May 2023 Vol. 39, No. 6

WISCONSIN REAL ESTATE MAGAZINE

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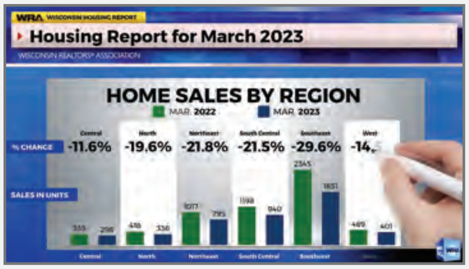
THE LATEST VIDEOS

HOUSING MINUTE

Monthly analysis in Wisconsin housing



March 2023 Housing Recap

Weak inventories kept March home sales down and drove prices up. "At the current pace of sales, we would need available inventory to increase by nearly 24,000 homes, which is an increase of 178% from current levels, to get back to a balanced existing home market. The current housing shortage is depriving young generations of the wealth-generating benefits of homeownership," said economist Dave Clark.

Watch: www.wra.org/HousingVideo/March23

MINI COURSES

Mini courses, major training

New Mini Courses Are Here

The WRA's new Mini Course Series gives you cutting-edge training and original knowledge to help you navigate the market. But a mini course doesn't mean mini impact. This new course series offers exclusive training you won't find anywhere else, taught by some of the top subject matter experts in Wisconsin real estate.

Watch: www.wra.org/MajorMini

LEGISLATIVE UPDATE

Advocacy in Wisconsin real estate

HOA Transparency Victory

In 2022, Gov. Tony Evers signed one of the WRA's legislative priorities into law to create better transparency for the potential and/or current residents living in homeowners associations (HOAs).

Under the new 2021 Wis. Act 199, those residents will now have access to the rules and regulations impacting the property.

Watch: www.wra.org/Advocacy/HOAs

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MARCH HOUSING

WEAK INVENTORIES KEPT MARCH HOME SALES DOWN AND DROVE PRICES UP

BY DAVE CLARK

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

March 2023 Wisconsin housing at a glance:

- Tight inventories were consistent statewide.
- Home sales slid 23.6% compared to March 2022.
- Months of inventory remained identical year over year.
- The median price rose 6.9% compared to March 2022.
- The housing affordability index dropped year over year.

See the full report: **www.wra.org/HSRMar2023**

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

4,419
CLOSED SALES MAR 2023
-23.6%
FROM MAR 2022

$272,500
MEDIAN PRICE MAR 2023
+6.9%
FROM MAR 2022

ACTIVE LISTINGS BY

PRICE RANGE	NUMBER OF LISTINGS
$0-$124,999	1,160
$125,000-$199,999	2,195
$200,000-$349,999	3,836
$350,000-$499,999	3,095
$500,000 & higher	3,056

13,342
TOTAL STATEWIDE LISTINGS
MAR 2023
-20.1%
FROM MAR 2022

MEDIAN PRICES BY REGION

CENTRAL	$205,000
NORTH	$223,500
NORTHEAST	$250,000
SOUTH CENTRAL	$325,000
SOUTHEAST	$275,000
WEST	$280,000

AVERAGE DAYS ON MARKET
78 DAYS MAR 2023
COMPARED WITH
78 DAYS MAR 2022

MONTHS OF INVENTORY
2.2 MAR 2023
2.2 MAR 2022

HOUSING STATISTICS MONTHLY ACTIVITY

Statewide	March 2023	March 2022	% Change	YTD 2023	YTD 2022	% Change
New Listings	5,867	8,140	-27.9%	N/A	N/A	N/A
Total Listings	13,342	16,700	-20.1%	N/A	N/A	N/A
Closed Sales*	4,419	5,782	-23.6%	10,834	14,915	-27.4%
Median Sales Price	$272,500	$254,900	+6.9%	$262,500	$240,000	+9.4%
Months of Inventory	2.2	2.2	0.0%	N/A	N/A	N/A
Avg. Days on Market	78	78	0.0%	N/A	N/A	N/A
Affordability Index	132	181	-27.6%	N/A	N/A	N/A

	Median Price			Closed Sales		
Region	March 2023	March 2022	% Change	March 2023	March 2022	% Change
Central	$205,000	$187,500	+9.3%	296	335	-11.6%
North	$233,500	$221,000	+1.1%	336	418	-19.6%
Northeast	$250,000	$220,000	+13.6%	795	1,017	-21.8%
South Central	$325,000	$316,500	+2.7%	940	1,198	-21.5%
Southeast	$275,000	$250,900	+9.6%	1,651	2,345	-29.6%
West	$280,000	$266,000	+5.3%	401	469	-14.5%

*Report criteria: Reflecting data through March 2023. *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

REVISED WB FORMS ON THE WAY FOR YOUR REAL ESTATE PRACTICE

Last month, the forms council at the Wisconsin Department of Safety and Professional Services (DSPS) decided on a new direction for the representation forms used in Wisconsin real estate practice.

Forms changes at a glance

- The existing WB-36 Buyer Agency/Tenant Representation Agreement will be split in two to create a revised version of the WB-36 as well as a new WB-39 Tenant Representation Agreement.
- The optional use date for both forms will be July 1, 2023.
- The mandatory use date will be September 1, 2023.

In addition, a new wire fraud warning for use in WB forms is currently in the works. Watch for the new wire fraud warning in the WB-36, in the new WB-39, and in a host of other WB forms in the future.

As always, the WRA will keep you updated about these developments that affect your practice.

WRA HOLIDAY HOURS

The WRA and the WRA Legal Hotline will be closed on Monday, May 29, in observance of Memorial Day. Normal business hours for the association and hotline will resume at 8:30 a.m. CDT on Tuesday, May 30. Have a safe and happy holiday weekend!

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ADJUSTABLE-RATE MORTGAGES: WHAT YOU NEED TO KNOW

BY RUDY IBRIC, ABR
CIBM BANK LOAN OFFICER AND BUSINESS DEVELOPMENT MANAGER

A mortgage product has recently resurfaced that you may not have seen in many years: the adjustable-rate mortgage (ARM).

ARMs become popular when interest rates rise and homebuyers look for ways to save on interest to make homeownership more affordable. Rates are up and ARMs are back again, but it has been quite a while since we experienced this phenomenon. As REALTORS®, we need to understand this mortgage product so we can explain it to our buyers and sellers. We should know for whom this product may be suitable. There is an area of the financing commitment contingency of the WB-11 Residential Offer to Purchase and the WB-14 Residential Condominium Offer to Purchase that needs to be completed if the buyer is applying for ARM financing, which can be confusing.

If you entered the industry within the last five years, you may have never seen this product used in your transactions. And even if you've been in the business for a long time, it may have been some time since you encountered this product. Due to changes in regulations, ARMs are somewhat different compared to many years ago.

ARMs are a byproduct of high interest rates of the late 1970s and early 1980s and the savings and loan crisis that followed. From 1995 to 2004, ARMs accounted for over 18% of all mortgage applications. Just prior to the mortgage crisis in the mid-2000s, the share of ARMs rose to over 34% of all mortgages. Then from 2009 to 2021, due to new regulations and low interest rates, ARMs were a very small percentage of mortgages. In 2021, when fixed-rate mortgages were at historic lows, ARMs accounted for less than 3% of mortgage applications. However, interest rates increased dramatically in 2022, and the share of adjustable-rate mortgages amplified to over 12%. This coincided with higher home prices, causing homebuyers to find new ways to afford to purchase a new home.

