where minority individuals were able to reside.



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Warranty Deed.
2005 Individual to Joint Tenants.

Form No. 5.

WALTER S. BOOTH & SON, MINNEAPOLIS
Minnesota Uniform Conveyancing Blanks (1931).

This Indenture, *Made this* 22nd *day of* October, 19 45, *between* SARAH PARRY HEAD and GEORGE DOUGLAS HEAD, her husband

of the County of Hennepin *and State of* Minnesota, *parties of the first part, and* RICHARD A. PLOOF and ELFREDA H. PLOOF, his wife, *of the County of* Hennepin *and State of* Minnesota, *parties of the second part,*

Witnesseth, *That the said parties of the first part, in consideration of the sum of* One Dollar and other good and valuable consideration ~~DOLLARS~~, *to* them *in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell, and Convey unto the said parties of the second part as joint tenants and not as tenants in common, their assigns, the survivor of said parties, and the heirs and assigns of the survivor, Forever, all the tract or parcel of land lying and being in the County of* Hennepin *and State of Minnesota, described as follows, to-wit:*

Lot Eleven (11), Block Two (2), Lakeland Terrace on Nokomis, according to the plat thereof on file and of record in the office of the Registrar of Titles in and for said County and State.

Subject to the following covenants which shall run with the land and bind the purchasers, their heirs, executors, administrators and assigns until the 1st day of January, A. D. 1970 when they shall cease and terminate, to wit:
No building shall be moved on to or erected upon any of said land except one new private detached dwelling house which shall cost not less than $8,000.00.
No person or persons other than of the Caucasian race shall be permitted to occupy said premises or any part thereof.
Subject to all unpaid installments of special assessments, if any.

The Federal Housing Administration (FHA), established in 1934, refused to underwrite mortgages for homes unless a racial covenant was in place. The FHA claimed if African-Americans bought homes in or near white suburbs, the property values of the white homes they were insuring would decline and put their loans at risk. This led to the color-coded redlining maps.

REALTORS® also encouraged racial segregation in order to maintain property values and sell housing. Beginning in 1924, the REALTOR® Code of Ethics provided, "a REALTOR® should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood."

Social enforcement was also a factor. There were threats from neighborhood associations, churches and other groups that promised to make life uncomfortable for those who integrated a neighborhood contrary to the covenants. A violator might have his real estate broker blacklisted or experience difficulty obtaining sewer, water, roadway access and other services. Sometimes the driveway was blocked off, the children were roughed up, or the property was damaged or littered up.

BANNED BY FEDERAL LAW

Twenty years after the U.S. Supreme Court ruling in *Shelley v. Kraemer*, the Fair Housing Act of 1968 was passed and outlawed these covenants altogether. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings and other housing-related transactions, based on race, color, national origin, religion, sex, familial status and disability. The act officially made the use of racially restrictive covenants in housing illegal and prohibited restrictive covenants from being upheld both privately and judicially.

However, this ruling did not erase racial restrictions from property deeds and title records. As a result, the language of segregation remains in the fine print of deeds and restrictive covenants today.

OTHER PROTECTED CLASSES

Black Americans were almost always excluded by these racial covenants. In many places, people of other ethnicities were barred as well. In Seattle, Washington, for example, some deeds state that homes shall not be lived in by any "Hebrew or by any person of the Ethiopian, Malay or any Asiatic Race."

THE PATCHWORK OF SEGREGATION

"Pretty much every community in the country is going to have racial covenants," said historian Kirsten Delegard, a founder of the Minneapolis-based Mapping Prejudice project, which researches the covenants that barred nonwhites from buying property in the city's most desirable neighborhoods. This project reveals the geography of segregation when the properties subject

to racial restrictions and covenants are viewed on the map of a community. The visual portrayal confirms the covenants were used to keep minorities out of neighborhoods perceived to be more desirable.

SCRUBBING AWAY THE RACIST STAINS

Whether racial covenants should be removed is subject to debate. Some experts warn that hiding the mistakes of the past could stymie efforts to somehow make amends and help the black and brown communities that continue to feel the economic consequences of having been denied access to property ladders and generational wealth.

Delegard from the Mapping Prejudice project asserts, "We need to know where these restrictions were put in place if we're ever going to dismantle the system of racism in a logical, consistent way." But others, including those whose ancestors were targeted by racial covenants, say it's time for the loathsome language to disappear.

Those who advocate for the banishment of the language provide an apt analogy. "It is akin to leaving up in the South, where you had Jim Crow laws, keeping up the 'no coloreds' or the 'white only' signs at water fountains, bathrooms, other facilities and saying, 'Oh, just ignore the sign. You can drink out of either one. Just ignore it,'" said Hector De La Torre, a former state lawmaker in California. "That's what this is."

De La Torre's family moved from Mexico to California in the 1960s, and he lives in a house that still has a racial covenant clause on title that at one time would have barred him from living there unless he was a servant. "So, perfectly fine for us to be servants and 'kept' in these houses. But could not own it, … could not live in it."

