May 2022 Vol. 38, No. 7

WISCONSIN REAL ESTATE MAGAZINE

INSIDE this Issue:

- Competitive Market Tips
- New Access Easement Law
- As-is Transactions

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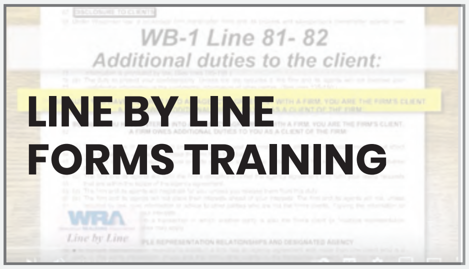

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TABLE OF CONTENTS

MAY 2022 | Vol. 38, No. 7

HOUSING RECAP

RISING PRICES AND HIGHER MORTGAGE RATES REDUCED AFFORDABILITY IN MARCH 2022

BY DAVE CLARK

PROFESSOR OF ECONOMICS AT MARQUETTE UNIVERSITY AND PRINCIPAL AT ECON ANALYTICS, LLC

- Low inventories drove up prices in March and limited sales.
- Sales in the first quarter of 2022 were down relative to the first quarter of 2021.
- The median price rose 9.6% in March 2022 vs. March 2021.
- Housing inventories tightened in every region of the state.
- The Wisconsin existing home market continues to be a strong seller's market.

See the full report: **www.wra.org/HSRMar2022**

David Clark, Ph.D., is a professor of economics at Marquette University and principal at ECON Analytics, LLC, and serves as a consultant to 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.

MARCH HOUSING

5,641
CLOSED SALES MAR 2022
-7.0%
FROM MAR 2021

$253,500
MEDIAN PRICE MAR 2022
+10.2%
FROM MAR 2021

ACTIVE LISTINGS BY PRICE

PRICE RANGE	NUMBER OF LISTINGS
$0-$124,999	1,736
$125,000-$199,999	3,180
$200,000-$349,999	4,884
$350,000-$499,999	3,126
$500,000 & higher	2,724

15,650
TOTAL STATEWIDE LISTINGS MAR 2022

16.2%
FROM MAR 2021

MEDIAN PRICES BY REGION

CENTRAL	$188,750
NORTH	$221,000
NORTHEAST	$220,000
SOUTH CENTRAL	$317,000
SOUTHEAST	$250,832
WEST	$265,000

AVERAGE DAYS ON MARKET

79 DAYS MAR 2022
COMPARED WITH
89 DAYS MAR 2021

MONTHS OF INVENTORY

2.1 MAR 2022
2.5 MAR 2021

HOUSING STATISTICS MONTHLY ACTIVITY

Statewide	March 2022	March 2021	% Change	YTD 2022	YTD 2021	% Change
New Listings	7,507	8,821	-14.9%	N/A	N/A	N/A
Total Listings	15,650	18,683	-16.2%	N/A	N/A	N/A
Closed Sales*	5,641	6,068	-7.0%	14,689	15,358	-4.4%
Median Sales Price	$253,500	$230,000	+10.2%	$240,000	$219,000	+9.6%
Months of Inventory	2.1	2.5	-16.0%	N/A	N/A	N/A
Avg. Days on Market	79	89	-11.2%	N/A	N/A	N/A
Affordability Index	161	200	-19.5%	N/A	N/A	N/A

	Median Price			Closed Sales		
Region	March 2022	March 2021	% Change	March 2022	March 2021	% Change
Central	$188,750	$179,900	+4.9%	330	355	-7.0%
North	$221,000	$185,000	+19.5%	416	555	-25.0%
Northeast	$220,000	$203,975	+7.9%	989	1,091	-9.3%
South Central	$317,000	$285,000	+11.2%	1,164	1,197	-2.8%
Southeast	$250,832	$235,000	+6.7%	2,285	2,338	-2.3%
West	$265,000	$219,950	+20.5%	457	532	-14.1%

*Report criteria: Reflecting data through March 2022. *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

WRA HOLIDAY HOURS

The WRA and the WRA Legal Hotline will both be closed on Monday, May 30 in observance of Memorial Day. Normal business hours for the association and the hotline will resume at 8:30 a.m. CDT on Tuesday, May 31. Have a safe and happy holiday weekend!

BE A NATIONAL LEADER IN 2023

The National Association of REALTORS® (NAR) recently adopted a new governance structure that establishes the composition of its board of directors, executive committee, regional vice presidents and leadership team. Under the new structure, states will be allocated a specific number of NAR directors to represent the state association and larger local boards.

The WRA is seeking members interested in serving as NAR directors representing medium and small boards for a one- or two-year term beginning in January 2023.

See full details about the new governance structure on the next page. To apply online, visit **www.wra.org/NationalLeader2023**.

FREE LINE BY LINE TRAINING

The most in-depth Wisconsin real estate forms training is now free for WRA members.
Previously a subscription-based series, Line by Line is now available for free as part of WRA membership* and gives all members equal access to the best Wisconsin-based real estate forms training on the market.

Get strated: www.wra.org/linebyline

* This video series is free for WRA REALTOR® members and legal section members

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Publisher: Michael Theo
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Managing Editor: Robert Uhrina

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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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BE A NATIONAL LEADER IN 2023

The National Association of REALTORS® (NAR) recently adopted a new governance structure that establishes the composition of its board of directors, executive committee, regional vice presidents and leadership team. In addition to changes in structure, new requirements and qualifications have been added for state and local association representatives on the NAR board.

Under the new system, states will be allocated a specific number of NAR directors to represent the state association and larger local boards. In addition, the WRA must appoint two new NAR directors:

- One director representing medium size boards (with 500 to 1,999 members)
- One director representing small boards (with 1 to 499 members)

As a point of reference, below is a listing of the small and medium local associations in Wisconsin as of December 31, 2021.

SMALL LOCAL BOARD/ASSOCIATION (1 to 499 members)	MEDIUM LOCAL BOARD/ASSOCIATION (500 to 1,999 members)
Door County Board of REALTORS®	Central Wisconsin Board of REALTORS®
Jefferson County Board of REALTORS®	Commercial Association of REALTORS® Wisconsin
Individuals	Lakes Area REALTORS® Association
La Crosse Area REALTORS® Association	Lakeshore REALTORS® Association
Lake Superior Area REALTORS® Association	REALTORS® Association of Northwestern Wisconsin
Manitowoc Board of REALTORS®	Southshore REALTORS® Association
Marinette Board of REALTORS®	Western Wisconsin REALTORS® Association
Northwoods Association of REALTORS®	
Rock-Green REALTORS® Association	

CALL FOR VOLUNTEERS

The WRA is now seeking members interested in serving as NAR directors representing medium and small boards.
This process includes:

- Certifying board size: NAR will certify the membership count in all boards as of July 31, 2022.
- Applications: Members interested in serving in these posts must complete the online application and return it to Sandy Bolgrihn at **sandyb@wra.org** by August 15, 2022.
- Terms: Those members selected will begin serving a one- or two-year term beginning in January 2023.