The latest Wisconsin housing statistic shows the median home price in Wisconsin increased 6.9% from March 2022 to March 2023 to $272,500. For someone putting 20% down, this results in an increase of $67.55 per month for the same home. However, that's assuming interest rates are at 3.5%. With the 30-year, fixed-rate mortgage recently peaking at about 7.25%, the same house now costs $575 more per month compared to just a year ago. It is substantially for this reason that ARMs have made a comeback.

With both home prices and rates up, REALTORS® who understand ARMs can use this to their advantage to sell more homes. The lower initial rate of an ARM allows buyers to buy a house they didn't think they could afford. A larger mortgage equates to a more expensive home. Assuming an ARM at 6% vs. a fixed-rate mortgage at 7.25%, a buyer can afford a home that costs 14% more for the same monthly payment. Although fixed and ARM rates have recently come down a bit, the affordability factor between the two is the same.

But why would anyone want a mortgage where the rate can change, and what is an ARM? We'll get into some specifics on how ARMs work, their advantages and disadvantages, and what kind of buyer may want an ARM. Then we'll discuss how to write and present an offer that has an ARM financing contingency.

BUYER MOTIVATIONS AND RATES

There are several reasons a buyer may choose to use an ARM. The obvious reason is ARMs have initial interest rates that are generally lower than fixed-rate mortgages. The rate difference, and therefore monthly payment, can be substantial. The rate differential and amount of savings depends on the type of ARM as well as market conditions.

ARMs have an initial rate called the start rate. This is also known as the discounted rate or "teaser rate" since it entices a borrower to select this mortgage program even though the rate can go up. The length of time before the initial rate can change the very first time is called the start rate period. Start rate periods vary. Longer start rate periods are riskier for lenders and therefore have higher rates.

The most common start rate periods are five, seven and 10 years. A start rate period of five years is called a five-year ARM, and a start rate period of seven years is called a seven-year ARM, and so on.

ARMs have other components like the maximum first adjustment. This is the most the interest rate can increase the very first time it adjusts. It's often different than the maximum subsequent adjustments discussed next. The maximum first adjustment can be as low as .5% or as much as 5% or even 6%. It's not uncommon to see seven-year and 10-year ARMs with 5% initial maximum adjustments.

Lenders qualify borrowers at the start rate for seven- and 10-year ARMs. However, it's important to note they use the first adjustment rate with five-year ARMs due to regulations. Although the initial rate of a five-year ARM may be lower, the qualifying rate can be higher than seven- and 10-year ARMs.

Another element of ARMs is the subsequent adjustment period. This is how often the rate adjusts after the initial adjustment and every time thereafter. The adjustment period can be every six months, every year or even every three years. The most common subsequent adjustment periods are six months and one year. Traditionally, the subsequent adjustment period was annual, but many ARMs sold by lenders to the secondary market now have six-month subsequent adjustment periods.

ADJUSTMENT CAPS

The next aspect of an ARM is its subsequent adjustment cap. This is the maximum the interest rate can go up or down at each subsequent adjustment. It limits the amount the interest rate can increase or decrease every time the rate adjusts. This is essential as it protects the borrower from the rate going up too much in a short period of time. Lenders call this "payment shock" and can lead to default. The adjustment cap has the same protections for lenders when interest rates are going down. You will find that ARMs with annual adjustments often have a 2% subsequent adjustment cap, and those with six-month adjustments have a 1% subsequent adjustment cap. I'll point out some items noteworthy to REALTORS® on this matter later in this article.

An additional rate limitation ARMs have is the lifetime cap. The lifetime cap is the maximum rate of interest the loan can ever reach. Most ARMs have either 5% or 6% lifetime caps. This cap protects the borrower from unlimited future rates.

Lenders use an index to determine what the interest rate will adjust to at the time of the subsequent adjustments. The index is a short-term financing instrument that is out of the lender's control. Common indices are one-year T-bills, the cost of funds index for a particular Fed district, and most recently the Secure Offer Finance Rate (SOFR). The SOFR index is now common among secondary market loans and replaced the London Interbank Offered Rate (LIBOR). A lender will use the index rate, typically 45 days prior to the adjustment date, to determine the new rate for the next adjustment period.

For the ARM to be profitable for lenders, a margin is added to the index. The margin is determined at closing and never changes. The index at the time of adjustment plus the margin determines the new rate for the next adjustment period. When adding the index and margin, the result is known as the fully indexed rate.

BENEFITS FOR HOMEBUYERS

Now that we understand how ARMs work, let's look at some of the advantages ARMs have for homebuyers, and who may benefit from this program.

While the initial rate of an ARM is generally lower than a fixed rate, it does come with risks that the rate could increase in the future. It's not guaranteed that the rate will go up — the rate could in fact go down — but a higher future rate is a borrower's main concern.

Despite its risk, this may not be an issue for some borrowers. There is the possibility that rates decrease during the start rate period. This would allow the borrower to refinance into a fixed-rate loan or another ARM in the future. Rates generally have highs and lows in four- to seven-year periods. A seven-year ARM, for instance, covers that rate cycle, along with the opportunity to refinance if rates come back down. The mantra lenders use is "date the rate and marry the house."

Also, the house someone is buying may be short term due to frequent job changes or other circumstances. Most loans are paid off in under 10 years for one reason or another.

Another candidate for an ARM is someone who is anticipating greater household income in the future, for instance, a partner entering or re-entering the workforce. Higher income may also be due to the likelihood of higher future wages. This would offset the potentially larger future payments if rates do go up. Also doctors in residency whose income will be greater upon completion may benefit from this program.

However, ARMs are not for everyone. A borrower with a fixed income may want a corresponding fixed-rate loan. A buyer may be buying their "forever home." A short-term rate is not a good strategy for a long-term situation. Regardless, ARMs are more risky than fixed-rate loans and may not fit a borrower's risk tolerance.

CONTRACT DRAFTING

Now that we understand how ARMs work as well as the best candidates for this product, let's look at how to complete and present the financing commitment contingency of the WB-11 and WB-14.

If your buyer is applying for an ARM, the financing commitment contingency of both WB forms must be completed correctly. If it does not match the loan commitment, you may provide a buyer wanting out of the contract with a solution. We never want this to be the agent's fault.

We'll use the WB-11 for illustration. The WB-14 is identical except for line numbers.

With ARM financing, lines 249-263 remain the same as for fixed-rate loans. See example 1. What to enter on lines 266-270 is what we're concerned with, as illustrated in example 2.

The check box on line 266 should be checked. The blank on line 266 is the start rate. The first blank on line 267 is the initial start rate period. For a five-year ARM, this is 60 months, and for a seven-year ARM, it's 84 months.

The second blank is the initial maximum first adjustment discussed previously. Note that the default is 2%. However, many seven-year and 10-year ARMs have an initial maximum of 5%. It's tempting to leave this blank since the default is often correct. In this case, however, we must know what the actual maximum first adjustment is.