In some places, official records can now be amended to account for racial covenants. For example, in Washington, Minnesota and California, homeowners can ask county clerks to record or attach a modification document to deeds and other recorded documents stating that any offensive discriminatory covenant therein is illegal and that the discriminatory restriction is legally discharged and released. And real estate professionals in California who deliver deeds and other documents containing racist covenants to clients and customers must include a cover sheet that states, in 14-point, boldface type, that a modification can be filed.

As far as a complete removal of the objectionable language from the recorded property records, rather than a virtual removal or a strikethrough, it is unclear how that might be done.

No mechanism has yet been found to permanently remove the painful, appalling language that reminds us of our racist history.

Debbi Conrad is Senior Attorney and Director of Legal Affairs for the WRA.

SOURCES

- "Racially Restrictive Covenants: The Making of All-White Suburbs in Milwaukee County," by Lois M. Quin: dc.uwm.edu/eti_pubs/178
- "Mapping Prejudice in Dane County?" by Brenda Konkel: www.forwardlookout.com/2019/12/mapping-prejudice-in-dane-county/29478#google_vignette
- "Racist language is still woven into home deeds across America. Erasing it isn't easy, and some don't want to," by Nick Watt and Jack Hannah, CNN: www.cnn.com/2020/02/15/us/racist-deeds-covenants/index.html
- Mapping Prejudice: mappingprejudice.umn.edu
- "Racial Restrictive Covenants History: Enforcing Neighborhood Segregation in Seattle": depts.washington.edu/civilr/covenants_report.htm

"Pretty much every community in the country is going to have racial covenants."

Doc. No. 681776 Filed July 24. 1913 at 4:35 o'clock P. M.

This Indenture, Made this Sixteenth day of July in the year of our Lord one thousand nine hundred and Thirteen (1913), between Thorpe Bros. (a corporation under the laws of the State of Minnesota), party of the first part, and William F. Krueger, and Louisa J. Krueger Husband and wife as Joint tenants and not as tenants in common of the County of Hennepin and State of Minnesota, parties of the second part.

WITNESSETH, That the said party of the first part, in consideration of the sum of Seven Hundred Fifty (750.00) to it in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, does hereby Grant, Bargain, Sell and Convey unto the said parties of the second part, their heirs and assigns, Forever, all the tract or parcel of land lying and being in the County of Hennepin and State of Minnesota, described as follows, to-wit:

Lots Nineteen (19) and Twenty (20), in Block Three (3), in Thorpe Bros. Nakomis Terrace Addition to Minneapolis, according to the plat thereof on file and of record in the office of the Register of Deeds in and for the said Hennepin County, Minnesota. Subject however to any and all assessments for special improvements which may have been or which may hereafter be levied or assessed against the above described property, and which have not as yet been paid. In consideration of the premises, it is understood and agreed by and between the parties hereto, their heirs, executors, administrators, successors, and assigns, that when said premises are improved, it shall be by the erection of a dwelling house only, which shall be finished at least on the outside, and cost not less than Two Thousand Dollars ($2000.00), and shall be set at least twenty-five (25) feet from the front line of said lots, and that no flat or hotel building shall be erected thereon, and it is also agreed that said premises shall at no time be transferred to any colored or other objectionable person or persons, and that this restriction shall run with the land and bind the heirs, executors, legal representatives, and assigns of the parties hereto.

TO HAVE AND TO HOLD THE SAME, Together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining, unto the said parties of the second part, their heirs and assigns, FOREVER. And the said Thorpe Bros. party of the first part, for itself and its successors, does covenant with the said parties of the second part, their heirs and assigns, that it is well seized in fee of the lands and premises aforesaid, and has good right to sell and convey the same in manner and form aforesaid, and that the same are free from all encumbrances except as mentioned above;

and the above bargained and granted lands and premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part will WARRANT AND DEFEND.

IN TESTIMONY WHEREOF, The said first party has caused these presents to be executed in its corporate name by its President and its Assistant Secretary and its corporate seal to be hereunto affixed the day and year first above written.

Signed, Sealed and Delivered in Presence of

H. Mynderse

C.S. White

Thorpe Bros.

By Samuel S. Thorpe

Its President.

Almer A Allen

(Corporate Seal)

Its Ass't Secretary

STATE OF Minnessota

County of Hennepin } SS.

On this 17th day of July, A. D. 1913, before me, a Notary Public, within and for said County, personally appeared Samuel S Thorpe and Almer A. Allen to me personally known, who, being each by me duly sworn each President and the Ass't Secretary of Thorpe Bros. did say that they are respectively the the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of Directors and said Samuel S Thorpe and Almer A. Allen acknowledged said instrument to be the free act and deed of said corporation.