REMINDER FOR WRA SERVICE

As a reminder, you will also need to apply for a NAR committee for service beginning in 2023.
Apply online at **www.wra.org/NARcommittee**.

WHO DO YOU SEE?
a friend? a professor? a homeowner?
Implicit bias: associating a stereotype unconsciously.
Combat implicit bias in real estate: wra.org/ImplicitBias

THIS COMPETITIVE MARKET: TIPS AND TRENDS

BY JENNIFER LINDSLEY
WRA STAFF ATTORNEY AND DIRECTOR OF TRAINING

As the market remains competitive, both listing agents and buyer agents are trying to navigate it in a way that is most beneficial to their respective parties. Some of the emerging agent practices are clever ways to advance a party's interest and would be considered appropriate, while other trends are potential violations of license law to be avoided.

DISCLOSING OFFER TERMS

An agent drafted an offer for a buyer on a property listed with a firm. There were several offers, and the seller rejected the buyer's offer. The listing agent sent out a communication to the agents who submitted offers that were rejected. The listing agent provided a summary of the offers that the seller received.

Summary of offers

- 18 offers were received
- 18 were over the list price of $285,000
- 4 were cash offers
- 15 waived the Inspection Contingency
- 6 had partial appraisal gap coverage
- 6 waived the Appraisal Contingency
- 3 had escalation clauses

Further, the listing agent invited the buyers with rejected offers to counter their own offers as secondary.

Listing agents are permitted but not required to disclose the existence of other offers. A seller, of course, can restrict an agent from disclosing the existence of other offers. If a seller has not restricted such disclosure, the listing agent can further disclose that the offers are subject to contingencies, or the existence of a bump clause. The listing agent should not have disclosed that offers were over list price, offers were cash, or the specific nature of contingencies either included or waived. Similarly, the listing agent should not have disclosed specific terms such as including appraisal gap coverage and escalation clauses.

The Wisconsin Administrative Code and the REALTOR® Code of Ethics regulate the sharing of information about pending offers on a property. Wis. Admin. Code § REEB 24.12(1) states, in relevant part, "A licensee may, but is not required to, disclose information known by the licensee regarding the existence of other offers on the property, the fact that a seller has accepted another offer, that the offer is subject to contingencies and that the offer is subject to a clause requiring removal of certain contingencies upon the occurrence of an event such as receipt, acceptance or conditional acceptance of another offer." Therefore, unless the seller has required the agent to keep any information about offers on the property confidential, the agent may disclose the existence of other offers.

Standard of Practice 1-15 provides, "REALTORS®, in response to inquiries from buyers or cooperating agents shall, with the sellers' approval, divulge the existence of offers on the property. Where disclosure is authorized, REALTORS® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. (Adopted 1/03, Amended 1/09)" Therefore, with the seller's approval and prior to the acceptance of an offer to purchase, the agent shall disclose information about other offers. If, however, the seller directs the agent not to disclose, the agent may document this fact and follow the instructions of the seller.

Standard of Practice 3-6 provides that REALTORS® must disclose the existence of accepted offers to agents seeking cooperation. Therefore, unless the seller has indicated that this information is confidential per Wis. Stat. § 452.133(1)(d), the agent would disclose accepted offers. Any confidentiality directive should be in writing in the listing contract, or an addendum or amendment thereto, or on a copy of an agency disclosure form.

In summary, REALTORS® must disclose the existence of other submitted offers if asked and if the seller has authorized the disclosure of this information. When a property is listed, REALTORS® should discuss with sellers whether they want the existence of submitted offers disclosed to buyers. If they do, REALTORS® should obtain the seller's written authorization in the listing contract or an addendum or amendment thereto. The authorization may specify whether the disclosure is authorized only when the agent is asked, or whether the agent should volunteer the information. Absent a seller's directive ordering or prohibiting the listing agent's disclosure of the existence of submitted offers, REALTORS® still have the discretion to choose whether to disclose the existence of submitted offers per Wis. Admin. Code § REEB 24.12.

SELLER MAKING OFFERS CONTINGENT ON FINDING A PROPERTY

In this market, some sellers are reluctant to list a property for fear they will not be able to purchase another property due to competition and low inventory. As sellers are currently calling the shots in many transactions right now, a seller may have the luxury of convincing a buyer to agree to make the buyer's offer contingent on the seller finding a property. If the seller has already identified a property, the following clause or something similar could be countered into a buyer's offer and protect the seller from having to move forward if something happens with the seller's purchase.

Purchase of other property by seller

This Offer is contingent upon the closing of the purchase by Seller of the property located at ____________________ ____________________ on or before _________________. If Seller's purchase transaction does not close by the stated deadline, Seller may, at Seller's option, terminate this Offer by delivery of written notice of termination.

If the seller has an accepted offer on a property but would still like the protection of not having to move forward after accepting an offer from a buyer, the following clause could be countered into a buyer's offer.

Purchase of other property by seller: seller obligated to close on other property (alternate)

Seller's obligation to conclude this transaction is conditioned upon the closing of Seller's purchase of property located at ___________________________ ___________________________ for which Seller is now under contract. If, through no fault of Seller, Seller is unable to close on such property no later than ____________________, Seller may deliver written notice of termination and all earnest money shall be returned to Buyer. Seller may, prior to the above date, deliver written notice to Buyer waiving this provision.

The clauses cited above are from *Wisconsin Real Estate Clauses* (2019 Edition) and may be used in an offer to make the offer contingent on the seller purchasing another property. For more information about *Wisconsin Real Estate Clauses* (2019 Edition) and all the helpful pre-drafted clauses available therein, visit **www.wra.org/pub280**. It is also available electronically at **www.wra.org/Transactions**.

BUYERS BRINGING INSPECTORS THROUGH DURING A SHOWING

Agents have been reporting a recent trend of buyers bringing a home inspector to a showing of the property to offer comments about the property. A buyer bringing a home inspector, contractor or another adviser through a property during a showing is not prohibited unless the seller has provided written instruction otherwise.

Wis. Admin. Code § REEB 24.13(2) provides that, "Listing firms shall permit access to listed property for showing purposes, to all buyers and persons assisting or advising buyers, without unreasonable delay, unless the buyer's or other person's access is contrary to specific written instructions of the seller." Arguably a home inspector, contractor or another adviser would be "persons assisting or advising buyers," and therefore their presence is authorized unless the seller has provided written instructions to the contrary.

If a home inspector produced a document for the buyer reflecting the inspector's impressions gathered during a showing, that would not need to be shared with the seller unless it was an "official" home inspection report produced as a result of a contingency in an offer that was accepted or another bilateral agreement between the parties. The terms of the offer to purchase specify at lines 190-191 of the WB-11 Residential Offer to Purchase that the buyer "agrees to promptly provide copies of all inspection and testing reports to Seller."