EXAMPLE 1

248 ☐ **FINANCING COMMITMENT CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain a written
249 ______________________________ [loan type or specific lender, if any] first mortgage loan commitment as described
250 below, within ________ days after acceptance of this Offer. The financing selected shall be in an amount of not less than $
251 _____________________ for a term of not less than ________ years, amortized over not less than ________ years. Initial
252 monthly payments of principal and interest shall not exceed $ ________________. Buyer acknowledges that lender's
253 required monthly payments may also include 1/12th of the estimated net annual real estate taxes, hazard insurance
254 premiums, and private mortgage insurance premiums. The mortgage shall not include a prepayment premium. Buyer agrees
255 to pay discount points in an amount not to exceed ________% ("0" if left blank) of the loan. If Buyer is using multiple loan
256 sources or obtaining a construction loan or land contract financing, describe at lines 543-551 or in an addendum attached
257 per line 573. Buyer agrees to pay all customary loan and closing costs, wire fees, and loan origination fees, to promptly
258 apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. Seller agrees to allow
259 lender's appraiser access to the Property.
260 ■ LOAN AMOUNT ADJUSTMENT: If the purchase price under this Offer is modified, any financed amount, unless otherwise
261 provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly payments
262 shall be adjusted as necessary to maintain the term and amortization stated above.
263 **CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 264 or 265.**

EXAMPLE 2

265 ☐ **ADJUSTABLE RATE FINANCING:** The initial interest rate shall not exceed ________%. The initial interest rate
266 shall be fixed for ________ months, at which time the interest rate may be increased not more than ________% ("2" if
267 left blank) at the first adjustment and by not more than ________% ("1" if left blank) at each subsequent adjustment.
268 The maximum interest rate during the mortgage term shall not exceed the initial interest rate plus ________% ("6" if
269 left blank). Monthly payments of principal and interest may be adjusted to reflect interest changes.
270 ■ SATISFACTION OF FINANCING COMMITMENT CONTINGENCY: If Buyer qualifies for the loan described in this Offer

The blank on line 268 is the maximum subsequent adjustment. It is not uncommon for this to be 1% if the rate adjusts every six months, and 2% if adjusted annually. Note the default is 1%. That may not be the case, and the offer would then not match the buyer's loan commitment.

Finally, the blank on line 270 is the lifetime cap. This is the maximum the interest rate can ever reach, regardless of the index plus margin.

It is good practice to find out the specific terms of the buyer's adjustable-rate financing directly from the lender. Buyers tend to focus on the initial rate and start rate period and are less concerned with the other terms. However, when writing an offer, those terms are important.

FINAL THOUGHTS

ARMs are a great tool when interest rates are relatively high. They have not been used much of late but have made a comeback. They allow the right buyers to afford a larger loan amount, and therefore a higher home price. An adjustable-rate mortgage might be the perfect fit to help sell a listing or get your buyer into their dream home.

Rudy Ibric (NMLS 273404), BS, ABR, is a loan officer and business development manager at CIBM Bank, REALTOR® and an adjunct mortgage instructor at Waukesha County Technical College, and assists the WRA with mortgage education. For more information, contact Ibric at 414-688-7839.

LAND CONTRACTS, WELCOME BACK!

BY JENNIFER LINDSLEY
WRA STAFF ATTORNEY AND DIRECTOR OF TRAINING

As everyone knows, interest rates have been rising, making financing a property through a lender more expensive for buyers. This is leading to shifts in the lending market, including the return of adjustable-rate mortgages and rate buydowns. In addition, some buyers and sellers are looking at land contracts as a way to address rising interest rates.

A land contract may be used when the seller finances the buyer's purchase of the property. The buyer in a land contract pays the seller in installments and receives a deed when all payments have been made. As an alternative to the seller giving a deed and taking back a mortgage, the land contract seller reserves title to the property as security. The parties may use a land contract to negotiate a sale when conventional financing is not available to the buyer or is not feasible.

WHAT IS A LAND CONTRACT?

Land contracts are often what come to mind when a buyer and seller are considering seller financing. A land contract is a written agreement by which a seller, or "vendor," promises to convey the seller's property to the purchaser, or "vendee," if the vendee makes payments under an installment payment plan. The land contract purchaser takes possession of the real estate and promises to make installment payments of principal and interest, typically on a monthly basis, until the contract is paid in full.

HOW IS EQUITABLE TITLE DIFFERENT FROM LEGAL TITLE?

During the term of the contract, the purchaser has "equitable title" to the property and takes physical possession. Equitable title is the absolute right to obtain ownership when legal title is held in another's name. The purchaser becomes, for all practical purposes, the owner of the real estate. The vendor has legal title to the property until the contract is paid in full and then must convey the property by deed to the purchaser.

WHY WOULD A BUYER WANT TO PURCHASE PROPERTY ON A LAND CONTRACT?

In the current market, the purchaser might be able to negotiate a lower interest rate than is available from a traditional lender. A land contract can attract buyers who face various obstacles in qualifying for traditional mortgage loan financing. Obstacles to financing could be credit issues, a small down payment or lack of credit history.

Land contracts are also sometimes used when the buyer is related to the seller, such as parents selling the family farm or family cabin to an adult child on a land contract.

ARE THERE ANY REGULATIONS THAT WOULD AFFECT A SELLER OFFERING SELLER FINANCING?

Changes to the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act) were made in Wis. Stat. §§ 224.71-224.77 to remove many of the prior seller financing limitations on agents drafting seller financing offers as well as sellers providing seller financing when selling their own properties. There is now an exemption for sellers not regularly engaged in the business of loan origination who occasionally offer seller financing on five or fewer transactions per calendar year. The same is true for a broker writing offers on five or fewer transactions where seller financing is offered.

Another new exemption in Wis. Stat. § 224.71(13) is intended to exempt real estate brokers who are engaged solely in the practice of real estate brokerage and use state-approved forms. Brokers will not be required to register as mortgage loan originators if they negotiate offers with seller financing as long as they use the forms approved under Wis. Admin. Code § REEB 16.03. That rule approves real estate licensees to use the forms such as the WB forms approved by the REEB and forms prepared by government agencies such as the FHA or VA.

In addition to the WB forms and forms prepared by government agencies, brokers can also use forms prepared and approved by the State Bar of Wisconsin, including deeds, mortgages and land contracts as well as out-of-state forms for out-of-state real estate and business transactions.

IS THERE A FORM FOR A LAND CONTRACT?

The State Bar of Wisconsin has a standardized form of land contract known as a "Form 11 Land Contract." Wisconsin-licensed brokers may use the State Bar forms, but salespeople cannot.

In the typical Wisconsin residential land contract transaction, the owner of the property first enters into an offer to purchase with the buyer contingent on the seller agreeing to provide land contract financing. Land contract terms and conditions may be addressed in the Additional Provisions sections of the offer forms or in addenda.

HOW DO THE PARTIES NEGOTIATE THE TERMS OF THE LAND CONTRACT?

The offer might include a land contract rider specifying the terms of a land contract. The WRA Land Contract Rider (WRA-LCR) spells out the terms the buyer wants in the land contract and may raise additional details the parties have not yet considered. An offer for a land contract may also be achieved by completing a Form 11 Land Contract, except for signatures, and using it as an addendum to the offer.