Notarial Seal

Chester S White Notary Public,
Hennepin County, Minn.
My Commission Expires Oct. 21, 1917

BY **TRACY RUCKA**
DIRECTOR OF PROFESSIONAL STANDARDS AND PRACTICES
LEGAL

The Best of the Legal Hotline:
Antitrust

What is all the talk about antitrust, and what does it really look like? Antitrust has many faces; some are familiar, like price-fixing commission with buyers clients or seller clients in agency agreements. But antitrust can also express itself in less recognizable ways, like group boycotts that can occur if multiple brokers agree to refuse to cooperate with another real estate firm or a supplier or vendor. Risk can also arise out of posts and conversations that occur online. Dialogue that occurs at an association board of directors meeting or an MLS committee meeting could be subject to scrutiny if it relates to association membership or MLS policies that target a certain firm or business practice. The prohibitions imposed by antitrust laws are designed to safeguard the underlying themes of the free marketplace, competition, consumer choice, and prevention of monopolies. Most antitrust situations concerning real estate brokers involve violations of the Sherman Antitrust Act of 1890 (Sherman Act). Section 1 of the Sherman Act provides that "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal." The following WRA Legal Hotline discussions relate to daily practice that can put brokers, associations or MLSs at risk.

As professionals within this industry, we all must continue to do our part to ensure that anticompetitive practices are not entertained, which means avoiding any conversation — in-person, email, social media or other format — that discusses boycotting, price-fixing or other restraints that stand in clear violation of antitrust law. Federal and state antitrust laws are designed to protect competition, and the opportunity of competitors to engage in business free of artificial restrictions on competition. Such restrictions include price-fixing agreements, group boycotts, "tying" arrangements and market allocation arrangements.

The staff executive of an association has been following the private Facebook group for association members. In that group, there has been talk about refusing to work with a specific vendor. What is the law surrounding this, and what are the potential risks for the conversation within the Facebook group?

A boycott occurs when competitors work together to exert pressure on a third party by collectively withholding, or inducing others to withhold, goods, services or patronage essential to the survival of the third party. Because real estate brokers, other real estate professionals and outside vendors — such as a lockbox provider or a showing services provider — depend a great deal upon one another's business, a group of real estate companies can coerce or eliminate a competitor or vendor by collectively refusing to deal with the targeted service provider until the targeted service provider either makes the change the group wanted or goes out of business. One possible objective of a group boycott is to cause a third party — another competitor, customer or vendor — to change its practices to conform to the practices or the expectations of the boycotters. This tactic might be used, for example, against a company introducing a new business model into a marketplace or a vendor that raises rates or conducts business in an "unacceptable" manner.

What risk exists regarding a discussion by the association board of directors about a new firm joining the association and local MLS?

Antitrust laws were enacted to prevent competitors from participating in business practices that restrain trade. When competitors work together in a manner that restrains trade, there is a potential for antitrust concerns. There are two key elements that can lead to an antitrust law violation: (1) a contract, conspiracy or combination, which (2) unreasonably restrains trade. Therefore, by its nature, an association membership meeting or a director meeting is a meeting of competitors. At a local board meeting or elsewhere, if the members, who are by their nature competitors, discuss with one another the "appropriate response" to a new competitor or another broker's marketing practices, then any subsequent

actions of the competitors in response to the behavior of the "outsider" can be viewed as conduct pursuant to a conspiracy. Accordingly, brokers and their agents should never discuss with other brokers or agents from different firms a new firm in the market or a firm with a different business model at association events or meetings. If competitors such as licensees from different firms conspire and discuss the business or business plans of a different firm, the risk is when conversation leads to action that restrains trade; a seemingly offhanded conversation may lead to an illegal antitrust conspiracy.

The firm has a private Facebook page. Is content on that page protected from antitrust concerns?

It is always good to remember, nothing on the internet is private. It is critical to consider any discussion about competitors or service providers to the real estate industry — whether in person, online, at meetings or on social media — is subject to scrutiny. Real estate licensees must avoid conversations, even in private groups. Any posts rising potential antitrust concerns should be referred to counsel for the firm. Counsel may request agents remove posts that contain inappropriate content. The firm may also post affirmative statements contradicting such content and may recommend or suggest training and resources to educate licensees regarding such risks.

How can listing or buyer agency fees lead to antitrust concerns? What about cooperative compensation offered by the listing firm in the MLS?

The antitrust prohibition on fixing commission rates means, simply, two or more real estate firms cannot jointly decide which commission rates they will charge clients. Firms cannot make agreements with other firms regarding commission rates, but firms must also avoid any actions that even imply that they have discussed or reached an agreement on fees. Agents must also avoid any suggestion that the firm with which they are affiliated is part of a price-fixing conspiracy.

Make no mistake, firms should train their agents and other staff to explain the commissions and fees charged by the firm in terms of independent decisions and competitive market forces and avoid giving the appearance of collusion among competing firms. Agents should never refer to the pricing policies of other firms, and agents should never make statements like, "This is the rate every firm charges," or "commission rates are pretty standard." All brokers and agents must remember that all commissions and co-broke commissions are negotiable on a transaction-by-transaction basis and that there is no set or fixed amount of commission that must be earned or offered in a particular market area.