There are some factors that a buyer should consider, though, if choosing to bring an inspector along for a showing. If the buyer later makes an offer that includes an inspection contingency, the buyer does not get to object to defects that the buyer already knew about regardless of how the buyer gained that knowledge. The terms of the offer to purchase specify at lines 210-211 that for purposes of the Inspection Contingency, defects "do not include structural, mechanical, or other conditions the nature and extent of which Buyer had actual knowledge or written notice before signing this Offer." A seller with surveillance equipment on the property could easily record discussions between the buyer and a home inspector during a showing and use those recordings to establish that a buyer did have actual knowledge of some or all the defects the buyer is objecting to after completing a home inspection as a step in the Inspection Contingency.

Now would be a good time to reiterate how important it is for a buyer to consider the benefits of including a home inspection in their offer to purchase and the risks associated with not having an inspection. Agents, of course, must draft contracts according to the instruction of the party; so, if a buyer is instructing an agent not to include an inspection contingency, the agent must draft accordingly. However, it is highly recommended that the agent take the opportunity to educate the buyer about the benefits of having an inspection and the risks of forgoing it. Understandably, buyers are getting creative to compete with other buyers, so one alternative to consider is for a buyer to draft an offer that gives the buyer an opportunity to have an inspection but does not make the offer contingent upon it. That way, the seller is assured that the buyer will not try to get out of the transaction based on the condition of the property, but the buyer will know what they need to know about the property and can begin planning to address any defects after closing.

Another alternative to forgoing an inspection entirely is to consider making the offer contingent on the inspection but setting some dollar limit under which a buyer will not object, or a category of defects to which the buyer will not object. For example, a buyer will only issue a notice of defects if the sum of needed repairs exceeds $X, and the buyer decides what $X is, based on the buyer's financial ability to absorb the cost to repair defects. Alternatively, the buyer could structure the offer where the buyer will only issue a notice of defects if defects are found in the electrical system or perhaps the heating, ventilation and air conditioning systems, but will address any other defects after the transaction closes. Presenting options such as these to the buyer will offer the buyer an alternative to the "all or nothing" treatment of the Inspection Contingency.

An agent working with a buyer who does not want to include an inspection contingency may also advise the buyer that some sellers may counter the buyer's offer to include an inspection contingency on the advice of the seller's attorney. The attorney may be advising the seller to do this to limit seller liability for conditions discovered after the transaction has closed. If the buyer had a home inspection and the home inspector did not discover a condition issue during the inspection that is discovered after the transaction has closed and the buyer sues the seller, the seller may be able to argue that the buyer ought to be able to rely on the inspector's report and not the seller's assessment of the property as represented in a Real Estate Condition Report.

If the agent's efforts to educate the buyer about the value of a home inspection do not persuade the buyer to have one, the agent is encouraged to have the buyer complete the WRA-BAR form, Buyer Acknowledgment of Risk When Not Having a Home Inspection, which is available in Transactions (zipForm Edition) as well as in the WRA PDF Forms Library for library subscribers. The form asks the buyer to affirmatively acknowledge that the buyer is making the decision not to have a home inspection against the advice of their agent. Additionally, the form includes a "hold harmless" provision so that if the buyer later regrets their decision not to have an inspection, the buyer may be less likely to try to sue the agent and the agent's firm for this decision.

"DEAR SELLER" LETTER IN SHOWING FEEDBACK

The discussion around the "Dear Seller" letters has been ongoing for some time now. In these letters, buyers often include information about the buyer or the buyer's family, career, hobbies and other bits of information to induce the seller to pick that buyer's offer over other buyers' offers. The big concern with these letters is the great potential for fair housing violations by the seller — and potentially the listing agent, depending on how the letters are used — if a seller chooses an offer on some bit of information related to the buyer's membership in a protected class such as religion, familial status, race or sexual orientation, for example.

Recently, agents have been noticing that instead of buyers including these "Dear Seller" letters with an offer or as an addendum to the offer, which has generally been discouraged by most listing firms and often the sellers themselves, buyers have been including comments in the showing feedback that offers up information about the buyer's membership in the protected classes, such as, "Loved the property. Can't wait to see my family in there," or "The lovely dining room is perfect for my family and me to celebrate our traditional Easter brunch." If a buyer is requesting to offer feedback such as the aforementioned, it should generally be discouraged as the risk for potential fair housing violations is high.

For more information about "Dear Seller" letters, visit **www.wra.org/DearSeller**.

What new trend will this competitive market reveal next? Who knows, but whatever it is, all of us at the WRA will do our best to let you know about it and whether it is a practice to be embraced or avoided.

WISCONSIN'S NEW ACCESS EASEMENT LAW

TOP 10 THINGS TO KNOW

BY CORI LAMONT
WRA SENIOR DIRECTOR OF LEGAL AND PUBLIC AFFAIRS

Property owners enjoy the use of easements in a variety of forms, including joint driveway access, the ability to cross over someone else's land to reach a private pier or access farm equipment, or gaining access to a business parking lot by utilizing the road of another. Most property owners have no idea their easement had — or has, depending on the circumstances — an expiration date.

IMAGINE THE FOLLOWING SCENARIO:

Parcel A and Parcel B are neighboring properties. Parcel A includes a single-family home and garage located on the lake. The only way to access Parcel A's property is by use of a driveway shared with Parcel B and primarily located on Parcel B. The driveway easement was created and recorded in 1979 when the land was split up to create Parcels A and B. The recorded easement provides it goes on in perpetuity.

The owners of Parcel A and B go along with no issue for 41 years. On September 1, 2020, Parcel B is sold "subject to easements and restrictions of record." There is document record referencing the driveway easement, but the easement itself was not re-recorded. The owner of Parcel B provided written disclosure as to the existence of the driveway easement in the transaction. The owner of Parcel A continues to use the driveway. However, the new owner of Parcel B has just learned about a law that provides if an easement or a reference to an easement is not re-recorded within 40 years, the easement is extinguished. The owner of Parcel B tells the owner of Parcel A they must pay $50,000 for the driveway access, and the owner of Parcel B will agree to a new easement to be recorded. Otherwise, the owner of Parcel B will deny the owner of Parcel A access via Parcel B.

The owner of Parcel A has an issue because the law, until recently, was behind the owner of Parcel B on this one.

Yes, you read that right.

Until recently, Wisconsin law provided that if an access easement or an instrument referencing the easement wasn't re-recorded at the register of deeds within 40 years of its creation, the easement would expire and become unenforceable; even if the original access easement agreement provides it goes forever.

You may be asking yourself; how did I not know about this? Don't worry, you are not alone. Most REALTORS®, attorneys and property owners had no idea about this law. This article will help provide you some background of the law and the current law.

HISTORY OF THE 40-YEAR LIMIT

Wis. Stat. § 893.33, an initiative backed by land title proponents, was originally created to help clean up title by eliminating old interests that create a cloud on title as a matter of law. The concept was to reduce confusion by statutorily causing easements to expire and thus eliminating them from the title to ensure there were no clouds on title; no abandoned easements that could someday impact future property owners.