The WRA Forms Committee is in the process of revising the WRA's Land Contract Rider, and the new and improved version should be available for agents to use in the very near future.

DO ANY OF THESE DOCUMENTS GET RECORDED?

The land contract is typically recorded with the register of deeds, giving notice of the vendee's interest in the real estate and the vendor's obligation to convey the real estate upon full payment. Failing to record a land contract puts the buyer at risk in that recording the land contract gives constructive notice to the public that the buyer has some type of interest in the property. If the parties do not record the land contract, a dishonest seller could sell the property out from under the buyer or use it as collateral for a debt.

WHAT ARE SOME FINANCIAL CONSIDERATIONS A SELLER SHOULD THINK ABOUT BEFORE AGREEING TO A LAND CONTRACT?

The seller is typically only going to receive the down payment from the buyer at closing. Out of that amount, the seller must consider what fees the seller will have to pay and whether the down payment is enough to cover such fees. The transfer fee is due at the time the land contract is recorded, along with a transfer return.

Because the seller in a land contract transaction is not receiving the full sales price upon execution of the land contract, there can be issues with commissions that may need to be worked out with the seller. The closing for a land contract conveys the equitable ownership interest in the property, hopefully creates an enforceable contract for the sale of the property, and thus triggers the seller's commission obligation. The execution and recording of a land contract also represent an effective change in ownership or control because the land contract buyer is treated as the owner, while the seller is treated as the secured party. If the buyer's down payment under the land contract is not enough to pay the listing firm's commission, the sellers and the listing firm can look for other solutions.

WHAT IF IT DOESN'T WORK OUT BETWEEN THE BUYER AND THE SELLER?

The parties to a land contract can negotiate their own remedy to end the land contract relationship. One possibility is for

the buyer to walk away from the transaction and quitclaim the buyer's interest back to the seller. The seller first should confer with legal counsel to examine any liens that may have attached to the buyer's interest in the property — it must be determined whether the liens will survive and continue to apply to the property if the buyer deeds it back to the seller.

If the buyer has significant liens, the seller may choose to foreclose to remove the "hitchhiker" liens from title. The seller may declare the land contract to be at an end and file a quiet title action to remove the land contract as a cloud on the seller's title to the property. This remedy generally is only used if the buyer's equitable interest in the property is insignificant.

The seller can sue the buyer for the money owed and get a money judgment. The acceleration clause in the Form No. 11 Land Contract makes it possible for the seller to declare the entire outstanding balance to be immediately due and sue for the balance if the buyer defaults on just one installment payment. This remedy allows the seller to quickly obtain a money judgment against the buyer.

The seller also can sue for foreclosure by sale, usually called "specific performance." This is like a mortgage foreclosure. The court establishes the redemption period in the foreclosure judgment. The court has a certain amount of discretion in fixing the redemption period, which may be as short as two months. If the buyer does not pay the balance, the sheriff sells the property at public sale. If the property does not bring in as much as the buyer owes, there may be a deficiency judgment against the buyer for the unpaid balance.

It may be more likely that a land contract seller will ask for a strict foreclosure. The seller who chooses this remedy has elected to rescind the contract, so the seller cannot get a deficiency judgment for the unpaid balance due on the contract. The seller gets their property back and keeps payments already made. There is no sheriff's sale. Costs may be less than those for a mortgage foreclosure, and the time required to complete the strict foreclosure is usually less than for mortgage foreclosure.

CAN ALL SELLERS OFFER SELLER FINANCING SUCH AS A LAND CONTRACT?

If the land contract seller has a mortgage on the property being sold and does not obtain the consent of the mortgage holder regarding the land contract sale, the "due on sale" clause in the mortgage may require the land contract seller to pay the total remaining balance due on the mortgage as soon as equitable title is transferred. Therefore, it is crucial for the seller to consult with the mortgage holder and obtain written consent to the land contract sale. Sellers with questions about this should be referred to their attorneys for legal advice.

THE BEST OF THE LEGAL HOTLINE

BY WENDY HOANG
WRA STAFF ATTORNEY

WHERE'S THE MONEY, LEBOWSKI?

Much like the characters in the 1998 movie *The Big Lebowski*, sellers want to know that buyers have the financing or funds available for a transaction to successfully close. The WRA Legal Hotline frequently receives questions about financing and what to do when financing problems appear during a transaction. The following discusses various scenarios involving financing.

FINANCING ACCEPTABLE TO THE BUYER

The seller accepted an offer with a conventional loan. The listing agent then received a call from an FHA appraiser saying an FHA appraisal must be done on the property. The seller chose the offer because she did not want to deal with an FHA appraisal. Can the buyer switch from a conventional loan to an FHA loan after the offer is accepted?

A buyer is allowed to obtain financing that is acceptable to the buyer. Lines 270-271 of the WB-11 Residential Offer to Purchase provide the following:

> *If Buyer qualifies for the loan described in this Offer or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of a written loan commitment.*

Further, the seller agrees to allow the buyer's appraiser reasonable access to the property to satisfy contingencies in the offer. If the buyer's lender requires an FHA appraisal to be done, then the FHA appraiser would need access to the property to satisfy the Financing Commitment Contingency. Lines 258-259 of the WB-11 Residential Offer to Purchase state the following:

> *Seller agrees to allow lender's appraiser access to the Property.*

If the seller does not allow access to the appraiser, the seller may be in breach of the contract. The seller may wish to review the default provision of the WB-11 Residential Offer to Purchase on lines 487-506.

According to the Default provisions of the offer, the parties have a duty of good faith and due diligence to meet the terms of the offer. See lines 487-489 of the WB-11 Residential Offer:

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

For further discussion about the FHA appraisal, see "FHA Loan Commitment? The Offer Said Conventional Financing," from the February 2021 issue of *Wisconsin Real Estate Magazine* at **www.wra.org/WREM/Feb21/FHALoan**.

NO FINANCING COMMITMENT CONTINGENCY

The seller accepted an offer that did not include a financing contingency or an appraisal contingency. The buyer attached a financial statement and a pre-approval letter to the offer. The listing agent was told that it was a cash offer, but the buyer might end up pursuing a loan. The buyer's lender contacted the listing agent to schedule an appraisal. If the offer was a cash offer with no appraisal contingency, does the seller have to allow the appraiser to conduct an appraisal of the property?

The licensees should review lines 296-307 of the WB-11 Residential Offer to Purchase that apply when the Financing Commitment Contingency is not marked or marked "N/A" at line 248, per line 247.

When an offer is not contingent on financing, the buyer still has a right to get financing, if they so choose, and the seller has already agreed to allow access to an appraiser in the "If This Offer Is Not Contingent On Financing Commitment" provision of the WB-11 Residential Offer to Purchase. Lines 304-307 of the WB-11 Residential Offer to Purchase provide the following:

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

This does not mean, however, that there is an Appraisal Contingency. The box on line 308 of the WB-11 Residential Offer to Purchase would need to be checked to include the Appraisal Contingency.

The "If This Offer Is Not Contingent On Financing Commitment" provisions of the offer at lines 296-307 provide that "within ___ 7 days of acceptance (default is 7 days)," a financial institution or third party in control of the buyer's funds shall provide the seller with reasonable written verification that the buyer has, at the time of verification, sufficient funds to close.