There is no set fee or amount for commissions or commission splits. To imply or infer there is a standard would imply elements of antitrust violations. An illegal price-fixing conspiracy can involve not only the prices a broker charges clients, but also the commission splits paid to cooperating brokers who produce a ready, willing and able buyer for listed properties.

If brokers collectively agree on the amount of cooperative commission offered, price fixing may occur. Conspiracies among competitors to fix the compensation paid to cooperating brokers may also be found to be per se illegal. To avoid antitrust concerns, brokers must determine their cooperative compensation policies in the same unilateral and independent manner they use to establish the commission or fees charged to clients. Each broker independently sets office policy regarding listing commissions, brokerage fees, cooperative commission splits as well as in-house commission splits. It would be an antitrust violation for the Real Estate Examining Board, the National Association of REALTORS®, MLS or broker competitors to set any minimum or maximum listing or co-broke compensation amounts.

A group of brokers has a Facebook group. The brokers in the area are looking for a different service provider for lockboxes, and they want to drop the current vendor they use. Are there any antitrust concerns in having conversations in the Facebook group?

Potentially yes. Per the Sherman Act, every contract, combination or conspiracy that unreasonably restrains trade or commerce is illegal. Generally, the following three elements must be proven:

(1) A contract, combination or conspiracy involving two or more separate business entities.

(2) The contract, combination or conspiracy restrains trade.

(3) The contract, combination or conspiracy is in interstate commerce or affects interstate commerce.

There need not be formal proof of an actual contract. All that needs be shown is that two or more separate entities participated in a common scheme or design. A conspiracy can be established by inferences drawn from circumstantial evidence frequently found in consciously parallel conduct by two or more competitors; for example, competitors that engage in similar competitive behavior with full knowledge of each other's actions. The intended topic of the conversation on the Facebook group suggests a potential group boycott that would be illegal under antitrust law. Brokers must make their business decisions independently without concern as to competitors' practices.

What are group boycotts? What should the broker do if they become aware that agents in the marketplace are discussing dropping service providers?

Brokers must be constantly vigilant against any appearance of antitrust violations and must be sure that their agents have been trained to avoid making comments that might suggest the presence of any group anticompetitive actions. One objective of a group boycott is to induce a third party to change its practices and policies so that it conforms to the expectations and desires of the boycotters. Because real estate brokers depend a great deal upon one another's business, a group of real estate companies can collectively refuse to deal with a service provider until the service provider either conforms to the group's expectations or goes out of business. Agents must avoid comments and conversations that infer boycott conspiracies. It is possible that the deliberate refusal to work with a particular service provider could be considered a group boycott under federal antitrust law. Brokers should be sure their sales agents and other staff are trained regarding online and in-person conversations to avoid giving the appearance of a conspiracy among competing companies.

Tracy Rucka is Director of Professional Standards and Practices for the WRA.

ADDITIONAL ANTITRUST INFORMATION

WRA resources

July 2019 *Legal Update*
"Antitrust Dangers in the Real Estate World"
wra.org/LU1907

March 2004 *Legal Update*
"Antitrust Primer for Real Estate Practice"
wra.org/LU0403

National resources

NAR's antitrust webpage; review all informational tabs
nar.realtor/antitrust

U.S. Department of Justice
"Competition in Real Estate: Questions and Answers"
justice.gov/atr/competition-real-estate-questions-and-answers

Latest Legal Resources

As a REALTOR®, your everyday business transactions are legal in nature. Your WRA membership includes access to various WRA legal resources, all designed to ensure that you practice real estate legally and correctly. Below are the latest resources from the WRA.

LEGAL HOTTIPS

Latest Discussions on the WRA Legal Hotline

- Demand for commission and commercial commission liens.
- Failure to pull building permits.
- Buyer's agent relies on seller's promises in MLS remarks.
- Photographing tenant's personal property when selling rental property.
- Native American effigy mounds on property.

Read the February 1 hottips: **WRA.ORG/HOTTIPSMAR1**

LEGAL UPDATE LIVE VIDEO SERIES

Legal Update Live Episode 11: Fair Housing and Fairhaven

Learn about the latest fair housing issues as well as the National Association of REALTORS®' (NAR) interactive training platform, Fairhaven: A Fair Housing Simulation. Episode 11 features special guest Alexia Smokler, NAR's senior policy representative on fair housing and the project manager of Fairhaven. Alexia will provide a demonstration of Fairhaven and also provide an update about NAR's ACT! fair housing plan. Don't miss this unique opportunity to watch one of the nation's top fair housing experts speak virtually to Wisconsin REALTORS®!

Watch: **WRA.ORG/LUL/EPISODE11**

FORMS UPDATE

Revised WB-13 and WB-15

In 2020, the Real Estate Examining Board (REEB) approved revisions for the WB-13 Vacant Land Offer to Purchase and the WB-15 Commercial Offer to Purchase. Both revised forms were mandatory for use on February 1, 2021. The WRA offers several resources to help you understand the modifications to these forms.

Read: **WWW.WRA.ORG/FORMSUPDATE**

LEGAL UPDATES

February 2021: Request for Condominium Documents

The WRA created a new optional form to assist unit sellers when requesting condominium disclosure documentation from a condominium association. Learn more about this new form in the most recent *Legal Update*.