Until July 1, 1980, the requirement to re-record was every 60 years. However, in the late 1970s, the Wisconsin Legislature changed the statute reducing the re-recording requirement from 60 years to 40 years. Essentially all easements created as of July 1, 1980, had to be re-recorded every 40 years. Otherwise, those easements would expire July 1, 2020.

Accordingly, in July 2020, property owners started to discover easements impacting their property or its use did not meet the statutory requirements of Wis. Stat. § 893.33, resulting in claims the easements were unenforceable.

Concerned about the lack of awareness by property owners about this 40-year statute of limitations and the substantial impact this law has on property rights, the WRA began its journey to have the law changed.

THE NEW LAW

On March 11, 2022, Gov. Tony Evers signed one of the WRA's legislative priorities addressing this very issue, creating 2021 Wis. Act 174, which can be found at **docs.legis.wisconsin.gov/2021/related/acts/174.pdf**. Prior to Act 174, Wisconsin law provided that if an access easement wasn't re-recorded at the register of deeds within the 40 years, the easement was extinguished and unenforceable, even if the original easement agreement provides it goes forever. The following are the top 10 things to know about the new law.

1. **The new law only applies to access easements.**
   Access easements are commonly executed on commercial, residential and agricultural parcels. Access easements often provide access to landlocked parcels, such as joint driveways, as well as offer access to parking lots, hunting land, water and farm equipment.

   Wisconsin law exempts certain interests from the 40-year statute of limitations, such as interests of utilities and railroads, political subdivisions and conservation easements. Act 174 only addresses private easement agreements.

2. **The law protects the freedom to contract.**
   It is against public policy to have a law automatically terminate a previously negotiated contract between two parties simply because the agreement was not re-recorded after 40 years. As with other contracts, state law should not override agreements between private parties. The presumption should be if the parties did not include a termination time frame in the access easement, then the easement continues in perpetuity.

3. **The new law applies only to recorded access easements.**
   This legislation only applies to easements recorded at the county register of deeds where the property is located. If the parties in a transaction state there is a verbal access easement agreement, they should be immediately directed to speak to legal counsel. REALTORS® should speak to their supervising broker as well.

4. **Access easements recorded on or after January 1, 1960, run in perpetuity.**
   Any easement that is recorded on or after January 1, 1960, no longer has any re-recording agreements.

5. **Access easements recorded on or before January 1, 1960, run in perpetuity if one of the following applies:**

   a) The easement was recorded before January 1, 1960, and a notice, an instrument or an instrument referring to the easement is recorded after January 1, 1960, and before the property is sold or transferred.

   b) The easement or express reference to the easement was recorded before January 1, 1960, and it is apparent from or can be proved from physical evidence of its use at such time a person acquired the property subject to the easement.

Agents should always encourage the parties to speak with their private legal counsel as to the existence or term of any easement, especially those recorded on or before January 1, 1960. This section of the law was created to provide certain steps for easements recorded on or before January 1, 1960, to ensure that random third parties do not pop in claiming rights to unused recorded easements 80 years later. Further, the 1960 time frame was selected to make sure title companies did not have to conduct title searches back to the original creation of the title.

6. **The terms of the access easement agreement control.**
   If the access easement agreement provides a specific termination date for the easement, the easement agreement

controls. The statute does not trump the agreement. Again, public policy supports the parties' right to contract freely.

7. **The legislation is retroactive for access easements.**
Unless the easement provides otherwise, an access easement recorded on or after January 1, 1960, goes on in perpetuity. See Wis. Stat. § 893.33(6m)1. Additionally, any access easement recorded on or after January 1, 1960, that meets the requirements of Wis. Stat. § 893.33(6m)2 and 3, also goes on in perpetuity. REALTORS® cannot provide legal advice and should have the parties confirm with their private legal counsel about the enforceability of the access easements.

8. **The legislation applies to current ligation.**
Act 174 may be asserted to any action, defense or counterclaim against pending litigation before March 13, 2022. Therefore, it is possible that current litigation will be impacted and, if the easement meets the requirements of Wis. Stat. § 893.33(6m), may be enforceable.

9. **The legislation does not impact any litigation resolved as of the bill's effective date.**
Act 174 does not modify any litigation that was resolved as of March 13, 2022.

10. **Effective date is March 13, 2022.**
Act 174 is effective as of March 13, 2022.

For more information about Act 174, see the April 2022 *Legal Update*, "Wisconsin's New Easement Law" at **www.wra.org/LU2204**

THE

BEST

OF THE LEGAL HOTLINE

BY TRACY RUCKA
WRA DIRECTOR OF PROFESSIONAL STANDARDS AND PRACTICES

AS IS EFFECTS ON THE REAL ESTATE TRANSACTION

The simple term “as is” can have great impact on a real estate transaction for both the parties and the agents involved. The following is general information about the seller’s duties to disclose, the possible implications of using an as-is clause in the offer, as well as a summary of an agent’s duty to inspect and disclose material adverse facts and information suggesting material adverse facts.

WHAT DOES "AS IS" REALLY MEAN?

It depends. If a seller states they want to sell as is, the listing agent can ask questions to determine what this specific seller is trying to accomplish. Frequent responses include the following:

- Seller does not want to make repairs or put any funds into the property.
- Seller thinks they are exempt from providing a Real Estate Condition Report (RECR), so they won't make representations.
- Seller is aware of defects in the property and thinks they can hide or conceal them.
- Seller thinks they won't get sued after closing if they sell as is.

These are all legitimate responses, but none capture the layers of legal analysis and implications of as-is sales. Therefore, it is prudent practice for licensees to refer parties to legal counsel when they have specific legal questions about a transaction.

Let's take a closer look at each of these possible seller reasons for selling as is.

REASON 1: THE SELLER HAS NO FUNDS TO MAKE REPAIRS

At the time of the listing, the seller may express their desire to sell the property in the current condition. They may want to minimize or eliminate making repairs or modifications to the property, either because they claim there are no funds to make repairs or in an attempt to maximize profits on the sale. However, at the time of the listing, no one has a crystal ball about what, if anything, a home inspection or test would identify as issues with the property. Likewise, depending on the potential buyer's financing, there may be underwriting standards that would necessitate repairs to the property prior to closing. The agent may communicate with cooperating agents about the seller's initial statements regarding hesitancy to make repairs but, until there is an amendment or a notice of defects provided to the seller, it is unknown what they will or will not do to complete a transaction.

REASON 2: THE SELLER THINKS THEY ARE EXEMPT FROM THE RECR

Is the seller really exempt from the RECR, or is the seller just choosing not to provide one?

The best tool for education and risk reduction is the WRA-SRR form, the Seller Refusal/Statement Regarding Condition or Disclosure Report document, found in Transactions (zipForm edition) as well as in the WRA PDF Forms Library for library subscribers. This form identifies the characteristics of sellers who are, per the statutes, exempt from completing a RECR. If the seller cannot check any of the boxes as an exempt seller, then the seller is not exempt. The seller may, upon advice of legal counsel, choose not to provide a RECR. In such an instance, the listing agent will have the seller check the "Seller Refusal to Complete" box and keep the document in the transaction file.