Unless the contract is modified, the elements of a proper proof of funds can be broken down into a few distinct elements. First is the party who can provide the documentation: either a financial institution or third party.

Second, the financial institution or third party is to be in control of the buyer's funds at the time of verification. In addition, the verification must indicate the buyer has enough funds to close the transaction at the time of the verification, which is not what a loan approval typically states. Depending on the content of the approval, the described elements or conditions contained in the offer would not appear to be met.

See the discussion of the "If This Offer Is Not Contingent On Financing Commitment" provisions on pages 3-4 of the October 2019 *Legal Update*, "WB-11 Residential Offer to Purchase — 2020 Edition — Part II" at **www.wra.org/LU1910**.

LAND CONTRACTS

The broker has a listing with a client and now the buyer and seller want to do a land contract. Does the broker draft the land contract using the offer to purchase with the land contract rider attached?

The land contract is a vehicle for seller financing. It is not an offer to purchase. The offer to purchase is the preliminary contract. When writing the offer, it should be contingent on the seller agreeing to finance with a land contract and the financing contingency would not be used. The offer may be used and can include a land contract rider for the terms of the land contract that will be drafted by the title company or an attorney. The land contract rider, which is the WRA-LCR form, spells out the terms the buyer wants in the land contract and may raise additional details the parties have not yet considered. Whether the broker drafts the land contract or refers it to an attorney is a judgment call for the broker to make. Additionally, the broker will want to review the firm's errors and omission insurance policy to see if it covers the broker drafting land contracts.

See the July 2008 *Legal Update*, "Using Land Contracts and Leases with Options," at **www.wra.org/LU0807** for further discussion and drafting tips. The January 2001 *Legal Update*, "Land Contract Financing," at **www.wra.org/LU0101**, is also a very useful resource regarding land contract financing and drafting. The broker may wish to review the financing contingencies for seller financing in the W*isconsin Real Estate Clauses Manual*.

A property owner has an existing mortgage on a property but was approached by a potential buyer about purchasing the property on a land contract. The current lender informed the owner that it would not permit the property to be sold on a land contract because of the existing mortgage. Is this typical of all mortgages?

It depends on the mortgage and the lender. Many, but not all, mortgages have what is called a "due on sale" clause, which means any transfer of the property, whether by a traditional sale or sale on a land contract, would trigger the remaining mortgage amount to become due immediately.

The property owner could consult with various lenders to see if any of them offer loans that do not contain "due on sale" clauses and whether the financing could be transferred to one of those lenders. Then the property could be sold on a land contract. Loans without "due on sale" clauses are not common, but sometimes government-backed financing such as FHA, VA or USDA loans can be made without "due on sale" clauses. Those loans, however, are typically only available for residential property used as a primary residence.

SIDE AGREEMENTS

The buyer has an accepted offer on a property that has two parcels. Both parcels are included in the offer. The buyer's lender does not allow financing for two parcels and has asked the buyer to remove the second parcel from the offer. The appraisal did not include the second parcel. The buyer's agent suggests that the buyer amend the offer to remove the second parcel and complete a separate purchase agreement for the second parcel to be sold for $0-25. The buyer has agreed to pay costs associated with the second deed. The listing broker has declined, stating that an auditor may flag the transaction due to the low sales price of the second parcel. Does the sales price of the second parcel matter if the seller and buyer agree to the low price?

Selling the second parcel for $0-25 when the second parcel may have a higher value may be considered mortgage fraud. An amendment to purchase the second parcel when the lender does not allow financing for two parcels could be considered to falsely portray an interest in real estate. A licensee cannot participate in an act of fraud under Wis. Admin. Code § REEB 24.085, which reads:

> *False portrayal of interest, prohibited. No licensee shall draft or use any document which the licensee knows falsely portrays an interest in real estate.*

In addition, a licensee may be required to make disclosures to the secured lender per Wis. Admin. Code § REEB 24.07(4):

> *DISCLOSURE OF SIDE AGREEMENTS. A licensee, when engaging in real estate practice, who becomes aware of the fact that a party to the transaction has not disclosed that party's entire agreement regarding the transaction to that party's secured lender, shall disclose this fact, in writing and in a timely manner, to the party's secured lender.*

LENDER REQUIREMENTS

The transaction is set to close in a week, and the buyer is financing with a VA loan. A termite inspection was conducted in accordance with the terms of the VA loan. The lender is requiring the termite inspection report to be signed by both the buyer and the seller. The listing agent has stated that he is not going to have his seller sign the report because the listing agent believes the seller is not required to sign it. The buyer's agent believes that the seller has not received the termite inspection report from the listing agent. Does the listing agent have to present the termite inspection report to the seller? Does the seller have to sign the termite inspection report?

If the lender is requiring both the buyer and the seller to sign the termite inspection report, the transaction may have problems closing if both parties do not sign.

Arguably, the listing agent has a duty to show the termite inspection report to the seller and inform the seller that the buyer's lender requires written confirmation on the termite inspection report. The listing agent should inform the seller that there may be problems with closing if the seller does not sign. This may constitute information material to the transaction that is not known or reasonably discoverable by the seller and thus requires licensee disclosure, per Wis. Stat. § 452.133(2)(b).

The buyer's agent may discuss with her supervising broker whether to contact the seller directly about the termite inspection and lender requirement, if they believe that the circumstances reasonably compel direct negotiation with the seller, per Wis. Admin. Code § REEB 24.13(5).

Wis. Admin. Code § REEB 24.13(5) provides the following:

> *A licensee may not negotiate a sale or lease of real estate directly with a party if the licensee knows that the party has an unexpired written contract in connection with the real estate that grants to another licensee an exclusive right to sell, lease, or negotiate. All negotiations shall be conducted with the firm holding the exclusive right to sell, lease, or negotiate, and not with the party, except with the consent of the firm or where the absence of the firm, or other similar circumstances, reasonably compels direct negotiation with the party. A listing firm has no duty to investigate whether a buyer has granted a buyer's agent an exclusive right to negotiate.*

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DOWN PAYMENT ASSISTANCE PROGRAMS

BY DEBBI CONRAD
WRA SENIOR ATTORNEY AND DIRECTOR OF LEGAL AFFAIRS

There are numerous down payment assistance programs around the country and throughout Wisconsin that may well be one of real estate's secret gems. There are programs for low- to moderate-income buyers as well as buyers with disabilities.

DPA PROGRAMS

Down payment assistance (DPA) is an umbrella term for programs offered by state housing finance agencies, cities and counties, housing authorities, WHEDA, nonprofit organizations, employers, and others. The assistance amounts may range from a few to tens of thousands of dollars and can be used toward the down payment. Many programs can be used together or "stacked" in combination with other DPA programs to achieve the needed total down payment amount. Additional uses may include closing costs, prepaids, principal reduction or repairs.

Each program is unique with distinct eligibility requirements, home-price limits and resale restrictions. DPA programs have household income standards, homebuyer education requirements, and specify the type of property that may be purchased using DPA funding. The property usually must be a house, townhome or a condominium unit purchased as a primary residence, and often must meet minimum housing code standards. For many programs, the buyer need not necessarily be a first-time homebuyer as long as they have not owned a home during the last three years.