Read: **WRA.ORG/LEGALUPDATES**

WRA LEGAL HOTLINE

Find out applicable legal standards, alternatives and possible solutions for your real estate practice questions with this members-only service.

CONTACT:
Phone: 608-242-2296 OR 800-799-4468
Online question submission: www.wra.org/legalhotline

Available Sundays
In addition to usual Monday-Friday hours, the hotline is also accessible on Sundays from 1:00 p.m. to 4:30 p.m.

Learn more:
WWW.WRA.ORG/LEGALHOTLINE

Three Apps Guaranteed to Save You Time

Agents are busy. Very busy. Ensuring you continue to remain productive is vital for closing transactions today and building new business tomorrow. You can increase your efficiency while still building future business if you get a little help. Several apps can help you speed up or simplify some time-consuming tasks.

FELT: HANDWRITTEN THANK-YOU NOTES

Few things have a greater impact on making a great impression on a client or prospect than personally handwritten thank yous. They are well worth the effort, but they take time, right? Not if you have the Felt app. With Felt, you can create printed thank you notes that are then mailed to clients.

Felt offers a wide variety of designs to match the message you want to send. You write your personal message on your phone or tablet screen using your finger or a stylus. For even greater impact, Felt offers custom envelope designs. Its toolkit enables you to customize colors and fonts. Felt can even help you tighten up your writing.

POCKET: INSTANTLY SAVE CONTENT

You need to stay informed about the real estate industry and keep tabs on your local market. You come across new stories and videos that pique your interests all the time as well as social posts that jar an idea you want to revisit later. But you are too busy closing transactions to take the time to stop, read, review and file everything that catches your eye.

Pocket lets you save anything you see online: articles, videos, Twitter posts. Then you can look at them offline on your own time without being distracted. It's a great way to curate ideas that might help you craft a blog or social media post, an article for your client newsletter, or a personal email to clients who might enjoy seeing links to some of the content you discovered.

Downloading Pocket automatically synchronizes it to all your devices, allowing you to access the app and your saved content anywhere. Whenever you save an item to Pocket, it is added to your list. When you open the app, you'll access either the Article View or Web View, depending on the content that you added.

Pocket also keeps track of your interests based on the content you save and then personalizes recommendations. You are also able to save online content just by adding the pocket extension to your web browser.

CALENDLY: EASY SCHEDULING

If you don't have an assistant or someone helping you manage your meetings, you can save a lot of time using a calendar-scheduling app to automate your schedule. With over 5 million monthly users, Calendly is a popular app that's simple for anyone to use. With Calendly, you avoid the back-and-forth calls, emails or texts. It even has an option for teams.

Calendly is easy to set up, as it integrates the most popular web calendars, including Google, Outlook, Office 365 and iCloud, so you avoid double-booking. Calendly gives you control over how you set up your schedule, offering a plethora of features to customize your scheduling experience. Calendly features confirmation and reminder notifications, buffer time before or after events, scheduling notices, daily limits for meetings, and even time zone detection so your invitee's time zone availability lines up with yours.

Calendly is excellent for teams, as it allows every team member to set up their schedule with different event types that are offered. Metrics provide insight into how well you manage your time and helps you keep track of your productivity. Calendly also can be embedded into your website and connects with other apps you own, such as GoToMeeting, Zoom and Google Analytics.

This article is from the Tech Helpline.

BY **JOE MURRAY**
DIRECTOR OF POLITICAL
AND GOVERNMENTAL AFFAIRS
GOVERNMENT AFFAIRS

The WRA Endorses Two Candidates for the Wisconsin Court of Appeals

For over 20 years, the WRA has been involved with statewide elections for the Wisconsin Supreme Court. This year, the WRA expanded its involvement in judicial elections to include the critical appellate court races.

There are two strong reasons to be involved in these judicial elections. First, similar to cases decided by the Wisconsin Supreme Court, Wisconsin Court of Appeals decisions have statewide impacts. Published opinions are binding on all circuit courts and appeals courts throughout Wisconsin. Additionally, because any case can be automatically appealed, the appeals court decides many appeals — many of which involve issues impacting the real estate industry such as land use and zoning, contracts, legal title, foreclosure, financing and liability. Unless an appeals court opinion is reversed by the Wisconsin Supreme Court, these opinions are binding.