At the time of the listing, it may be helpful for the agent to suggest the seller review the offer to purchase and consult with counsel. The offer to purchase states the "Seller represents to Buyer that as of the date of acceptance Seller has no notice or knowledge of Conditions Affecting the Property or Transaction, other than those identified in the Seller's Real Estate Condition Report ..." Therefore, if the seller knows of defects or other conditions affecting the property and they do not provide a RECR or counter the offer, the seller will be making misrepresentations in the offer. The seller may, prior to receipt of offers, consult with counsel about how to counter or modify the property condition representations section in an attempt to minimize potential liability. Real estate licensees should avoid drafting such provisions as it would presumably cross over into the unlicensed practice of law.

REASON 3: THE SELLER KNOWS THE PROPERTY CONDITION

Property flippers are exempt from the RECR, right?

No. This is an urban legend. Again, review the WRA Seller Refusal form for a list of sellers who are exempt from providing a RECR.

REASON 4: THE SELLER WANTS TO AVOID LITIGATION

The seller won't get sued, right?

As the old saying goes, anyone can sue anyone for anything. Some sellers mistakenly have the false perception that selling as is is a bulletproof vest to avoid future litigation, but this is false. The provisions may put the buyer on notice to inspect or raise questions about the property condition, but it is not a bar to later litigation and, as mentioned above, if it is proven the seller knew of defects and did not disclose and the buyer relied on the seller's representations, the buyer has the likelihood of successful misrepresentation claims.

What if the seller does not know the condition of the property?

The agent may refer the seller to the RECR, which states the seller will disclose defects of which the buyer is aware. "Aware" means to have notice or knowledge. If the seller legitimately does not know about any defects in the property, they can honestly answer "no" on the RECR. Often non-owner occupants or landlords will try to claim they know of no defects. This may be hard to defend when the tenants provide emails and correspondence about all the maintenance and repair requests about the property, which would fall into the definition of defect.

If a seller mentions an as-is sale, does the listing agent still have to inspect?

Yes. In all transactions, the agent has a duty to inspect the property prior to listing it and to ask the seller for a written statement of property condition, generally a RECR. If the seller refuses to complete a RECR, the licensee is still required to inspect and make disclosures of material adverse facts and information suggesting material adverse facts.

Do licensees have to make disclosures of material adverse facts if a property is being sold as is?

Yes. Once the seller provides a RECR, the licensee compares their observations and knowledge with the RECR. If there are inconsistencies or the licensee thinks the seller's disclosures are incomplete or inaccurate, the licensee would make timely written disclosure of material adverse facts, as appropriate. This applies in all transactions; the term as is does not relieve the licensees of their inspection duties or disclosure duties.

From the licensee's standpoint, Wis. Admin. Code § REEB 24.07 requires that licensees perform reasonably competent and diligent property inspections and disclose material facts and potential adverse facts to the parties in writing. This is not excused or waived in as-is sales. In fact, when the buyer is purchasing as is, it is very important for the buyer to know the condition of the property. Generally, the buyer has expert inspections of the property as a condition of the offer to purchase, but this does not excuse the licensee from the duty to assure that all known material defects are disclosed in writing to the buyer.

OFFER DRAFTING

The buyer's offer has full inspection contingencies. The seller's counter-offer states the property is being sold as is. The seller provided a RECR. Does this take away the buyer's option to back out of the sale if the inspections show a major defect that was not disclosed on the RECR?

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. Consequently, the buyer may include testing and inspection contingencies in the offer. The inclusion of the term as is does not preclude the buyer from conducting testing and inspections per the contract. The parties will work through each of the inspection and testing contingencies on their merits.

In summary, when a seller says, "as is," determine why they have chosen to sell as is. Address that underlying issue on its merits and refer all parties to legal counsel as appropriate.

Learn more about as-is transactions

- "Uncovering the Truth: As-is Transactions" in the June 2011 *Wisconsin Real Estate Magazine*: **www.wra.org/WREM/Jun11/AsIsTransactions**
- "'As-is' Does Not Mean Act as if You are the Exception to the Rule" in the March 2015 *Wisconsin Real Estate Magazine*: **www.wra.org/WREM/Mar15/AsIs**
- "Should the Seller Disclose?" in the June 2012 *Wisconsin Real Estate Magazine*: **www.wra.org/WREM/Jun12/SellerDisclosure**
- "Seller Liable for Damages in As-is Sale" in the February 2016 *Wisconsin Real Estate Magazine*: **www.wra.org/WREM/Feb16/As-is**

LEGAL RESOURCES

THE LATEST UPDATES AND RESOURCES ABOUT WISCONSIN REAL ESTATE LAW FROM THE WRA

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Search the Q&As (WRA login required):
www.wra.org/LegalHottips

LEGAL UPDATES

Included with WRA membership is access to the WRA's *Legal Update* publication, the legal publication of the WRA.

April 2022: "Wisconsin's New Access Easement Law"
This *Legal Update* issue focuses on access easements — the ability to use another's land to allow access for a specific purpose — and Wisconsin's new access easement law.

See the recent issue (WRA login required):
www.wra.org/LegalUpdates

PROFESSIONAL POINTERS

The Professional Pointers series offers you a regular boost of professionalism. The pointers explore topics like the ethical duties to cooperate, confidentiality, managing expectations and more.

See the pointers: **www.wra.org/ProfessionalPointers**

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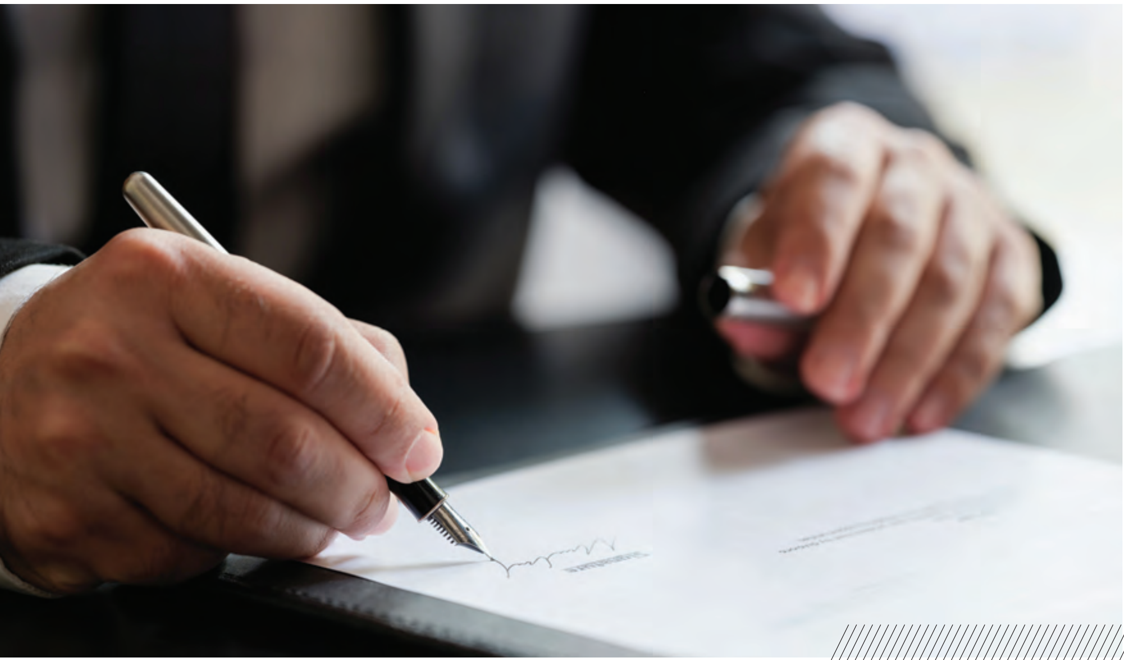
LEGISLATIVE ALERT