DPA programs may be grants that do not have to be paid back or second mortgage loans with varying payback or loan forgiveness provisions.

Grants

Grants are awarded to low-income or moderate-income borrowers, typically defined as earning no more than 80% of the area median income. A buyer might be able to apply for multiple grants, so they should not be shy about trying to find more financial assistance.

Loans

Besides grants, there are a variety of down payment assistance second mortgage loans taken out with the first mortgage used to buy the home. Some loans are forgivable, which means the second mortgage will be forgiven so long as the buyer stays in the home for a certain period of time and stays up to date with their first mortgage payments. With deferred-payment loans, no interest is charged, but they need to be repaid in full when the buyer sells the home or refinances the first mortgage. Low-interest loans are low-interest second mortgages that have to be repaid, usually over the course of a few years.

Income qualification

Several nonprofits specialize in assisting low- to moderate-income homebuyers to secure affordable housing. The U.S. Department of Housing and Urban Development (HUD) defines low- to moderate-income as a household's annual gross income at or below 80% of county median income. Thus, there are likely moderate-income buyers who may be eligible, but they have not investigated DPA assistance because they assume they make too much money and are not low-income.

The other important thing to remember about income eligibility is that lenders look at an applicant's earning history while the DPA programs look at the applicant's present and future income and will evaluate this based on the entire household. This means if the son or grandmother who is part of the household has a part-time job, that income would be included by the DPA provider.

LOOK TO THE LOCAL LENDERS

Many people think they could never buy a home because they don't have the down payment, so they don't ever shop for a house even though they may be able to afford monthly mortgage payments. They should instead ask local lenders about the qualifications for DPA programs in their area. Prospective buyers should not only shop for favorable mortgage terms but also for lenders who are knowledgeable about DPA programs. Let the lenders be the experts.

Bringing DPA programs to the attention of real estate professionals and homebuyers is the first step. The other piece of the puzzle is finding an acceptable way to document these programs in the offer to purchase.

ADDENDUM DPA — DOWN PAYMENT ASSISTANCE CONTINGENCY

That's where the Affordable Housing Equal Opportunities Committee of the REALTORS® Association of South Central Wisconsin comes in. Together with the WRA, that committee developed a short addendum to use in transactions when one or more DPA program will be asked to contribute funds for the purchase. The Addendum DPA — Down Payment Assistance Contingency form is available in Transactions (zipForm Edition) as well as the WRA's subscription-based PDF forms library.

Addendum DPA is intended to be used with residential or condominium offers to purchase that are contingent upon the buyer securing approval from one or more DPA programs that are named on line 2 of the addendum. The total amount of DPA assistance needed is stated on line 6.

Buyer's DPA approvals

The buyer agrees to promptly apply to the named DPA programs. If the buyer is approved, the DPA provider will deliver written approval to the buyer's lender. This is different from most contingencies that real estate practitioners are accustomed to working with. In this instance, the DPA provider notifies the lender, and the lender will then ultimately approve or reject the buyer's loan. The presumption is that the lender's loan approval is dependent upon the DPA approvals; the down payment must be covered and then the balance of the loan can be evaluated based on underwriting standards. If the DPA is denied, the buyer's lender will likely deny the loan because there will not be enough down payment.

DPA inspection rights

Many DPA programs adhere to local minimum housing code standards or have specific property condition inspection or testing standards different than the definition of "defects" in an offer to purchase. The Addendum DPA attempts to build upon, or piggyback, the inspection and testing contingencies already in the offer.

With regard to inspections, lines 11-17 of Addendum DPA indicate that the buyer will provide all DPA providers a copy of all inspection reports created in fulfillment of the Inspection Contingency in the offer as well as any other offer provisions that cause inspection reports to be supplied. The deadline for the provision of the inspection reports to the DPA programs is to be stated at line 12. If the DPA program requires additional inspections beyond what is addressed in the inspection reports provided, the DPA provider may engage a qualified third-party inspector to conduct any additional needed inspection.

The DPA inspection will be piggybacked onto the Inspection Contingency, and the parties will treat the DPA inspection as a follow-up inspection under the Inspection Contingency in the offer. "Defects" are defined as stated in the offer but additionally include any property condition deficiencies under the standards of the DPA programs named in the DPA Addendum. Accordingly, if there is an issue with a DPA program property condition standard, the buyer will have the opportunity to deliver a notice of defects to the seller based on the expanded definition of defects. The seller, in turn, may then decide whether to cure and repair the property condition pointed to as a defect.

As stated in the caution on lines 18-21 of Addendum DPA, it is critical to provide ample time in the Inspection Contingency to layer in any needed DPA program inspections. The parties should allow time for the Inspection Contingency in the offer and any DPA inspections done as follow-up inspections, all before the deadline for giving a notice of defects in the offer. Many DPA inspectors will look for health and safety concerns and, for example, may flag lack of smoke and carbon monoxide detectors, windows with no latches or screens, and missing outlet covers. Bathrooms must have a window or a fan for ventilation.

LBP

The parties should also include an Addendum S or other lead-based paint (LBP) addendum or contingency in the offer because the DPA programs likely will require an LBP inspection. Generally, it will be the DPA program inspector who will conduct the LBP inspection, possibly using XRF, so that the parties need not pay for this service.

DPA testing rights

Similar to the provision for DPA program inspections, the buyer will give a copy of any testing reports to the DPA providers by the deadline indicated on line 22. The testing rights provisions on lines 22-31 grant the right for additional testing to any DPA provider requiring additional testing. Again, providing ample time when setting testing contingency deadlines is necessary if the DPA program testing is to be successfully layered on the testing contingencies already part of the offer.

If a licensee were to draft an offer where $25,000 was needed for the down payment, the buyer applied to DPA programs for the funds and there was no Addendum DPA in the offer, the offer would look like the buyer was bringing $25,000 to the table. When it is discovered that they are not, and they don't have the funds to close, the buyer may lose their earnest money or worse when the transaction fails. The Addendum DPA protects buyers seeking down payment assistance from liability if their financing does not come together.

SAMPLE TRANSACTION

This is a true story from the fall of 2022. The buyer was looking for a home for herself and her two children. They found an older ranch home that was in reasonable condition and was listed for $300,000. She wrote an offer for $300,000 with $3,000 in earnest money. She was able to meet the income limit for a household of three in the county where she was purchasing, which at 80% median income was $80,500, and applied for down payment assistance. The buyer is a person with disabilities, so she was able to apply for $40,000 down payment assistance from Movin' Out. Those funds are repayable when the home is sold. The buyer also applied for $6,000 in down payment assistance from the Down Payment Plus program, which is a five-year forgivable loan.

The offer included an Addendum DPA that listed Movin' Out and Down Payment Plus on line 2. The buyer was able to obtain an FHA mortgage, was approved for the DPA programs and thus enjoyed a successful closing. Yes, down payment assistance works!

Use the resources below to search for DPA programs in your area.