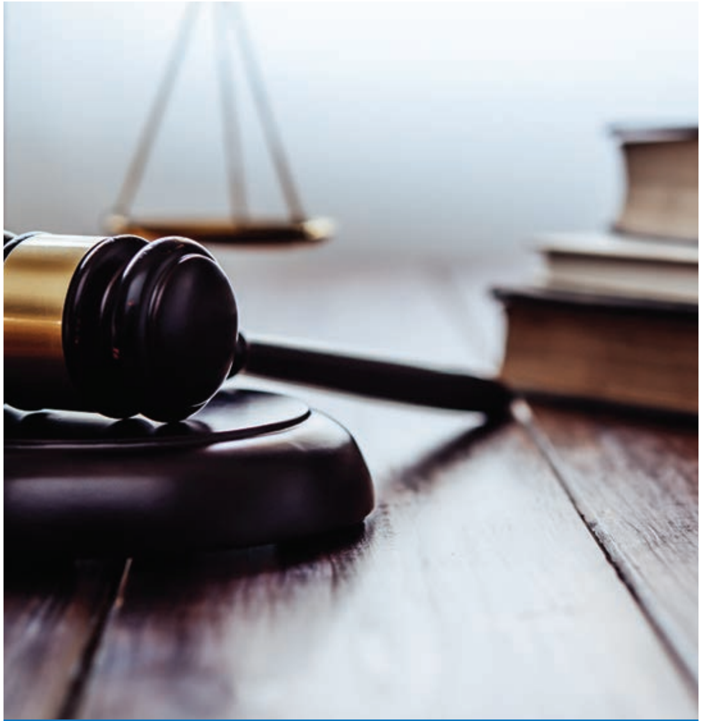
For the 2021 spring elections, the WRA has endorsed two highly qualified candidates: Judge Shelley Grogan in Court of Appeals District II, and Judge Gregory Gill in Court of Appeals District III. The WRA's Strategic Advocacy Group and the WRA leadership team interviewed all the candidates. After successful interviews, the WRA board of directors unanimously and enthusiastically endorsed Judge Grogan and Judge Gill.

GROGAN AND GILL RECEIVED THE WRA'S ENDORSEMENT FOR THREE REASONS

- Both candidates believe their job is to apply the law as directed by higher courts, the legislature and the constitution. That is, judges are to apply the law as it is — not as what they want it to be. Both candidates believe that the state and federal constitution should be strictly construed and share a conservative judicial philosophy.
- Both candidates support private property rights and illustrate a broad understanding of why this is so important. Judge Gill teaches real estate law at Fox Valley Technical College, and Judge Grogan has been working with and for judges committed to protecting private property rights for 25 years.
- Both candidates support the First Amendment's guarantee to the freedom of speech, including political speech. As an organization heavily involved in elections of all kinds, this is a critically important issue to the WRA.

We urge all members of the WRA who live in Court of Appeals Districts II and III to vote for Shelley Grogan and Gregory Gill for the Wisconsin Court of Appeals on April 6.

Joe Murray is Director of Political and Governmental Affairs for the WRA.



WHY IT MATTERS TO YOU

Any court case in Wisconsin can be automatically appealed and sent to the Wisconsin Court of Appeals. Thus, the appeals court decides many appeals — many of which involve issues impacting the real estate industry such as land use and zoning, contracts, legal title, foreclosure, financing and liability.

Wisconsin Court of Appeals District II

JUDGE SHELLEY GROGAN

- Municipal judge in Muskego
- Judicial assistant to Wisconsin Supreme Court Justice Rebecca Bradley
- Adjunct professor, Marquette Law School
- J.D., Marquette Law School

District II Jurisdiction

- District II headquartered in Waukesha
- Counties include Calumet, Fond du Lac, Green Lake, Kenosha, Manitowoc, Ozaukee, Racine, Sheboygan, Walworth, Washington, Waukesha and Winnebago

Wisconsin Court of Appeals District III

JUDGE GREGORY GILL

- Outagamie County Circuit Court Judge
- J.D., Marquette Law School

District III Jurisdiction

- District III headquartered in Wausau
- Counties include Ashland, Barron, Bayfield, Brown, Buffalo, Burnett, Chippewa, Door, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Kewaunee, Langlade, Lincoln, Marathon, Marinette, Menominee, Oconto, Oneida, Outagamie, Pepin, Pierce, Polk, Price, Rusk, Sawyer, Shawano, St. Croix, Taylor, Trempealeau, Vilas and Washburn

WRA Legislation is on the Move

In 2020, the COVID-19 pandemic upended much of daily life, including the legislative process in Wisconsin. During the last legislative session, three pieces of important WRA legislation did not reach the Wisconsin Senate floor due to the pandemic. With the current 2021-22 legislative session now underway, all three bills are now making their way through the legislative process.

LEGISLATION AT STAKE

AB 37/SB 46: Restore the Right to Place a Pier of Flowages
This bill clarifies the right to place a pier on "man-made" waterways and flowages. The bill creates a presumption of riparian rights, including the placement of a pier on all waterfront property, including "man-made" waterways and flowages.

AB 57/SB 74: Improve Home Inspection Reports
One of the biggest disputes between buyers and sellers in a real estate transaction is whether a condition of the property constitutes a "defect." This legislation requires new registrants to complete a 40-hour course before taking the exam, allows qualified reciprocal applicant home inspectors to obtain a registration, requires home inspectors to use the word "defect" in the inspection report when it meets the statutory definition, and requires a summary page to be included in the report.