FORECLOSURE EQUITY BILL SIGNED INTO LAW



BY JOE MURRAY
WRA DIRECTOR OF POLITICAL AND GOVERNMENTAL AFFAIRS

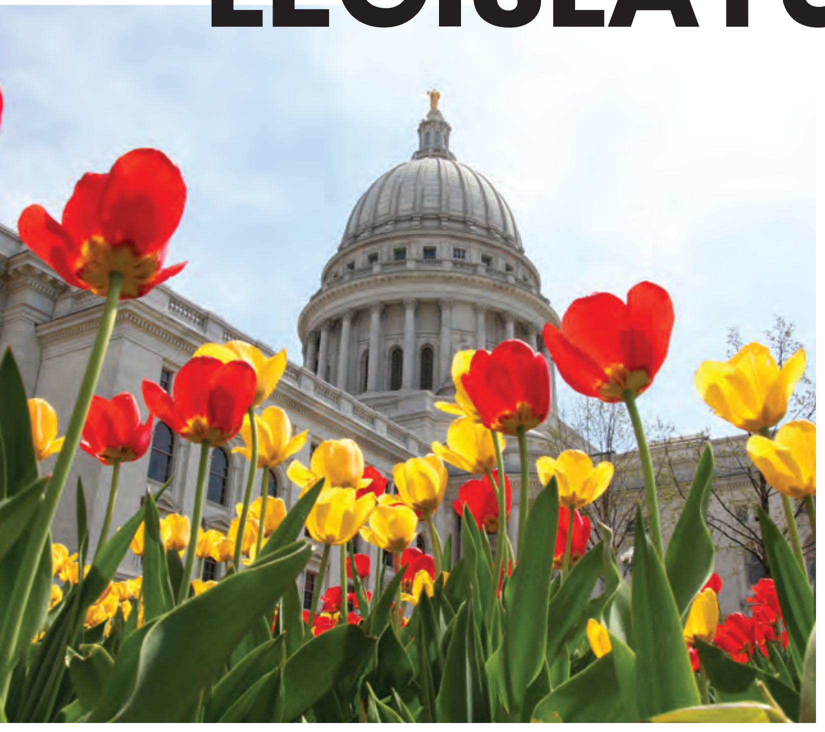
In late March, Gov. Tony Evers signed Wis. Act 216 — the foreclosure equity bill and one of the WRA's legislative priorities — into law. The new law requires counties to pay any net proceeds in a property tax foreclosure sale to the former owner of the property.

Passage of the new law was a matter of fairness and was important because:

- Prior to the passage of Act 216, counties could keep any net proceeds — even after all penalties, interest and selling costs were paid — unless the property was the former owner's homestead.
- Wisconsin was one of only 12 states that allowed foreclosure equity theft.
- Foreclosure equity theft was an unconstitutional taking. Under the Fifth Amendment to the U.S. Constitution, the government is prohibited from taking property for a public purpose without just compensation.
- Keeping the equity in an owner's property made such financial hardships even worse and prevented the owner from making a financial recovery.

Wis. Act 216 passed both houses of the Wisconsin Legislature on unanimous votes and was signed into law on March 30, 2022.

TURNOVER BRINGS CHANGE TO THE LEGISLATURE IN 2023



BY JOE MURRAY
WRA DIRECTOR OF POLITICAL AND GOVERNMENTAL AFFAIRS

When the Wisconsin Legislature gavels back into session in January 2023, there will be many new faces in both houses. With six of 33 senators and 22 of 99 state representatives retiring or running for higher office, there will be a lot of change in the state Assembly and Senate next year.

In addition to the large number of open seats this year, there has already been significant change in leadership for Democrats in the Assembly and pending leadership changes in the Senate. In January, Democratic Leader Gordon Hintz, 49, stepped down as minority leader, and Greta Neubauer, 30, of Racine was elected as the new leader of the Assembly Democratic Caucus. The average age of former leader Hintz's leadership team was 48; the average age for Neubauer's leadership team is 26.

That same generational change in leadership is likely coming next January in the state Senate. Current Democrat leader Janet Bewley, 70, and assistant leader Janis Ringhand, 72, are not running for reelection, and new leaders will be selected by their caucus after the November elections. The new leaders will likely be significantly younger.

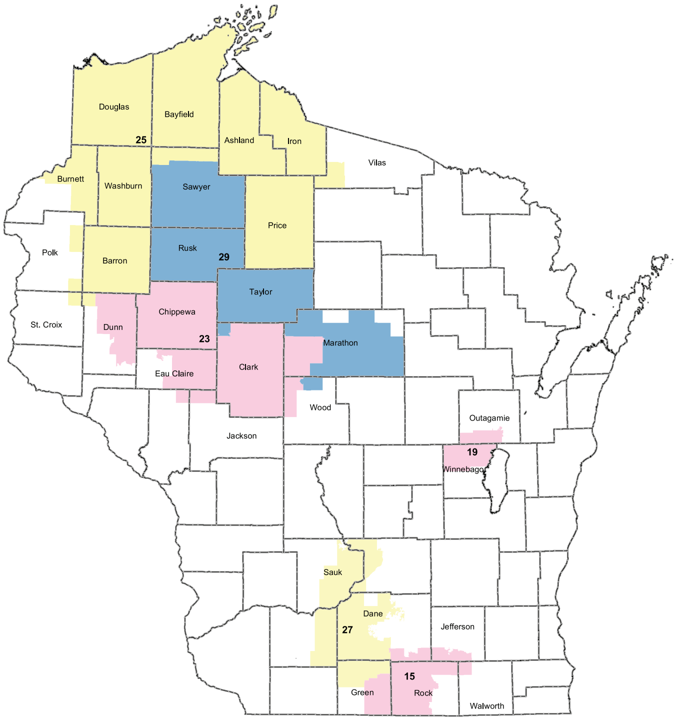
The large number of retirements this year will also bring changes for Republicans. There are a total of 28 open seats this fall, and 16 are in GOP legislative districts. This kind of change is inevitable and will likely bring new priorities and new ideas to both chambers.