RESOURCES

- Homeownership Assistance: Wisconsin: **www.hud.gov/states/wisconsin/homeownership/buyingprgms**
- WHEDA First Mortgage and Down Payment Assistance Programs: **www.wra.org/WHEDA-DPAprograms**
- Wisconsin first-time homebuyer assistance programs: **www.bankrate.com/mortgages/wisconsin-first-time-homebuyer-assistance-programs**
- Home Buyers Round Table: **homebuyersroundtable.org**
- Housing Resources Inc.: **hri-wi.org/home-buyers/grants**
- REALTOR® Down Payment assistance search tool: **www.realtor.com/fairhousing**

LEGAL RESOURCES

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Included with WRA membership is access to the WRA's *Legal Update* publication. Recent issues include:

April 2023: "Landlord-tenant Law Refresher"
Review a variety of landlord-tenant issues as well as resources to use when handling rental agreements.

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Learn about the type of transactions covered by RESPA as well as the rules prohibiting referral fees and kickbacks.

See more: **www.wra.org/LegalUpdates**
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$45 MILLION AND COUNTING

HOW DID WE GET HERE?

BY NATHAN CONRAD
WRA DIRECTOR OF POLITICAL ADVOCACY

It wasn't so long ago that spring elections were not viewed as particularly noteworthy. In Wisconsin especially, voters have gone through election fatigue for the last decade or so. A lot of national attention is laser-focused on the Badger State during presidential election years due to the state's importance as a swing state for the electoral college.

Whether it was during the recalls of the early 2010s, or the extremely contentious gubernatorial and U.S. Senate races of 2022, the lion's share of voter involvement in the election cycle is focused on the fall elections held on the second Tuesday of November.

In these fall elections every two years, we as voters decide on whom to send to the state Assembly, whom to represent us in Congress, and we decide on half of our state Senate. Every four years, we decide on our statewide constitutional offices, including our state treasurer, secretary of state, attorney general, lieutenant governor and governor. In the alternate two-year cycle, we also decide on the leader of the free world, the President of the United States. In those elections, we also decide whom we send to Washington as our U.S. Senator.

Since the recalls of 2011 and 2012, Wisconsin voters have been asked to the ballot box several times more than the average voter in other states. In fact, since 2014, voters have been asked to the polls at least 24 times.

WHY DO VOTERS KEEP COMING BACK?

It is not just a sense of civic duty; it is partly due to the massive increase in political campaign spending to target and ensure that base voters — and now occasional voters — get to the polls on election day.

Before 2020, it was unheard of for a race in a state of 6 million people to exceed $15-20 million in total spending. Those numbers have been eclipsed as campaigns, political parties and third-party advocates have gotten better at asking for and spending money efficiently to get their preferred candidate's message to the masses.

More importantly, spring elections, which used to be lightly followed unless one was a political insider or very interested in the outcomes of local judicial races, have become the playground of big spending.

If you sat in front of a computer, a television, your cell phone, or went to your mailbox since January 2023, you were no doubt inundated with campaign materials regarding the Wisconsin Supreme Court race. In the 2023 Wisconsin Supreme Court race, more than $45 million was spent either for or against the candidates who ran for that seat. That amount dwarfs what has been spent on any Supreme Court race in Wisconsin or any other state.

Both campaigns were hard at work pressing for contributions so that they could extend their message to the people of Wisconsin. The Protasiewicz campaign brought in more than $12 million, in what is easily the largest amount raised by a Supreme Court candidate in the nation's history. The Kelly campaign was no slouches in adding to their coffers nearly $3 million. Both candidates received support, either in-kind or direct campaign contributions from the political parties that most closely align with their judicial outlook. Again, both sides of this ideological divide also benefited from robust spending by independent third-party advocacy groups.

WHAT DOES THIS MEAN?

With the ideological identity of the court on the line, this race brought nationwide attention to an election that just six years ago failed to garner two candidates for the top of the ticket. You read that right: in 2017, current Wisconsin Supreme Court Chief Justice Annette Ziegler did not field an opponent in her race. We have likely seen the last of uncontested races. This year's race most likely laid the groundwork for even longer campaign cycles for the Supreme Court as well as even larger pots of money to be spent to engage and educate the voters of the Badger State.

This race, and those that follow, will continue to be a battle for the ideological identity of the court, which will drive enhanced spending for years to come.

But don't worry, with the amount spent in 2023, you will be sure to be informed when the next seat comes up for election in 2025. If you want to know why, the answer is simple: Candidates, their allies, third-party activists and all the voters in between will no doubt be inundated with ads for years to come. Millions of dollars are already being put into place for the next race.

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ABR marketing virtual course: May 24-25

Dive into traditional and cutting-edge strategies to strengthen your marketing efforts and take them to the next level. Instructor Robbie English examines various tools that can help you maximize lead generation and market impact.

- Course: "Marketing Strategy & Lead Generation"
- Date/time: May 24-25, 9:00 a.m. – 12:00 p.m. each day
- Fee: $135 early bird pricing good through May 9

Register: www.wra.org/ABR

SALES PRE-LICENSE

Sales pre-license training course: July 10–14, 17–19

Are you a broker 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. Course topics include financing, mandatory disclosures, contracts, land use controls, valuation and much more.

• Course: "Sales Pre-license Course" (live at the WRA headquarters in Madison)
• Date/time: July 10-14, 17-19, 8:00 a.m. – 5:00 p.m. each day
• Fee: $345 + $59.99 book fee

Register: www.wra.org/SPL

EMBRACE DIVERSITY IN YOUR PRACTICE

AHWD virtual course: July 26-27

Help buyers of all cultural backgrounds achieve homeownership with At Home With Diversity (AHWD) training. In the AHWD course, instructor Amy Peterson analyzes strategies for working effectively with diverse populations so you can build business success in today's multicultural real estate market.

• Course: "At Home With Diversity"
• Date/time: July 26-27, 9:00 a.m. – 12:00 p.m. each day
• Fee: $95 early bird pricing good through July 11

Register: www.wra.org/AHWD

OFFERING	FORMAT	DETAILS & REGISTRATION
WRA PRE-LICENSE TRAINING		
SCHEDULED TRAINING		
Sales Pre-license Course: July 10-14, 17-19, 2023	Madison	www.wra.org/SPL
ONGOING TRAINING		
Broker Pre-license Course	On Demand	www.wra.org/BPL
Sales Pre-license Course	On Demand	www.wra.org/SPL
WRA PROFESSIONAL DEVELOPMENT TRAINING		
SCHEDULED TRAINING		
ABR Real Estate Investing Course: May 17-18, 2023	Virtual	www.wra.org/ABR
ABR Marketing Strategy Course: May 24-25, 2023	Virtual	www.wra.org/ABR
AHWD Certification Course: July 26-27, 2023	Virtual	www.wra.org/AHWD
ONGOING TRAINING		
GRI On Demand	On Demand	www.wra.org/GRI
Line by Line Forms Training	On Demand	www.wra.org/LinebyLine
Mini Course Series	On Demand	www.wra.org/Mini
Quick Start	On Demand	www.wra.org/QuickStart
WRA BUSINESS FORUMS		
SCHEDULED TRAINING		
June 1, 2023	Virtual	www.wra.org/BLF
WRA APPRAISER CONTINUING EDUCATION		
SCHEDULED TRAINING		
Cost Approach Course: August 9-10, 2023	Virtual	Save the date
Challenging Repairs Course: August 16, 2023	Virtual	Save the date
Desk Review: August 23, 2023	Virtual	Save the date
Moving Parts Course: August 30, 2023	Virtual	Save the date
Land Valuation Course: September 6, 2023	Virtual	Save the date
Unacceptable Appraisal Practices: September 18, 2023	Virtual	Save the date
Appraisal Mistakes Course: October 6, 2023	Virtual	Save the date
PARTNER WEBINARS		
THE PAPERLESS AGENT WEBINARS		
May 18, 2023	Virtual	www.wra.org/PaperlessAgent
May 23, 2023	Virtual	www.wra.org/PaperlessAgent
June 8, 2023	Virtual	www.wra.org/PaperlessAgent
June 20, 2023	Virtual	www.wra.org/PaperlessAgent
REALTORS® PROPERTY RESOURCE WEBINARS		
May 15, 2023	Virtual	www.wra.org/RPR
May 16, 2023	Virtual	www.wra.org/RPR
May 17, 2023	Virtual	www.wra.org/RPR
May 18, 2023	Virtual	www.wra.org/RPR