AB 65/SB 73: Modify Disclosure Reports
AB 65 makes modifications to Chap. 709 including returning earnest money after exercising the right to rescind, any seller condition report with strike-throughs and no responses to questions is deemed incomplete, clarification as to disclosures pertains to private not public rights of way, and a new FIRPTA question is added.

Status
All three bills have been introduced and received a committee hearing. Once these bills pass through committee, they will then be scheduled for floor action in both houses of the legislature.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ADVOCATE.
PROTECT.
IT'S YOUR STORY. TELL IT.
"The state of Wisconsin needs to position itself as a leader in broadband deployment."
- Jeff Hoffman, REALTOR®
RGD 21
REALTOR & GOVERNMENT DAY
APRIL 14, 2021 | 1:00-3:00 P.M. | VIRTUAL EVENT

The Tax Man Cometh. Are You Ready?

Tax season is approaching quickly, so it's time to gather your receipts and the necessary paperwork. And using an expense-tracking app makes your life less stressful when it comes time to file.

The expense tracking app from Taxbot includes the following features that you are eligible to receive as a WRA member:

Mileage tracking: Track your mileage with the Taxbot-integrated GPS system on your smartphone. No more mileage logs or clipboards!

Photo receipts: Take pictures of your receipts using your smartphone. Taxbot also requests the appropriate information for your expenses so you can be tax-compliant for all your business deductions.

Cloud storage: All your records, including receipts, are stored in the cloud so you don't have to worry about shoeboxes of receipts anymore.

Bank/credit card integration: Taxbot will search for deductions you might be missing.

Training library: You'll receive access to the Taxbot training library with short videos that can teach you strategies for lowering your taxes by thousands of dollars a year.

Check your inbox for the WRA Education Update email, which will highlight information about upcoming Taxbot webinars on advice and tips to help you get the most out of your potential refund. View complete details about Taxbot at www.wra.org/taxbot.

This is a contributing article from Taxbot, a WRA partner.

WRA EXCLUSIVE PARTNERS

Save on products and services with the WRA's exclusive benefit partners.

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Energize your wardrobe with custom apparel.
www.wra.org/LandsEndBusiness

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Resources for your real estate marketing.
www.wra.org/PaperlessAgent

PEARL INSURANCE
Insurance designed for the real estate industry.
www.pearlinsurance.com

REALTYZAM CRM
Simple CRM for your business.
www.realtyzamcrm.com/WRA

SPECTRUM INSURANCE
Save on insurance premiums.
www.wra.org/spectrum

TAXBOT
Bulletproof your records against audits.
www.wra.org/taxbot

Learn more about these exclusive partners:
www.wra.org/ExclusivePartners

WRA MEMBERSHIP BENEFITS

The WRA offers products and services to give you a competitive edge.

INMAN SELECT SUBSCRIPTION
Get the latest real estate news, award-winning commentary, special reports and more.
www.wra.org/InmanSelect

WRA LEGAL HOTLINE
Discuss your real estate practice questions with a real estate attorney.
www.wra.org/LegalHotline

WRA 360
Explore cutting-edge topics in this professional development video series.
www.wra.org/WRA360

Learn more about all WRA member benefits:
www.wra.org/MemberBenefits

Forms Don't Have to Be Frustrating

WRA training series cuts the contract confusion

If drafting errors or contract issues delay your transactions, the WRA's Line by Line online video series has the insight you need to get things back on track. Line by Line episodes provide a detailed breakdown of each form so you can enhance your understanding of your contracts. With Line by Line, you'll be prepared to draft your real estate forms with confidence and reach that closing table quickly!

AVAILABLE FORMS

Line by Line training examines the following forms:

- WB-1 Residential Listing Contract
- WB-36 Buyer Agency/Tenant Representation Agreement
- WB-4 Residential Condominium Listing Contract
- WB-11 Residential Offer to Purchase
- WB-14 Condominium Offer to Purchase
- WB-28 Cooperative Agreement
- WB-3 Vacant Land Listing Contract
- WB-13 Vacant Land Offer to Purchase
- WB-5 Commercial Listing Contract
- WB-38 and WB-47 Buyer Agency/Tenant Forms
- WB-15 Commercial Offer to Purchase
- WB-37 Residential Listing Contract – Exclusive Right to Rent
- WB-24 Option to Purchase
- WB-2 Farm Listing Contract and WB-42 Amendment to Listing
- WB-12 Farm Offer to Purchase
- WB-6 Business Listing Contract – Exclusive Right to Sell
- WB-16 Offer to Purchase – Business with Real Estate Interest
- WB-17 Offer to Purchase – Business Without Real Estate Interest
- WB-36 Simultaneous Exchange Agreement

ALL VIDEOS, ONE PRICE

Gain access to the entire Line by Line video series for one easy price! For $89.99 plus tax, you can access all Line by Line episodes for a full year with unlimited views. Watch any episode as many times as you need.

COMPANY SUBSCRIPTION

Brokers, owners and managers: Take advantage of the WRA's Line by Line company subscription and give your agents access to all Line by Line episodes. Call the WRA for company subscription pricing.