In addition to the record number of retirements and leadership changes, candidates will be running in newly drawn legislative districts. Every 10 years, the legislature is required to redraw districts to account for population shifts. The new lines could generate change in ways that may be significant. Only time will tell.

The political bottom line is simple: retirements, new district lines and members pursuing higher office could have a dramatic impact on the next legislative session in 2023-24. With lots of new members and new leadership on the Democratic side in both houses, the next session of the Wisconsin Legislature could look and feel dramatically different than the last 10 years. Here's a quick look at which legislators are leaving and where their districts are located in Wisconsin.

WI STATE SENATE

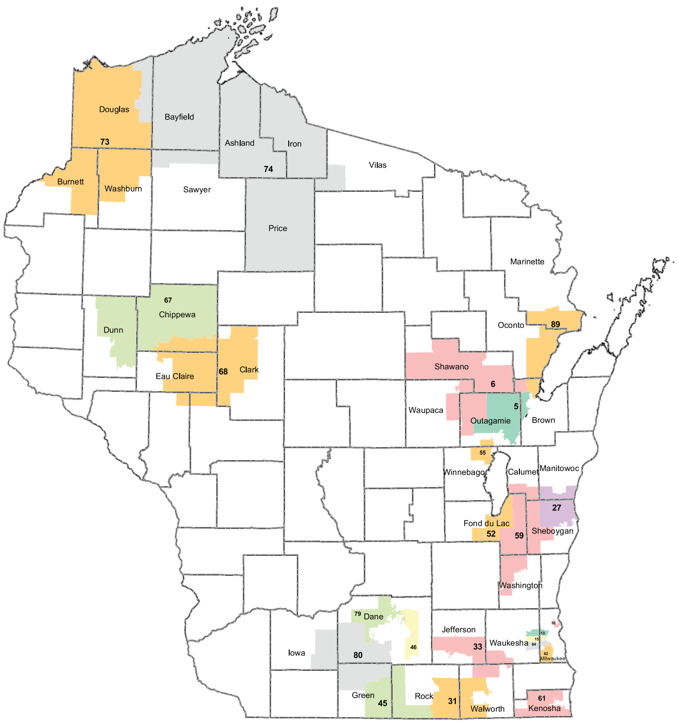
2022 District Map



- District 15: Janis Ringhand (D)
- District 19: Roger Roth (R)
- District 23: Kathy Bernier (R)
- District 25: Janet Bewley (D)
- District 27: Jon Erpenbach (D)
- District 29: Jerry Petrowski (R)

WI STATE ASSEMBLY

2022 District Map



- District 5: Jim Steineke (R)
- District 6: Gary Tauchen (R)
- District 10: David Bowen (D)
- District 13: Sara Rodriguez (D)
- District 15: Joe Sanfelippo (R)
- District 27: Tyler Vorpagel (R)
- District 31: Amy Loudenbeck (R)
- District 33: Cody Horlacher (R)
- District 45: Mark Spreitzer (D)
- District 46: Gary Hebl (D)
- District 52: Jeremy Thiesfeldt (R)
- District 54: Gordon Hintz (D)
- District 55: Rachael Cabral-Guevara (R)
- District 59: Tim Ramthun (R)
- District 61: Samantha Kerkman (R)
- District 68: Jesse James (R)
- District 73: Nick Milroy (D)
- District 74: Beth Meyers (D)
- District 79: Dianne Hesselbein (D)
- District 80: Sondy Pope (D)
- District 82: Ken Skowronski (R)
- District 84: Mike Kuglitsch (R)

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TRANSACTIONS (ZIPFORM EDITION)

Complete real estate forms with ease with the electronic forms program Transactions (zipForm Edition). All DSPS-approved real estate forms, WRA-related forms and select Wisconsin State Bar forms are available on Transactions. Even though the National Association of REALTORS® ended member access to zipForm at the end of 2021, the WRA extended access to Transactions (zipForm Edition) to WRA members.

Learn more and sign up: **www.wra.org/transactions**

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- AgentID marketing websites: These sleek, professional websites are the perfect solution if you don't have a website yet or don't have much control over your existing site. The Club publishes blog content monthly and helps you create landing pages to generate leads and promote your listings.
- Monthly training: The Club offers two live group marketing sessions each month that cover a variety of tech-related topics, such as iPads for sellers, website strategy, lead generation and much more.
- Exclusive Facebook community: With over 4,000 agents in the Club, you'll have access to an engaged community of like-minded individuals.
- Marketing suite: You can now upload your database and email newsletters using the marketing suite included with your Club membership.
- Monthly digital marketing campaigns: As a Club member, you get access to a brand-new campaign every month so you can stay connected with your contacts with all the latest real estate news.
- Marketing resources: The Club's marketing sessions come with complementary resources. With email sequences, customizable marketing pieces, scripts, checklists and more, the Club has you covered.
- Your questions, answered: The Club's group marketing sessions let you find answers to your questions from industry experts who have tested and proven the success of their systems. And between marketing sessions, feel free to reach out to the Club's support team if you need additional assistance.

Get started and learn more: **www.wra.org/PaperlessAgent**.

This is a contributing article from the Paperless Agent, a WRA partner.

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RSPS certification course: May 16-17

Become a dedicated expert to lifestyle real estate with the Resort & Second Home Property Specialist (RSPS) certification. RSPS training gives you the skills needed to buy, sell or manage second homes in a resort, recreational or vacation destination.

- Date/time: May 16-17, 9:00 a.m. – 12:00 p.m. each day
- Course location: Virtual
- Instructor: Maurice Hampton
- Course fee: $179 (sign up before May 16 to take $20 off)

Register: www.wra.org/2022RSPS

BOOST YOUR SELLER SKILLS
SRS designation course: June 2-3

The Seller Representative Specialist (SRS) training provides a comprehensive foundation of skills and resources to help you represent the interests of sellers in today's marketplace.

- Date/time: June 2-3, 8:30 a.m. – 4:30 p.m. each day
- Course location: Madison live and virtual streaming
- Instructor: Robert Morris
- Course fee: $319 (sign up before May 18 to take $30 off)

Register: www.wra.org/2022SRS

2022 WRA ANNUAL CONVENTION
Back in the Dells in October

Save the date for the WRA's biggest event of the year! The convention returns to Wisconsin Dells in 2022 for the WRA convention experience you know and love: three days of networking, education and fun at the Kalahari. Join us and hundreds of your fellow REALTORS® as we come together, make memories and learn new tools for the business.

Watch for more details this summer!

Learn more: www.wra.org/2022Convention

SALES PRE-LICENSE
Sales pre-license training course: July 11-15, 18-20

Are you a broker who is thinking about hiring new agents at your office? Your recruits can be ready for their new career with the WRA's accelerated eight-day training course this summer.

This course meets the DSPS' 72-hour education requirement for Wisconsin real estate licensees and prepares your recruits for the licensing exam. Real estate fundamentals such as financing, mandatory disclosures, contracts, land use controls, valuation and much more, are covered in the course.