See the complete calendar: www.wra.org/coursecatalog

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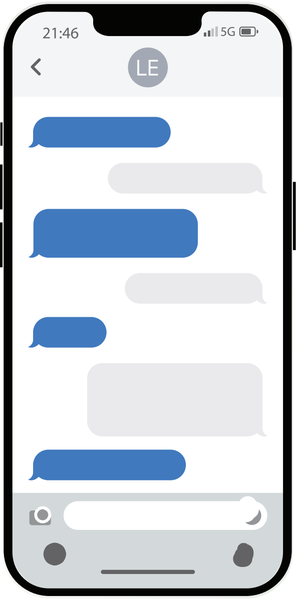

THE DO'S AND DON'TS WHEN TEXTING

Texting has emerged as the "go-to" communication tool for real estate agents and their clients. Six years ago, the National Association of REALTORS® (NAR) ranked texting as the third most popular form of client communication, behind email and telephone. The most recent NAR study shows texting is now the No. 1 way agents connect with their clients at 93%, topping telephone and email communications. More importantly, the practice of agents texting past clients and prospects has grown more than 25% since 2016.

Because texting is efficient, quick and convenient, it is often the most effective way for agents to engage with their clients and co-workers. But sending a text can sometimes be fraught with risks.

And while texting is especially vital to millennials — who open their text messages about 98% of the time versus 20% of emails being opened — an unwanted or unsolicited text can cause an immediate and adverse reaction.

Real estate agents must also be aware of the Telephone Consumer Protection Act (TCPA). This federal law protects consumer privacy rights and was created to limit both annoying and unwanted telephone calls and texts.

Here's a quick primer on texting etiquette with some of the essential do's and don'ts you should follow when texting.

THE DO'S

Do remain professional

The best texting rule in real estate is to maintain a professional demeanor. When texting a client for the first time, start by identifying yourself and explaining why you are texting them. Use short and complete sentences instead of abbreviations or text lingo until you can observe the client's texting style. Also, hold off on using emojis unless you know the recipient well. Once you have begun a text exchange and see the client's style, you can determine if you should loosen up a little.

Most importantly, be mindful of the time and the time zone, and unless there's a compelling reason, keep your text exchanges limited to business hours. Not all clients are keen on receiving texts late at night or early in the morning unless they expressly permit you. A best practice is establishing text boundaries with clients in advance when discussing the best ways to reach them and for them to reach you.

Do keep texts short and on topic

When texting prospects or past clients, it's essential to keep your text messages brief. They are more likely to be read and remembered than deleted.

Texts should never be lengthy — that's the job of an email or phone call. If you have a lot to say, put it all in an email; if it's important, send a short text making sure the client read the email you just sent. Otherwise, you also risk that they will lose interest. Also, remember to use the client's name in a text; it can be powerful to share something you know about them, such as a birthday or anniversary note. Finally, if you expect a response, you must end your message with a question. That's how to get most people to respond.

Do send targeted updates and links: Since you're likely sending clients emails — perhaps suggested listings or requests for document review — feel free to text them a link to a relevant video or article about the community in which they are shopping. They will feel like you are giving them inside information and special attention for what they want. Potential homebuyers will also be intrigued by a digital walk-through of a listing, especially if you send them a personalized tour shot on your smartphone and use the client's names throughout the tour.

Do reply ASAP

Texting is an immediate form of communication: it comes across as more urgent than a phone call or email. Clients who text you during business hours will expect a quick response. Even if you are busy, it's better to text back sooner than later out of politeness.

Do provide opt-in and opt-out opportunities

If you are using text to share general information vs. individual-specific information, give recipients the option to opt in to receiving texts when needed. This is especially true when promoting an event like an open house. If you plan to text clients regularly — for example, weekly — set that expectation upfront by letting them know what to expect. On the flip side, if a lead asks you to quit texting them, then stop immediately. You should also confirm their request promptly. If you are using a professional texting service, you should add a line at the end that says, "reply STOP to opt out of future messages." This lets your contacts know they can stop any time they wish.

THE DONT'S

Don't use group messages

When someone gives you their mobile number, it creates a new level of responsibility. Use their number wisely to earn their trust. Including clients or prospects in a group message is rarely a good idea, as it can quickly erode the trust you are building with them. Instead, customize your text communication for each recipient. Yes, it takes extra time to create separate texts instead of a group text, but it is worth it.

Don't text bad news

Texting is not the best communication method if you need to share unfortunate information. Sharing bad news via text could be interpreted as cowardly or callous. If you need to be the bearer of bad news, it's better to call the client directly. That way, you can answer your customer's questions, provide additional advice, and most importantly, read and respond to their nonverbal cues.

Don't send without proofreading

Do you use the dictation feature on your phone to write texts? If you do, be extra careful, as autocorrect can wreak havoc with the English language and cause unintended embarrassment. While some clients may be forgiving of a typo or two, others will see it as a negative reflection on you. To maintain your professional image, before sending a text to a client or prospect, take a breath. Make sure you proofread and check for any errors that need to be corrected. And if you accidentally send out a text with a mistake, take ownership of it and quickly clarify what you meant to say. When texting, you can correct an error by immediately responding using an asterisk before the corrected spelling of the word, like the phrase "*ample — instead of apple," that appears in the text you just sent. You could also use a virtual editor to assist you with your writing.

Don't send too many attachments

Sometimes, you need to send photos or short videos to a client or prospect via text. But you want to send as few as possible. Sending too many images and videos can negatively affect someone's data plan or phone storage limits. Too many photos and videos also can make you appear to be pushy. If you want to send multiple images, text a link to the photos and videos on a webpage or a shared online document folder, like Dropbox, Google Drive or Microsoft OneDrive.

Don't text numbers on the Do Not Call (DNC) Registry

Don't ever text a number on the DNC registry without permission. While doing so could potentially lead to heavy fines, more importantly, it could damage a relationship. Remember, if you want to text a number on the "do not call" list, you must either have a business relationship with the recipient or get their written permission before you send them a text.

The popularity of texting remains strong: 97% of American adults text weekly. Over 6 billion texts are sent daily — which calculates to 27 trillion texts sent yearly. But real estate agents need to use texting wisely because they are entrusted with personal mobile phone numbers. Perhaps the best rule of thumb when deciding whether to text or not to text is if that if you must ask that very question, don't text.

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