SALES PRE-LICENSE TRAINING

Blended training: July 12-16, 19-21, 2021

9:00 a.m. - 1:00 p.m. each day

Are you looking for new licensees for your team? Your recruits can gain the knowledge they need for a real estate career with the WRA's sales pre-license blended training. This format combines the best of both worlds: livestreamed instruction with online education. This course includes eight livestreamed training sessions in July as well as online course activities for a flexible and interactive education experience.

Register: **WWW.WRA.ORG/SPLBLENDED**

POWER UP YOUR PRICING

PSA certification course: April 1-2, 2021

8:30 a.m. - 12:00 p.m. each day

Take the guesswork out of pricing by taking a deep dive into pricing strategy with the "Pricing Strategies: Mastering the CMA" course in April. You'll enhance your understanding of pricing and comparative market analyses (CMAs) across the board so you'll be able to guide clients through the CMA to ultimately list and sell properties at the appropriate price.

Register: **WWW.WRA.ORG/PSA**

GET IN THE "VACATION" GAME

RSPS certification course: April 22-23, 2021

8:30 a.m. - 12:00 p.m. each day

Over a third of all home sales are either vacation or investment properties. The resort and second-home market is filled with opportunities for REALTORS®, and the Resort & Second Home Property Specialist (RSPS) certification can prepare you to service the growing resort and second-home market. Earn your RSPS with the RSPS virtual training in April!

Register: **WWW.WRA.ORG/RSPS**

QUICK START ON DEMAND

Get your business on the right track

Quick Start On Demand provides you cutting-edge real estate training at your fingertips, no matter your level of experience. For new agents, Quick Start serves as a prime career-launching resource. For veteran agents, Quick Start serves as a fantastic refresher of the fundamentals.

This four-course series dives into topics like business budgeting, client communications, disclosure requirements and much more.

Register: **WWW.WRA.ORG/QUICKSTART**

TRAINING PRODUCT	TRAINING FORMAT	DETAILS & REGISTRATION
PRE-LICENSE TRAINING		
ONGOING ONLINE TRAINING		
Appraisal Pre-license Course	On Demand	www.wra.org/APL
Broker Pre-license Course	On Demand	www.wra.org/BPL
Sales Pre-license Course	On Demand	www.wra.org/SPL
SCHEDULED TRAINING		
Sales Pre-exam Review Webinar: Apr. 9, 2021	Virtual webinar	www.wra.org/SPLwebinar
Sales Pre-exam Review Webinar: May 7, 2021	Virtual webinar	www.wra.org/SPLwebinar
Sales Pre-license Course: Jul. 12-16; 19-21, 2021	Blended (virtual sessions and online activities)	www.wra.org/SPLBlended
PROFESSIONAL DEVELOPMENT		
ONGOING ONLINE TRAINING		
GRI On Demand	On Demand	www.wra.org/GRI
Line by Line Forms Training	Online Video Series	www.wra.org/LinebyLine
Quick Start	On Demand	www.wra.org/QuickStart
SCHEDULED TRAINING		
PSA certification course: Apr. 1-2, 2021	Virtual	www.wra.org/PSA
RSPS certification course: Apr. 22-23, 2021	Virtual	www.wra.org/RSPS
APPRAISAL CONTINUING EDUCATION		
SCHEDULED TRAINING		
Inconsistencies in Appraisals and Reports: Mar. 24-25, 2021	Virtual	www.wra.org/AppraisalCE
REAL ESTATE CONTINUING EDUCATION		
SCHEDULED TRAINING		
Course 1: March 23, 2021	Virtual	www.wra.org/VirtualCE
Course 2: March 23, 2021	Virtual	www.wra.org/VirtualCE
Course 3: April 13, 2021	Virtual	www.wra.org/VirtualCE
Course 4: April 13, 2021	Virtual	www.wra.org/VirtualCE
Course 5: April 20, 2021	Virtual	www.wra.org/VirtualCE
Course 6: April 20, 2021	Virtual	www.wra.org/VirtualCE

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Wisconsin real estate legal discussion

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EP. 10: "Form Revisions on the Horizon"

EP. 9: "New Professional Standards and MLS Policy Changes"

EP. 8: "Landlords Beware"

EP. 7: "Cursory Overview of Changes to the WB-11 and WB-14"

Watch: www.wra.org/LegalUpdateLive

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Real estate advocacy podcast

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EP. 20: "The Good, the Bad and the Drugly"

EP. 19: "Shoreland Zoning, Beached"

EP. 18: "'Piering' into the Future"

EP. 17: "Rep. John Jagler to the Rescue"

Listen: www.wra.org/CapitolInsights

WRA 360

New professional development series

Watch: www.wra.org/WRA360

HOUSING REPORT

Monthly analysis in Wisconsin housing

Watch: www.wra.org/HousingVideo


Definitely a front porch with a swing...
#homeownershipgoals
The WHEDA Advantage loan has everything your home buyers need to achieve their home ownership goals. Visit www.wheda.com to learn how.
Certain program restrictions and eligibility requirements apply.
WHEDA
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