Register: www.wra.org/2022JulySPL

OFFERING	FORMAT	DETAILS & REGISTRATION
EVENTS		
Annual Convention: October 2-4, 2022	Live in Wisconsin Dells	Watch for details in summer 2022!
PRE-LICENSE TRAINING		
SCHEDULED TRAINING		
Sales Pre-exam Review Webinar: June 3, 2022	Virtual webinar	www.wra.org/SPLwebinar
Sales Pre-exam Review Webinar: July 8, 2022	Virtual webinar	www.wra.org/SPLwebinar
Sales Pre-license Course: July 11-15, 18-20, 2022	Live in Madison	www.wra.org/July2022SPL
ONGOING TRAINING		
Broker Pre-license Course	On Demand	www.wra.org/BPL
Sales Pre-license Course	On Demand	www.wra.org/SPL
PROFESSIONAL DEVELOPMENT		
SCHEDULED TRAINING		
RSPS Certification Course: May 16-17, 2022	Virtual	www.wra.org/2022RSPS
SRS Designation Course: June 2-3, 2022	Live in Madison and virtual	www.wra.org/2022SRS
ONGOING TRAINING		
GRI On Demand	On Demand	www.wra.org/GRI
Home Essentials	On Demand	www.wra.org/HomeEssentials
Line by Line Forms Training	On Demand	www.wra.org/LinebyLine
Quick Start	On Demand	www.wra.org/QuickStart
REAL ESTATE CONTINUING EDUCATION		
SCHEDULED TRAINING		
Courses 1 & 2: May 11, 2022	Live in La Crosse	www.wra.org/May2022CE
Courses 1 & 2: May 17, 2022 (commercial)	Live in Wauwatosa	www.wra.org/CommMay2022CE
Courses 3 & 4: May 18, 2022 (commercial)	Live in Wauwatosa	www.wra.org/CommMay2022CE
Courses 3 & 4: May 19, 2022	Live in La Crosse	www.wra.org/May2022CE
Courses 5 & 6: May 24, 2022	Live in La Crosse	www.wra.org/May2022CE
Courses 1 & 2: May 24, 2022	Live in Hudson	www.wra.org/May2022CE
Courses 3 & 4: May 25, 2022	Live in Hudson	www.wra.org/May2022CE
Courses 5 & 6: May 26, 2022	Live in Hudson	www.wra.org/May2022CE
Courses 1 & 2: June 8, 2022	Live in Appleton	www.wra.org/June2022CE
Courses 3 & 4: June 22, 2022	Live in Appleton	www.wra.org/June2022CE
Courses 5 & 6: June 29, 2022	Live in Appleton	www.wra.org/June2022CE

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FIVE WAYS TO SPRING CLEAN YOUR TECH

Spring is a time of renewal. With warmer weather and sunny days arriving for many of us, spring is not just a time for cleaning the house but also a time to tidy up your technology.

As real estate becomes synonymous with remote work, a messy online space can negatively impact your productivity. Worse, digital clutter also slows down your technology.

Best practices tell us to keep our technology in good working order and our software programs and favorite web browser up to date. But when you're busy, it's sometimes tough to find the time to keep things current or tech tools clean.

Spring can be a great time to make sure your tech is in top shape.

Here are five tips and tricks for a tech spring cleaning:

1. DECLUTTER YOUR DESKTOP

Can you see your desktop's background image? Or are there too many items you saved to your desktop blocking your view?

Many people save items to their computer's desktop to remember where to find them. But when you do this too many times, you create a digital mess. It also can be even more challenging to locate the files you need.

A quick digital decluttering can get you organized. For example, removing files that you no longer need can free up space. In the end, you'll feel better by organizing your desktop.

Pro tip: If you view your desktop files in list view (Finder in macOS and File Explorer in Windows), you can create folders for like files, such as "screenshots," or quickly trash the ones you can delete.

2. REMOVE UNUSED APPS

How many apps do you have on your smartphone? A better question: How many of them have you opened in the last 30 days? Having too many apps slows you down. It can take you more time to find the app you need. It also can slow down your phone. If the apps you aren't using still are set to run in the background, that can take up Random Access Memory. Using too much RAM can make your phone response slower. It even can cause Wi-Fi connection issues, even if it used to connect perfectly.

Pro tip: Conduct an audit of your apps and use the 30-day rule. Determine which apps you haven't used in the last 30 days and are unlikely to use during the next 30 days. For iPhone users, you'll see a setting to "offload unused apps," which automatically deletes the apps but saves their documents and data and leaves the icon on your phone. When you tap the icon, everything reinstalls, but until then, you free up all that space.

3. DELETE OLD FILES

Have you ever run a date sort on your computer's files? You should, as you might be surprised to find many files from several years ago that you don't need. Also, go through and look for original software files you downloaded to store a program.

Pro tip: If you don't have time to go through all your files now, why not at least get them off your computer? By transferring all your older files to a low-cost data storage service such as Google Drive, you can clear your computer of clutter. That way, you can go back through your files when you find the time. Also, if you move your files online, don't dump everything into one folder. Instead, take just a little time to sort them, even if it's only in folders by years.

4. SYNC YOUR PHONE'S PHOTOS

A common mistake people make is keeping every picture on their phone. That practice can slow your phone down because images, especially videos, take up a lot of space. You have a couple of options. You can transfer them to your computer or, better yet, move them online to still have access to them almost whenever.

The good news is that it has never been easier to have your photos transferred online automatically. Google Photos, Amazon Photos or iCloud from Apple not only help you store your photos, but their smart software can also automatically help you organize them by like images or location.

Pro tip: If you upload your favorite photos to Facebook, did you know you can download all of them at once? After logging in, go to your Facebook settings. Then, click on "view" next to "download your information." This will take you to the downloads page. Select the "date range" as "all time" in the pull-down. Just below, at the right of the top of "select information to download," be sure to "deselect all" so you only check "posts." Facebook will send you an email with a link to download your posts with all the high-quality photos you have posted since you opened your Facebook account. It's a great way to make sure you have copies of those photos you are deleting from your phone!

5. PHYSICALLY CLEAN YOUR TECH

Your devices get grimy over time. You may not even realize it unless you take a good look. Start with your computer keyboard. If you take a lint-free cloth and some rubbing alcohol, you may be surprised how dirty it is and why most keyboards are black. Now clean your mouse, and if you have a trackpad, clean that too.

But don't use that cloth on your computer screens; it's best to clean them with a chemical-free cleaning cloth as you can ruin some screens, like Mac laptops, by using any solution but water. Experts suggest microfiber cloths and distilled water as the safest way to clean. The same goes for your smartphone. And if you are spraying anything to clean a device, make sure you spray on the cleaning cloth and not the device.

Pro tip: Compressed air or a mini vacuum can work magic to dislodge or pick up particles from a keyboard or crevice in your device. Amazon and other retailers sell compressed air in a can for as little as a couple of dollars a can, and mini vacuums are available for as little as $20.

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